

CITY OF AMADOR CITY
AGENDA OF THE REGULAR MEETING OF THE CITY COUNCIL

TUESDAY September 20, 2022, 7:00 p.m.

This will be a hybrid meeting – in person in the City Hall

SPECIAL NOTICE

Pursuant to Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020, as a response to mitigating the spread of coronavirus known as COVID-19, during the September 20, 2022, meeting of the City Council of Amador City, California members of the public will be allowed to join Zoom Meeting.

Zoom information – see next page.

As of August 2, 2021, the State of California requires masks for unvaccinated people and recommends masks for everyone in indoor settings, including local government offices. Therefore, we respectfully request that you wear a mask if you attend this meeting in person.

1. Call to Order
 - Pledge of Allegiance
 - Roll Call -
2. Approval of Agenda, Minutes of August 16, 2022, and Financial Statements
3. Public Matters Not on the Agenda – Discussion items only , no action to be taken. Any person may address the council at this time on any subject matter within the jurisdiction of the Amador City Council. Any item that requires action will be deferred to a subsequent council meeting. Five-minute time limit –
4. Public Comment
5. Public Hearing
 - A. City Manager Report
 - B. South Parking Lot Tree Assessment (Discussion/Action)
 - C. Break Even Brewing,LLC, Sign Application – Packet Review
 - D. Aces Contract (Discussion/Action) - City Manager Groth
 - E. Code Enforcement (Discussion) – City Manager Groth
 - F. Flags in Amador City (Discussion) – Bruce Smith
 - G. Housing Element (Update) – Mayor Kel-Artinian
 - H. Short Term Rental Ad Hoc Committee (Update) – City Manager Groth
 - I. Permit Log – Review – Larry White
 - J. Fire Wise (Update) – City Manager Groth
 - K. Creek Cleaning (Conservation Corps Process) – City Manager Groth
 - L. Sewer Study Update – Mayor Kel-Artinian
 - M. Committees:
 - a. ARSA
 - b. Air
 - c. ACRA
 - d. Design Review
 - e. ACTC/RTMF
 - f. LAFCO

- h. Museum**
- i. Cemetery**
- j. Maintenance**
- k. Powder House**
- l. Fire Dept.**
- m. Homeless**

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, then please contact Joyce Davidson at (209)268-6910 or e-mail city.clerk@amador-city.com. Requests must be made as early as possible, and at least two full business days before the start of the meeting.

Amador City Office of the Mayor is inviting you to a scheduled Zoom meeting.

Topic: Amador City Regular City Council Meeting - Zoom link

Time: This is a recurring meeting Meet anytime

Join Zoom Meeting

<https://us02web.zoom.us/j/88534027186?pwd=cUhaSm8xRUNTOTgxb1QwSFFzb1VqUT09>

Meeting ID: 885 3402 7186

Passcode: 193935

One tap mobile

+16699006833,,88534027186#,,,,*193935# US (San Jose)

Dial by your location

+1 669 900 6833 US (San Jose)

Meeting ID: 885 3402 7186

Passcode: 193935

Find your local number: <https://us02web.zoom.us/j/kczh1A5R1>

CITY OF AMADOR CITY
MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL
TUESDAY August 16, 2022, 7:00 p.m.

This will be a hybrid meeting – in person in the City Hall

SPECIAL NOTICE

Pursuant to Paragraph 11 of Executive Order N-25-20, executed by the Governor of California on March 12, 2020, as a response to mitigating the spread of coronavirus known as COVID-19, during the August 16, 2022, meeting of the City Council of Amador City, California members of the public will be allowed to join Zoom Meeting.

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1. Call to Order
 - Pledge of Allegiance
 - Roll Call – Kel-Artinian, Bragstad, Robinson, Marks, Smith present
2. Approval of Agenda, Minutes of July 19, 2022, and Financial Statements – Robinson moved, 2nd by Bragstad to approve the minutes. Financial Statements will be on September agenda for approval,
3. Public Matters Not on the Agenda – Discussion items only , no action to be taken. Any person may address the council at this time on any subject matter within the jurisdiction of the Amador City Council. Any item that requires action will be deferred to a subsequent council meeting. Five-minute time limit –
4. Public Comment – Sandy Staples, representing the Amador Whitney Museum, reported the poor condition of the board walk in front of the Museum. It needs replacement or extensive repairs.
5. Public Hearing
 - A. Supervisor Frank Axe – Introduction and discussion only – Mr. Axe introduced himself to the Council and gave a brief summary of some of the projects he is currently undertaking ie. Economic Development, grant funding, Central Sierra projects, CERF Funding – recovery from COVID, Resiliency Fund Grant, ARSA, LAFCO, reducing speed limit on 49, Code Enforcement
 - B. City Manager Report (Discussion) – City Manager Groth reported that he has been in contact with Michael Gornet re: request for records, Housing Element, Sewer Study, Short Term Rentals, City Park, Firewise, Compliance Training and Parsac contact
 - C. Resolution #603 – Placement of Delinquent Sewer Bills on Tax Roll – Bragstad moved, 2nd by Smith, approved unanimously
 - D. Ord. #182 – Edible Food Recovery (Discussion) – Mayor Kel-Artinian reported that grocery stores are a major contributor to Food Bank which is planning to purchase a walk-in freezer for their warehouse. Bragstad suggested Amador City might consider selling composters as a way to participate in Food Recovery.
 - E. Amendment to Aces Contract – To be on September agenda.
 - F. Request for \$500 for Recognition Party for Mary Ann McCamat – Imperial Hotel – No action

G. City Hall Park – Rock Landscaping – Bragstad moved to remove rocks, 2nd by Smith, approved.

H. Sewer Rate Option – Discussion ensued regarding satisfying proportionality between assessment and usage (Prop. 218). City can still apply for grants to cover capital improvements. Robinson and Smith not in favor of using funds from #18 for use Bragstad moved to adopt Option A. Second by Kel-Artinian. Approved by Bragstad, Kel-Artinian, and Smith. No votes from Robinson and Marks

H. Permit Log (Discussion) – Building Inspector White is adding two more items – Strong Motion and American with Disabilities

I. Building Department Action – Appeal – Michael Gornet – Larry White reported that Mr. Gornet never filed a building plan. Building Inspector cited other violation regarding the fires on subject property. Mr. White also reported that soil report submitted by Mr. Gornet was incomplete and not in the area for the “glamping” project. It was mentioned that Mr. Gornet could apply for a zoning change relative to his property. The temporary power pole was removed by P.G. and E. Mayor Kel-Artinian, Weber Ghio and Larry White all had input on temporary power pole removal.

6. Committees:

- a. ARSA – Sutter Creek not going through with tertiary plant. Will improve secondary treatment. Will send water to lone**
- b. Air – Still talking re. EV charger cost**
- c. ACRA – Nothing**
- d. Design Review – Nothing**
- e. ACTC/RTMF – Discuss walking and biking trails from Amador City to Sutter Creek**
- f. LAFCO - Nothing**
- g. BnB/VRBO – Will request summary of units from Air BnB for TOT purposes**
- h. Museum – New sign – not attached to building**
- i. Cemetery – Tree still an issue**
- j. Maintenance – August 27 for Ace's Clean Up Day – Dumpster at City Hall**
- k. Powder House- Nothing**
- l. Fire Dept. – Bruce Smith and Dave Groth will meet with Captain Moreno on Thursday**
- m. Homeless – Plan for low income housing by Transportation Agency. Number of homeless went down at latest count.**

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Basic Tree Risk Assessment Form SEP 8 - 2022

Client Amador City Date September 4, 2022 Time 11:15 AM
 Address/Tree location Keystone Mine Public Parking Lot Tree no. N/A Sheet 1 of 1
 Tree species Foothill Pine / Pinus Sabiniana dbh 36" Height 98' Crown spread dia. 45'
 Assessor(s) Jeff McDonald, TRAQ Tools used Tape and Drone Time frame 5 years

Target Assessment

Target number	Target description	Target protection	Target zone			Occupancy rate 1 - rare 2 - occasional 3 - frequent 4 - constant	Practical to move target?	Restriction practical?
			Target within drip line	Target within 1 x Ht.	Target within 1.5 x Ht.			
1	Pedestrians	None	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2	Parked vehicles	None	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3								
4								

Site Factors

History of failures Species known to fail when mature Topography Flat Slope 5 % Aspect North
 Site changes None Grade change Site clearing Changed soil hydrology Root cuts Describe Compacted soil
 Soil conditions Limited volume Saturated Shallow Compacted Pavement over roots 80 % Describe Tree in roundabout
 Prevailing wind direction West Common weather Strong winds Ice Snow Heavy rain Describe Seasonal storms

Tree Health and Species Profile

Vigor Low Normal High Foliage None (seasonal) None (dead) Normal 90 % Chlorotic 5 % Necrotic 5 %
 Pests/Biotic _____ Abiotic Drought
 Species failure profile Branches Trunk Roots Describe Species prone to failure, heavy lean, codominant tops

Load Factors

Wind exposure Protected Partial Full Wind funneling N/A Relative crown size Small Medium Large
 Crown density Sparse Normal Dense Interior branches Few Normal Dense Vines/Mistletoe/Moss N/A
 Recent or expected change in load factors One top failed

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown LCR 35 %
 Dead twigs/branches 5 % overall Max. dia. 5"
 Broken/Hangers Number N/A Max. dia. N/A
 Over-extended branches
 Pruning history
 Crown cleaned Thinned Raised
 Reduced Topped Lion-tailed
 Flush cuts Other N/A
 Large wound from failed top _____ Condition(s) of concern Long tops and branches with little taper
 Part Size 78' Fall Distance 20'
 Load on defect N/A Minor Moderate Significant
 Likelihood of failure Improbable Possible Probable Imminent
 Cracks N/A Lightning damage
 Codominant Multiple tops Included bark
 Weak attachments _____ Cavity/Nest hole 0 % circ.
 Previous branch failures Top Similar branches present
 Dead/Missing bark Cankers/Galls/Burls Sapwood damage/decay
 Conks Heartwood decay _____
 Response growth Little

— Trunk —

Dead/Missing bark Abnormal bark texture/color
 Codominant stems Included bark Cracks
 Sapwood damage/decay Cankers/Galls/Burls Sap ooze
 Lightning damage Heartwood decay Conks/Mushrooms
 Cavity/Nest hole N/A % circ. Depth N/A Poor taper
 Lean 20 ° Corrected? No
 Response growth Not enough
 Condition(s) of concern Heavy lean, failure
 Part Size 78' Fall Distance 20'
 Load on defect N/A Minor Moderate Significant
 Likelihood of failure Improbable Possible Probable Imminent

— Roots and Root Collar —

Collar buried/Not visible Depth N/A Stem girdling
 Dead Decay Conks/Mushrooms
 Ooze Cavity N/A % circ.
 Cracks Cut/Damaged roots Distance from trunk _____
 Root plate lifting Soil weakness
 Response growth N/A
 Condition(s) of concern N/A
 Part Size N/A Fall Distance N/A
 Load on defect N/A Minor Moderate Significant
 Likelihood of failure Improbable Possible Probable Imminent

Risk Categorization

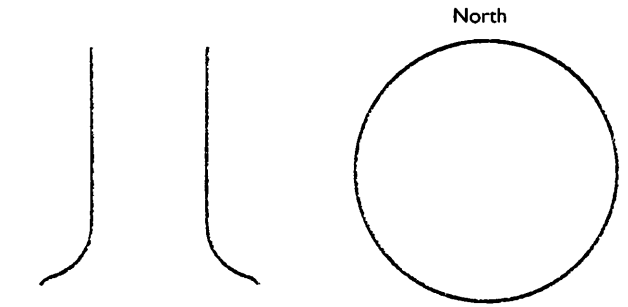
Target <i>(Target number or description)</i>	Tree part	Condition(s) of concern	Likelihood											Consequences				Risk rating <i>(from Matrix 2)</i>	
			Failure				Impact				Failure & Impact <i>(from Matrix 1)</i>			Negligible	Minor	Significant	Severe		
			Improbable	Possible	Probable	Inminent	Very low	Low	Medium	High	Unlikely	Somewhat	Likely						Very likely
Pedestrians	One of multiple tops may fail	Over-extended codominant tops			✓			✓				✓						✓	Low
Parked vehicles					✓			✓				✓						✓	Low
Pedestrians	Whole tree failure	Heavy lean species has a history of failure			✓			✓				✓						✓	Low
Parked vehicles					✓			✓				✓						✓	Low

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impact			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low



Notes, explanations, descriptions

A mature tree with structural defects and a history of tree parts failing is leaning over a popular public parking lot and walking path.

Mitigation options

- Block off the west side of the tree with heavy lean. Residual risk Low
- Remove the tree. Residual risk None
- Residual risk _____

Overall tree risk rating Low Moderate High Extreme

Overall residual risk None Low Moderate High Extreme Recommended inspection interval _____

Data Final Preliminary **Advanced assessment needed** No Yes-Type/Reason _____

Inspection limitations None Visibility Access Vines Root collar buried Describe _____



Foothill Pine / *Pinus sabiniana* with one of multiple tops that previously failed

Mitigation Options

The following mitigation options are recommended for this Foothill Pine.

1. Complete removal of the tree would result in zero (0) risk.
2. Blocking off the roundabout so that vehicles cannot drive under or park under the tree would result in zero (0) risk for vehicles but would still resulting a low risk for pedestrians.

Conclusion

In my professional opinion, in a five (5) year time span, the likelihood of one of the multiple tops failing or the whole tree failing and striking a person causing severe consequences poses a **LOW** risk.

Also, the likelihood of the whole tree failing and one of the tops failing and striking a parked vehicle causing significant consequences poses a **LOW** risk.

SEP 8 - 2022

Assignment and Scope of Work

At the request of Ms. Joyce Davidson, City Clerk of Amador City, I was asked to provide a tree assessment of a foothill pine, also known as *Pinus sabiniana*, on the grounds of the Keystone Mine located in the heart of Amador City, California. A recent tree failure at one of the codominant stems has prompted the need to inspect the entire tree for health and safety.

I visually inspected the tree from the ground. I performed a Level 2 risk assessment, also known as a basic tree risk assessment.



Foothill Pine / *Pinus Sabiniana* with a heavy lean

Amador City Sign Application



Date: August 29, 2022

Name of Applicant: Aaron Wiltman (biz partner) / Jolene Stark (designer)

Name of Business: Break Even Beermakers Tavern

Mailing Address: PO Box 507 Amador City, CA 95601

Business Location: 14166 Old Route 49

Telephone: Bus 530-228-2081
aaron@breakevenbeermakers.com

Res jolene@dibst.com

*See word
9-15-22*
SEP 1 2 2022

Size: _____ Type (Hanging/flat/other) _____ Material: _____

Please see attached presentation sheets for all materials, mounting, and size details.

Colors: Background

Lettering

Trim

Additional art work

Letter Size:

Please provide a scaled and dimensioned drawing (example 1/2 in = 1 ft) depicting the proposed sign including lettering, artwork and colors. The colors shall be as accurate as possible. Labeled paint samples shall be included. Lettering style(s) shall be specifically shown. Lettering examples from magazines or newspapers may be used to show type face. Trim and artwork shall be accurately portrayed.

Please complete all the information on this sheet even though the information may be repeated on the sign.

Applicants or their representative are strongly urged to be present at Sign Committee when this item is reviewed

THE SIGN COMMITTEE WILL INDICATE THEIR APPROVAL, CONDITIONAL APPROVAL OR DENIAL BY AFFIXING THEIR INDIVIDUAL SIGNATURES TO THIS FORM. A QUORUM MUST BE PRESENT AT MEETING. IF SIGN IS DENIED, COMMITTEE MEMBERS WILL INDICATE SECTION OR SECTIONS OF SIGN ORDINANCE SUPPORTING DENIAL.

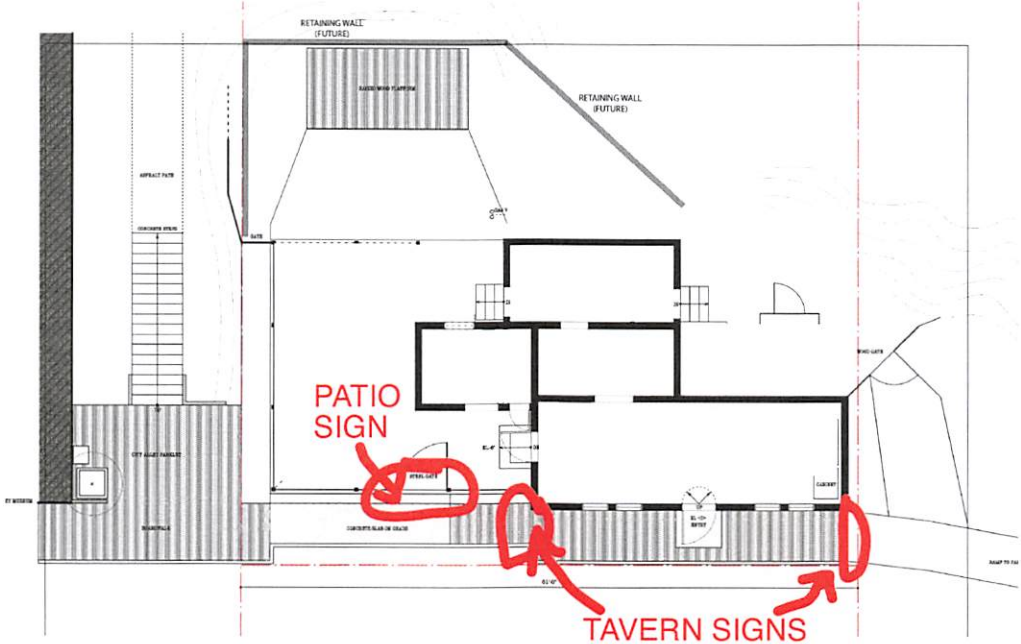
Approval:

Conditional Approval:

Denial:

CITY OF AMADOR CITY
SIGN APPLICATION

PLOT PLAN (Birds eye view) Draw building and locations of all signs for this business.



FRONT VIEW: Draw front elevation of business and location of sign.

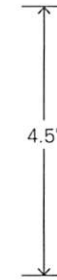
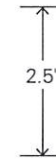
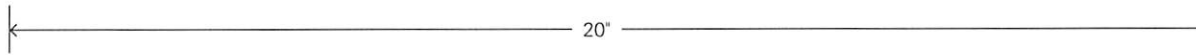
Please see the attached sign presentation.

Designer: Jolene Stark, jolene@difbst.com, (916) 838 4988

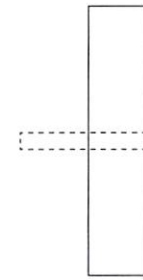
QTY: 2

SCALE: 1:2

TOTAL SQ. FT. : 1.2525 FT



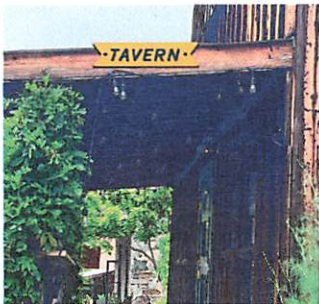
SIDE VIEW



1IN. THICK WOOD SUBSTRATE
PAINTED SATIN OR MATTE
YELLOW.

HANDPAINTED ROUTED OUT
LETTERS IN BLUE.

CENTER MOUNTED TO
OVERHANG WITH 2 EXPOSED
BOLTS PAINTED BLUE TO
MATCH LETTERS.

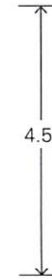
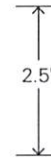
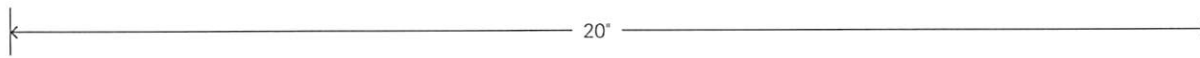


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QTY: 2

SCALE: 1:2

TOTAL SQ. FT. : 1.2525 FT



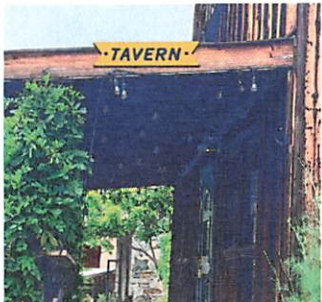
SIDE VIEW



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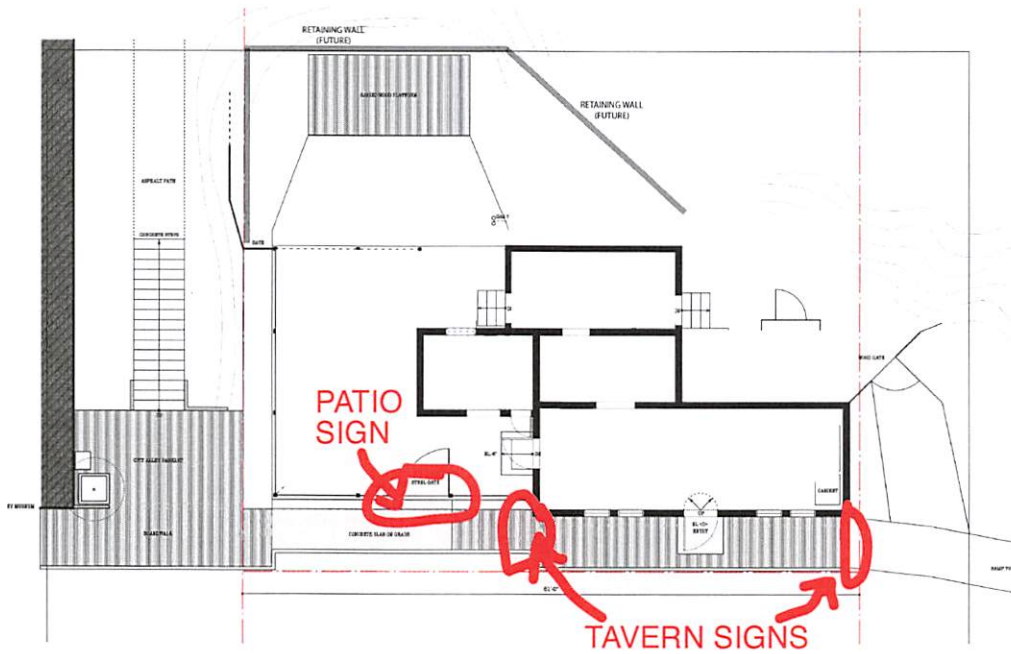
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CITY OF AMADOR CITY

SIGN APPLICATION

PLOT PLAN (Birds eye view) Draw building and locations of all signs for this business.



FRONT VIEW: Draw front elevation of business and location of sign.

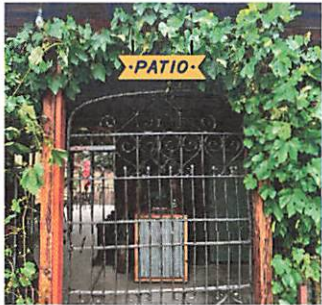
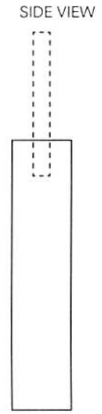
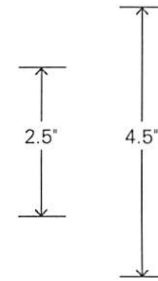
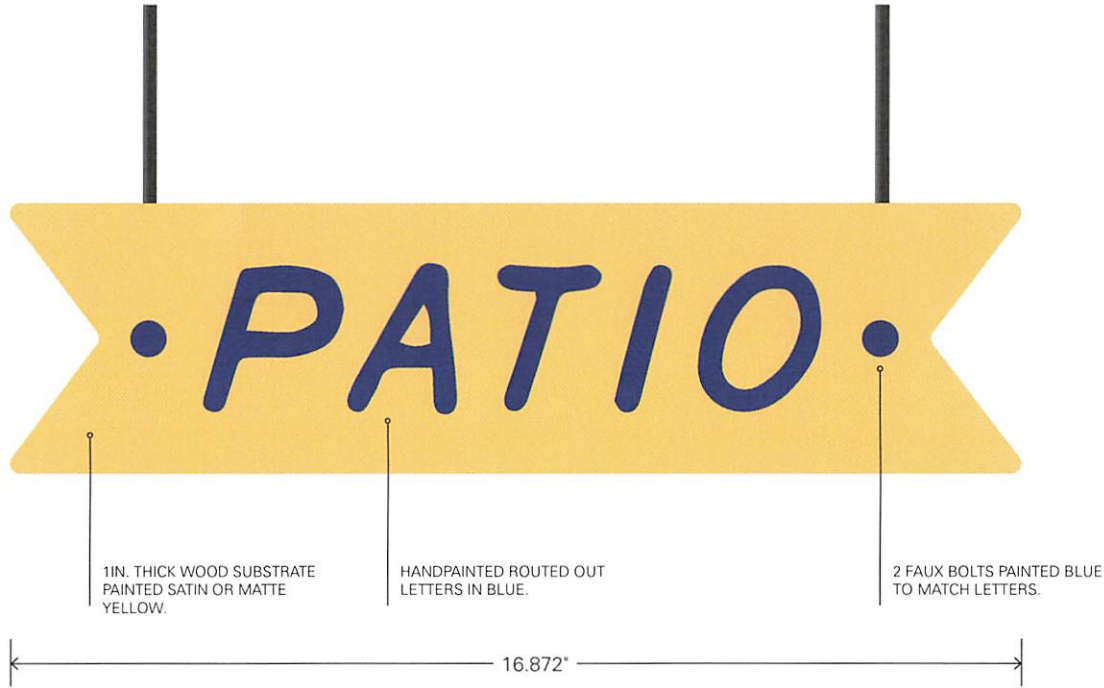
Please see the attached sign presentation.

Designer: Jolene Stark, jolene@difbst.com, (916) 838 4988

QTY: 1

SCALE: 1:2

TOTAL SQ. FT. : .527 FT



FRANCHISE FOR SOLID WASTE COLLECTION, DISPOSAL AND RECYCLING SERVICES

THIS FRANCHISE, made and entered into this 12 day of ~~November~~ 2009 between the City of Amador City, a municipal corporation of the State of California, hereinafter referred to as "City"; and ACES WASTE SERVICES, INC., a California corporation, hereinafter referred to as "Contractor" and "ACES".

WHEREAS, the public health, safety and welfare, and Amador City Municipal Code, Chapter 8.13 require measures be taken by the City to provide for collection and disposal of refuse; and

WHEREAS, Contractor desires to collect and dispose of all garbage, rubbish and waste matter including recyclables, accumulated in City and any service area over which it has jurisdiction.

NOW, THEREFORE IT IS HEREBY AGREED between the parties hereto as follows:

ARTICLE A. DEFINITIONS.

1. As used in this Franchise, the terms "collection", "collection vehicle or equipment", "garbage", "litter", "putrescible", "recyclable material", "recycling", "removal", "refuse", "resource recovery", "rubbish", "scavenging" and "solid waste" shall have the meaning and be defined as set forth in Chapter 8.13 of the Amador City Municipal Code.

ARTICLE B. REFUSE COLLECTION AREA.

The collection area for the collection of refuse by Contractor as herein provided is described as follows:

All residential, commercial, and industrial areas within the boundaries of the City of Amador City as they existed on the effective date of this Franchise Agreement, and as they may be hereafter modified or increased by annexation or de-annexation. Territory annexed to the City shall be added to the franchise area granted by this Agreement, and Contractor shall be permitted to adjust rates to be consistent with his corresponding schedule within said area.

ARTICLE C. FRANCHISE PURPOSE, TERM, AND COMMENCEMENT

1. **Exercise of City Rights.** City chooses to exercise its authority under Public Resources Code § 40059, its police power authority under the Constitution of the State of

California, and other applicable law to grant an exclusive franchise for the collection and disposal of all solid waste, garbage, refuse, construction and demolition debris and recyclable materials as more fully set forth herein. Notwithstanding this grant of franchise, City retains and reserves to itself the full authority to regulate, correct, and control all activities of the franchise, including removal, termination, and suspension. To the maximum extent allowed by law, City shall provide for franchisee control of all solid waste, garbage, refuse, construction and demolition debris and recyclable materials upon relinquishment of ownership by placement in the refuse collection and disposal system operated by franchisee.

2. Exclusive Franchise. City grants to Contractor the exclusive right to collect and dispose of refuse within City for the period commencing upon the operational date of this Franchise which is September 1, 2009 and continuing to and including August 30, 2019, with the further provision that this Franchise may be extended for an additional term of five (5) years upon consent of both parties. Contractor shall commence collection and disposal operations under this Agreement on the operative date of this Franchise and upon the execution by Contractor of a performance bond or alternative performance security. Upon Franchise expiration, termination, or upon any application for an extension other than the automatic extension provided in this subsection by Contractor, City shall have the full right and authority to solicit proposals from any and all interested persons for these franchise privileges, without any obligations to or preference for the contractor herein.

ARTICLE D. REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Representations and Warranties of Contractor. Contractor hereby makes the following representations and warranties for the benefit of the City as of the effective date of this Agreement:

- A) Contractor is duly organized and validly existing as a corporation in good standing under the laws of the State of California;
- B) Contractor has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement by all necessary and proper action by its Board of Directors, or by its shareholders, if necessary;
- C) The person signing this Agreement on behalf of the Contractor is authorized to do so, and this Agreement has been duly exercised and delivered by Contractor in accordance with the authorization of its Board of Directors or by its shareholders, if necessary, and constitutes a legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms;

- D) Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder conflicts with, violates, or will result in a violation of any existing applicable law;
- E) Contractor has sufficient financial resources to perform all aspects of its obligations hereunder;
- F) Contractor has the expert, professional and technical capability to perform all of its obligations under this Agreement.

2. Representations and Warranties of the City. The City hereby makes the following representations and warranties to and for the benefit of Contractor as of the effective date of this Agreement:

- A) The City is a California municipal corporation, duly organized and validly existing under the laws of the State of California, with full legal right, power and authority to enter into and perform its obligations under this Agreement;
- B) The Party executing this Agreement on behalf of the City is duly authorized by the City Council to do so. This Agreement constitutes the legal, valid and binding Agreement of the City and is enforceable against the City in accordance with its terms.

3. Contractor's Covenants. Contractor covenants it shall obtain and deliver to City before September 1, 2009, the following documents;

- A) **Certificates of Insurance.** Contractor shall furnish the City with satisfactory Certificates(s) of Insurance in the form and according to the provisions of Article F of this Agreement. Such certificates shall be signed by Contractor's insurer, and shall clearly state the types of and amounts of coverage required under Article F, the effective dates and expiration dates of the policies, and all required endorsements.

ARTICLE E. COMPLIANCE WITH LAW, PERMITS

1. Compliance with Law. Contractor shall comply, at its expense, fully and faithfully with all local, state and federal and state laws, ordinances, regulations and permit requirements, as they may be amended from time to time, applicable to its performance under this Agreement or in any way related to Contractor's performance of the services required under this Agreement; including but not limited to local, state, and federal laws, ordinances and regulations relating to collection, disposal and processing of solid waste, recyclables, and yard waste; and laws, ordinances and regulations relating to protection of the environment. Without limiting the generality of the foregoing, Contractor shall, at its sole expense, prepare and complete, or arrange for the preparation and completion, of, any environmental impact report or other environmental reviews

required under applicable local, state and federal law for the construction, modification or operation of physical plants, if any, necessary to perform the services provided under this Agreement.

2. Permits, Authorizations, Licenses. Contractor shall obtain and shall maintain throughout the term of this Agreement, at Contractor's sole expense, all necessary permits, licenses, inspections and approvals required for Contractor to perform all the work and services agreed to be performed by Contractor pursuant to this Agreement. Contractor shall show proof of such permits, licenses, or approvals upon the request of the City.

ARTICLE F. INDEMNIFICATION AND INSURANCE

1. Contractor's Duty to Indemnify City. To the maximum extent allowed by law, Contractor shall protect, defend, indemnify and hold harmless the City, its agents, officers, employees, successors, and appointed and elected officials (collectively, "Indemnitees") from and against all liabilities, claims, suits, allegations, actions, damages, interest, penalties, fines, and/or causes of action (collectively "claims") arising from or in connection with Contractor's exercise of the franchise, or which are caused by Contractor's failure to comply with laws legally binding on Contractor which are described in Article E. Contractor shall to the maximum extent allowed by law, indemnify and hold harmless the Indemnitees from and against all costs of investigations, litigation, negotiation or alternative dispute resolution; counsel fees' expenses incurred in obtaining expert testimony and the attendance of witnesses; and all other expenses and liabilities incurred in connection with the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered thereon, except to the extent such claims arise solely out of the active negligence or willful misconduct of the City. In the event of legal challenge to the issuance of this franchise, City shall be responsible for defense of any legal action arising from allegation of procedural irregularities in the granting of the franchise. Franchisee shall be responsible for, and shall indemnify and hold City harmless from, any legal action arising from the award of this franchise to franchisee, including any allegation of unfair business practices in the obtaining of the franchise, save and except for any procedural irregularities in granting the franchise. The City shall provide Contractor with prompt notice of any claims, and Contractor may assume the defense of any claim. Contractor shall have authority to settle any claim, provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the claim. The provisions of this subsection shall survive the termination of this Agreement.

AB939 Indemnification.

A) To the maximum extent allowed by law, Contractor shall protect, defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of

AB939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder, if said failure results from Contractor's failure to comply with this Franchise Agreement and/or Contractor's failure to comply with said laws, rules or regulations binding on Contractor, including but not limited to failing to timely supply to the City the reports and information required by the City in order to comply with AB939. However, Contractor shall not be obligated to indemnify City for fines or penalties caused by City's own acts or omissions which result in City's failure to provide timely reports to the State.

2. Insurance. Irrespective of, and in addition to, the indemnity and hold harmless provisions set forth above, Contractor shall secure and maintain throughout the course of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The cost of insurance, as of the commencement date of this franchise, shall be included in the Contractor's fixed price for provision of service hereunder.

A) Comprehensive General Liability Insurance. Contractor, at its own expense, shall maintain liability and property damage insurance and for the period covered by this Agreement in the amount of Two Million dollars (\$2,000,000) per occurrence combined single limit coverage. The amount of this coverage may be increased upon mutual Agreement of the parties, and the costs of such increases shall be considered during City Council review of any rate increases sought by Contractor. Such coverage shall include, but not be limited to, protection against claims arising from: Bodily and personal injury, including death resulting therefrom; damage to property resulting from activities contemplated under this Agreement; product liability; and claims relating to completed operations. The City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties, shall not affect coverage provided to the Insured Parties. The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by the City will be called upon to contribute to a loss suffered by Contractor hereunder. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that written notice must be given to the City thirty days prior to policy cancellation by certified mail, return receipt requested. Contractor shall

notify the City within ten days of its knowledge of any material change in coverage.

B) Automobile Liability Insurance. Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement in the amount of Two Million Dollars (\$2,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage. The amount of this coverage may be increased upon mutual agreement of the parties; the costs of such increases shall be considered during City Council review of any rate increases sought by Contractor. The City may require increases in the amount of coverage on an annual basis proportionate to inflation in the regional Consumer Price Index. Such coverage shall include, but shall not be limited to, the use of owned and non-owned automobiles. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that written notice must be given to the City thirty days prior to policy cancellation by certified mail, return receipt requested. Contractor shall notify the City within ten days of its knowledge of any material change in coverage.

C) Worker Compensation Insurance. Contractor, at its own expense, shall carry and maintain full Worker Compensation Insurance, as required by the California Labor Code and Employer's Liability insurance with limits as required by law. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City. Such policies shall provide that written notice must be given to the City thirty days prior to cancellation by certified mail, return receipt requested. Contractor shall notify the city within ten days of its knowledge of any actual or impending material change in coverage under insurance policies or self-insurance programs.

D) Non-renewal or Cancellation. Upon notification of receipt by the City of a notice of cancellation, material change in coverage, or expiration of policy(ies), Contractor shall file with the City a certified copy of a new or renewal policy(ies) and certificates for such policy(ies) satisfactory to the City.

E) Failure to Comply. If at any time during the term of the Agreement, Contractor fails to comply with the provisions of Article F (3), the City may, in addition to any other remedy available to City, take out and maintain, at Contractor's expense, such insurance as the City may deem proper and charge the cost thereof to the Contractor.

F) Copies of the initial certificates of insurance, policy endorsements are attached hereto and incorporated herein by reference as Attachment 1.

ARTICLE G. COLLECTION OPERATION DUTIES

1. **Frequency of Collection.** Contractor shall make at least one weekly collection of all refuse from all residential, commercial and institutional subscribing customers within the collection area unless otherwise approved by the City. The pickup days and schedule shall be designated by Contractor and shall not be changed by him without at least 30 days prior written notice to the City and the customer affected by any such change.

2. **Equipment.** All equipment necessary to execute its duties under this Franchise shall be maintained by Contractor, at all times during the term hereof, unless said equipment is replaced with comparable or better equipment. All equipment used by Contractor for the collection and hauling of garbage shall be of the watertight "compactor" type truck. Equipment used exclusively for the collection of refuse may be of any suitable type but shall be provided with coverings to adequately contain the refuse within the truck body. Contractor shall maintain all trucks in a clean and sanitary condition, and shall have clearly visible an insignia and telephone number on each truck designating the name of the Contractor. Contractor shall clean the inside of the trucks regularly after dumping, and shall keep the outside of the bodies free from dirt and filth.

3. **Hours of Collection.** Refuse collections shall generally commence at 7:00 a.m., but Franchisee may, if reasonably required, commence pickup at 6:00 a.m. in residential areas. Such collection may be made in any commercial and industrial districts, except the "downtown" area, at any time subject to such reasonable modifications of collection periods as may be imposed by the City. Collections in the "downtown commercial area" shall occur prior to 12:00 p.m. No regularly scheduled residential collections shall be made on Saturdays or Sundays, and no regularly scheduled collections may be made on Sundays. All collections shall be made as quietly as possible. Unnecessarily noisy trucks or equipment are prohibited.

4. **Standard of Care.** Contractor shall not litter in the process of making collection from any residence or business, nor allow any refuse to blow or fall from any vehicle used for collections. Contractor shall repair or replace at its expense containers damaged as a result of its negligent handling thereof, reasonable wear and tear excepted. Contractor shall replace lids or covers on containers immediately after emptying.

5. **Special Haul.** Contractor shall provide an annual cleanup week at no additional cost. Contractor will provide the City and each subscriber with literature explaining the scope and schedule.

6. **Disposal Operations.** All refuse collected in the area described herein by Contractor shall be disposed of at its Pine Grove Transfer Station and ultimately deposited at the Keifer Landfill operated by the County of Sacramento or at such other approved place as the parties may agree. Refuse will only be disposed of in landfill sites having all the necessary permits and approvals of any administering jurisdiction.

7. Expected Performance Level. Contractor understands and acknowledges that every detail of this solid waste handling operation is important to the City for the protection of the health and safety of its residents. Therefore, Contractor agrees to and shall develop and maintain a high and uniform level of orderly and uninterrupted service, cleanliness, appearance, well maintained equipment and responsible training and business techniques which will protect and enhance customer needs and contribute to the service reputation of the City and this franchise system. Accordingly, Contractor agrees:

A) To hire and carefully supervise efficient, competent, sober and courteous operators and employees for the conduct and operation of the business;

B) To reasonably maintain all equipment, to conform with public health standards of cleanliness and neatness, including regular disinfecting and cleaning of each truck.

C) To purchase and maintain said equipment in a manner capable of satisfying all of the City's standards and meeting all customer needs. Normal downtime for repairing and service of said equipment is not a material failure to perform the work.

D) Contractor shall have a contingency plan for expected performance level in the event of a deficiency. Such plan shall include the ability to bring additional or replacement equipment and/or personnel to the franchise area, in order to perform the required work in the event of a deficiency.

E) Contractor shall comply, as a part of Contractor's duties hereunder, with all State, Federal, Regional or other appropriate governmental authorities, rules and regulations relating to resource reduction and/or recycling.

ARTICLE H. RATES.

1. **Rates.** For all services required to be performed under this Franchise, Contractor shall not charge any amount in excess of the rates fixed pursuant to the Rate Adjustment Methodology described below. Contractor agrees that the rates will not be increased during the first year of this contract. The second year of this contract will be treated as Rate Year 2 for the purposes of the Rate Adjustment Process described below.

2. **Rate Adjustment Methodology.** The Rate Adjustment Process will be on a three year cycle with a cost based adjustment (Detailed Rate Adjustment) in Rate Year 1 followed by Indexed Rate Adjustments (Refuse Rate Index) in Rate Year 2 and Rate Year 3. The cycle will then repeat with a Detailed Rate Adjustment in Rate Year 4 and so forth in successive years.

A) DETAILED RATE REVIEW. A Detailed Rate Review will be performed in each Rate Year that requires a Detailed Rate Adjustment.

Non-Allowable Expenses

1. Fines.
2. Liquidated Damages.
3. Penalties and Violations.
4. Income Taxes.
5. Charitable or Political Contributions (including CRRC PAC expense)(CRRC dues other than PAC expenses are an “Allowable Expense”).
6. Good Will.
7. Employee free services in excess of normal weekly garbage service and limited roll off service (debris box/employee/year).
8. Related party charges in excess of that which would otherwise reasonably be charged by an unrelated party.
9. Long-term rental or lease charges for collection vehicles or equipment which are greater than the cost of acquisition (although normal interest/financing charges and costs borne by the leasing/rental company that would normally be the responsibility of the hauling company if they owned the assets directly. These costs include but are not limited to license fees, property taxes, insurance, repairs and maintenance).
10. Costs that are not reasonable or necessarily incurred in the performance of the services provided in accordance with the Franchise Agreement.
11. Unless specified in this section, all other reasonable or necessary expenses incurred by ACES in the performance of the services provided in accordance with the Franchise Agreement are allowable.

Pass Through Costs and Expenses (Not Subject to Profit)

1. Third-party Transfer, Processing and Disposal Expenses (ACES material transport costs are an “Allowable Expense”).
2. Host Fees and Franchise Fees.
3. Regulatory or Other Fees.
4. Third-party Rate Review Costs.

Other Allowable Expenses. Reasonable Franchise-related Marketing Expense, Promotional Expense and Travel Expenses are Allowable Expenses.

Variance Analysis. ACES to provide line item revenue and expense variance analysis for prior 4 years (since last Detailed Rate Review) and provide explanation of significant variances as part of Detailed Rate Application.

Other Terms Related To Profit

1. Eighty Seven point Five percent (87.5%) Operating Ratio contingent upon the City's compliance with all terms and conditions of the Franchise Agreement and any and all other related requirements. Determination of compliance shall rest solely with the City.
2. City reserves the right to increase or decrease the ACES' profit, at its sole discretion, based on its assessment of the extent to which ACES has or has not complied with all terms and conditions of the Franchise Agreement and any and all other related requirements.

Basis for Rate Adjustment Calculation. The rate adjustment for the Current Year is to be based on the Rate Adjustment Methodology applied to the results for the Prior Year (e.g., FYE 2009 Actual results will serve as the basis for 2010 Rate Adjustment.)

Schedule for Annual Rate Adjustments

1. Detailed and Indexed Rate Applications due to City by March 15th
2. Detailed Rate Review to be completed by May 1st.
3. Rate Adjustment to become effective on July 1st.

Other Terms Related to Detailed Rate Adjustment

1. ACES to provide Income Statements annually including Indexed Rate Adjustment Rate Years.
2. Income Statement to be audited for Detailed Rate Review year only (with exception of Material Sales Revenues which City reserves the right to have audited every year).
3. Notwithstanding the Schedule for Annual Rate Adjustments, if an extraordinary or unanticipated event should occur, including change in law, new or increased/decreased governmental or regulatory fees or tip fees or other event that materially affects ACES' compensation and over which they have no control, then ACES or City may request an Interim Compensation Adjustment. At the City's discretion, the Interim Compensation Adjustment may be incorporated into the base rate, but not more frequently than quarterly. ACES shall clearly document the reason for the proposed adjustment, calculation of the proposed cost adjustments and supporting documentation. The City reserves the right to determine what constitutes a material affect that would trigger an Interim Compensation Adjustment as a result of events other than a change in law, increase/decrease in governmental or regulatory fees or tip fees.

4. There are to be no Balancing Accounts associated with the Rate Adjustment process. Either party may request a full cost based rate application (Detailed Rate Review) in place of an Indexed Rate Application. If allowed, any associated third party cost in excess of \$5,000 is to be paid by the party making the request.
5. ACES is to identify any revenues and/or expenses that are allocated and identify the specific allocation methods. City reserves the right to review any such allocations for reasonableness.
6. City reserves the right to review ACES' franchised operations to obtain assurances that ACES is operating in a cost effective manner. City recognizes that there are many reasonable and cost effective ways of providing solid waste services and the City is not interested in dictating the specific collection methodologies, the City's concern is that the chosen methods are reasonable and can be reasonably justified by ACES.
7. Any third-party cost of future rate reviews are to be paid by ACES and are to be allowed as a Pass Through Cost not subject to profit.

B) INDEXED RATE ADJUSTMENT. An Indexed Rate Adjustment will occur in Rate Year 2 and 3 and as set forth above. An Indexed Rate Adjustment will be based upon the Refuse Rate Index ("RRI").

Rate Year 2

1. RRI to be applied to the total of each applicable category (e.g., labor, fuel, R&M, depreciation, Other: from detailed rate review Income Statement (Rate Year 1) to generate Year 2 Indexed Expenses that will serve as the basis for the Year 2 Rate Adjustment Calculation.
2. Disposal expenses to be projected based on best available information.
3. Material Sales revenues to be set to prior year actual revenues during RRI years to account for commodity price fluctuations. City reserves the right to require that Material Sales revenue be audited during RRI years.

Rate Year 3. RRI to be applied to Rate Year 2 Indexed Expenses that will serve as the basis for the Rate Year 3 Adjustment calculation. Material Sales revenue to be set to prior year actual revenues during RRI years to account for commodity price fluctuations.

Year 4 and all other Rate Years. By mutual agreement of the parties the RRI can be used in place of the Detailed Rate Review in Rate Year 4 or any other Rate Years. In that event, the Detailed Rate Review will be deferred to the following year (e.g., the parties could agree to use the RRI in Rate Year 4 and Rate Year 5 in which case the

Detailed Rate Review would be conducted in Rate Year 6 followed by Indexed Rate Adjustments in Rate Year 7 and Rate Year 8.)

Other Terms Related To Refuse Rate Index

1. Indexed Adjustment for “All other” costs to be set at 100% of CPI rather than 75% as originally proposed.
2. Consideration to be given to the use of CA No 2 Diesel Fuel Index or other proposed index (e.g., CA No 2 Diesel Ultra Low Sulfur Fuel) mutually agreed upon by ACES and City.
3. Material Sales Revenues to be set to prior year actuals during RRI years to account for commodity price fluctuations.

ARTICLE I. FRANCHISE FEES

1. **Payment.** In consideration of the franchise privileges granted by City, Contractor shall pay to City on a quarterly basis a franchise fee of five percent (5%) of the gross revenues from Contractor’s operations in the City annually. Contractor guarantees a minimum fee equal to those paid by the previous Franchisee, based on quarterly receipts received for the quarter ended _____. Franchise fees shall be paid to and received by City on or before the last business day of each quarter. Any late franchise fee payment shall be subject to a 1.5% per month late fee.

2. **Exclusion of Franchise Fees from Rates.** Contractor is prohibited, and agrees to refrain, from including that portion of the franchise fees payable to the City under this Agreement within its rate structures. Contractor further agrees no portion of any future requests for rate adjustments shall be based upon, or take into account, franchise fees paid pursuant to this Agreement.

ARTICLE J. REPORTS AND FINANCIAL AUDITING

1. **Financial Reporting.** Contractor shall submit to the City quarterly and annual year-end financial statements which clearly identify Contractor’s profits or losses. Such statements shall be prepared pursuant to standard bookkeeping procedures, said procedures being acceptable to the City. Quarterly statements shall be provided within 30 days of the end of the quarter. Financial statements as determined to be necessary by the City Council shall be required in the event of any request by contractor for a rate increase. Contractor shall also provide City with quarterly financial reports showing the performance of Contractor’s recycling programs. Contractor agrees to and shall keep true and correct records and books of account from which the City may readily determine the status and progress of the Franchisee’s business operation. The Contractor further agrees that City, by any of its authorized personnel, may inspect such books and records in Contractor’s business office at reasonable times. City shall have the right to examine

equipment orders, customer accounts and other related records, as deemed necessary by City.

2. Annual Reports. Upon request by the City, within one hundred twenty (120) days after the close of Contractor's fiscal year (Contractor's fiscal year ends December 31st each year), Contractor shall submit to the City a written annual report, in a form approved by the City, including but not limited to, the following information:

A) A summary of the previous year's (or in the case of the initial year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class and level of service.

B) Contractor shall also submit annual revenue statements to the City setting forth quarterly franchise fees and the basis for calculation thereof, certified by an officer of the contractor. Said statement shall include revenues received under this Agreement, outstanding accounts receivable, bad debt write-offs and recoveries, and regulatory fees submitted to the City.

C) A list of Contractor's Officers and member of its Board of Directors.

3. AB939 Requirements. During the term of this Franchise Agreement, Contractor shall submit "Quarterly Station Notification to County or Regional Agency" to County of Amador as lead agency for the AB939 Regional Agency, with a courtesy copy submitted *to City*, and more often if required by law, information reasonably required by City to meet its reporting obligations imposed by AB939, and the regulations implementing AB939, in a manner approved by City. Contractor agrees to submit said courtesy copy to the City in electronic form if reasonably requested by City. Contractor agrees to render all reasonable cooperation and assistance to the City in meeting the requirements of City's Source Reduction and Recycling Element and Non-Disposal Facility Element.

4. Waste Audits. Grantee shall conduct waste audits at the request of City where such waste audits are necessary to enable City to comply with the requirements of State or Federal law. The results of such audits will be memorialized on forms approved by the City. The purpose of the audit will be to identify volume and characteristics of Solid Waste being generated by the customer. A copy of the audit shall be provided by the Contractor to the City, and to Contractor's own files.

5. Customer Lists. Upon conclusion of operations under this agreement, Contractor shall immediately furnish to City copies of customer lists, pick up addresses and service levels. City acknowledges that information pertaining to the accounts or customer list is confidential information which City will protect from public disclosure, except in the event of substantial default by Contractor, or where disclosure is required by court order.

Privacy of Customer Information. Franchisee shall use all reasonable efforts to observe and protect the rights of privacy of customers. Information identifying individual customers, or the composition or content of a customer's refuse or recyclables shall not be revealed to any person, private agency or company, unless upon the request of federal or state law enforcement personnel, the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or other reports requested by the City under the Franchise Agreement or required or requested by any governmental agency.

Mailing List. Grantee shall not market or distribute outside the normal course of its business mailing lists with the names and addresses of customers.

6. Financial Auditing. At City's request, annual financial statements shall be reviewed and certified, at Contractor's expense, by a certified public accountant mutually approved by City and Contractor. The form of the review shall be acceptable to City. Such reviews shall be conducted initially as a limited scope and screen review, which examines the validity of representative sampling of financial data. If significant discrepancies are found in the initial screening review, a more comprehensive audit shall be conducted at contractor's expense.

7. Failure to Report. The refusal, failure or neglect of the grantee to file any of the reports required, or to provide material information to City, or the intentional inclusion of any materially false or misleading statement or representation made knowingly by Contractor shall be deemed a material breach of the Franchise Agreement, and shall subject the Contractor to all remedies, legal or equitable, which are available to the City under the Franchise Agreement.

ARTICLE K. **DEFAULT, TERMINATION, WAIVER.**

1. Default and Automatic Termination. Contractor shall be deemed to be in default under this Franchise and all rights and privileges granted to contractor shall terminate upon thirty (30) days written notice and this Agreement shall be terminated automatically if:

A) Contractor's collection or disposal service remains inoperative for any period of five (5) or more consecutive business days.

B) Contractor fails to submit required franchise fee payments to City or maintain all required policies of insurance.

C) Contractor: (i) becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property; or (ii)

being or becoming a party to a voluntary or involuntary bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding instituted by or against the Franchisee under the laws of any jurisdiction, which proceeding, if involuntary in nature, has not been dismissed within sixty (60) days; or (iii) taking any action approving of, consenting to, or acquiescing in, any such proceeding; or (iv) being a party to the levy of any distress, execution or attachment upon the property of the Franchisee which shall substantially interfere with the Franchisee's performance hereunder. In the event of the Franchisee being or becoming insolvent or bankrupt, the Franchisee shall: (i) assume or reject this Agreement within sixty (60) days after the order for relief; (ii) promptly cure any failure to perform its obligations or any event of default arising under this Agreement for reasons other than the event set forth in this paragraph; (iii) provide adequate assurance of future performance under this Agreement under 11 USC Section 365(b)(1)(c), or any successor provision of the Federal Bankruptcy Code. The foregoing provisions shall not prevent the City from requesting such other conditions to assumption of this Agreement, as it deems reasonable and necessary; and (iv) Franchisee concludes any other transfer of this franchise except as authorized by Article N of this Agreement.

D) Contractor fails to perform any material condition, covenant or performance requirement in the Agreement, as established by the City Council findings of fact and a decision supported thereby.

2. Duties Upon Termination. In the event of termination of this Franchise Agreement for any reason, Contractor shall:

A) Within Thirty (30) days of written notice from City, cease all operations hereunder; and

B) Immediately cause all business records, customer lists, addresses, billing data and other pertinent operating information to be transferred to City; and

C) Immediately pay all amount of fees (including attorneys fees and court costs) which may be owing and appoint City or any of its officers as its attorney-in-fact to execute all instruments and to do all things necessary to accomplish the operations of garbage collection and disposal on behalf of the public; and

D) Permit City to provide collection service by any means available to City, and pay any and all costs incurred by City over and above the amount of the performance bond (defined in Article I herein). In such event, City shall also have the right to the use and possession of all items of operating equipment used in the business of Contractor within the

franchise area, for the purpose of providing garbage collection service. This provision shall be in addition to any other remedies available to City at law or in equity to compensate it for losses caused by Contractor's breach or to compel compliance with this Franchise. In such event, City shall hold harmless, indemnify and defend Franchisee from any liability proximately caused by City's use and operation of such equipment and shall provide liability insurance coverage satisfactory to Franchisee in the reasonable exercise of its discretion.

E) Notwithstanding the foregoing, and at City's sole election, in the event of termination, Contractor shall provide all services pursuant to this Agreement for a period of three months following the effective date of termination, or for a lesser period as determined by City.

3. **Waiver.** The waiver of any default or defaults shall not operate as a waiver of any successive defaults and all rights of the City on default by contractor shall continue, notwithstanding one or more waivers.

4. **System and Services Review.** To provide for technological, economic, and regulatory changes in Solid Waste collection, to facilitate recycling programs, to promote competition in the Solid Waste Industry, and to achieve a continuing, advanced Solid Waste collection system, the following system and services review procedures are hereby established:

A) Public Hearing. At City's sole option, City may hold a public hearing on or about the first anniversary date of the Franchise Agreement to review Franchisee's collection systems and services. Subsequent system and services review hearing may be scheduled each two (2) years thereafter.

B) Franchisee's Report. Sixty (60) days after receiving notice from the City, Franchisee shall submit a report to City indicating the following:

- (1) Performance of all Solid Waste collection and recycling services provided by Franchisee.
- (2) Changes recommended to improve the City's ability to meet the goals of AB939.
- (3) Any specific plans for provisions of such new services by the Franchisee along with the estimated expenses and adjustments to rates necessary to compensate Franchisee for providing such services.

C) Service Review Topics. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, customer complaints, rights of privacy, amendments

to the Franchise Agreement, developments in the law, and new initiatives for meeting or exceeding AB939'S goals and regulatory constraints.

ARTICLE L. ASSIGNMENT.

1. **Right of Assignment.** Neither this Franchise, nor any rights, privileges or duties hereunder, shall be assignable or transferable in whole or in part by the Contractor by stock transfer, formation of a new partnership, corporation or entity or any other conveyance mechanism without prior written approval by City Council Resolution after the following findings of fact:

1. Capacity of the proposed assignee as to financial competency, performance and service, record and equipment inventory;
2. Guarantee of performance by assignee based upon financial security and insurance and bonding capability;
3. Any other pertinent evidence.

2. **Transfer Fee.** Any application for a franchise transfer shall be made in a manner prescribed by the City Mayor or his/her successor. The application shall include a transfer fee in an amount to be set by the City Council to cover the anticipated cost of all direct administrative expenses including consultants and attorneys necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses.

3. **Non-recoverable Costs.** These Franchise Transfer Fees are over and above any Franchise Fees specified in this Franchise Agreement and shall not be recoverable costs for rate setting purposes.

ARTICLE M. LIABILITY FOR BREACH.

In the event of any defaults on the part of Contractor, City may elect to permit Contractor to cure and correct the same pursuant to a written notice from City specifying the nature of the default, the time within which to cure and any procedures required. Upon receipt of any such notice to cure a default, contractor shall pay to City all damages, costs and expenses, including reasonable attorney's fees incurred by City as a result of the default. City may adopt and impose a schedule of monetary penalties for each occurrence of a default or violation or infraction of any provision of this Franchise. Such schedule shall be adopted by City Council Resolution, following a public hearing conducted for the purpose of considering said schedule.

ARTICLE N. NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery when delivered personally to the parties as specified below or three (3) days following the date deposited in the United States Mail. All notices or other communications sent by mail shall be sent postage prepaid by certified first class mail, return receipt requested, to the address specified below:

If to the City, address to:

Aaron Brusatori, Mayor
Amador City
14531 East School Street
P.O. Box 200
Amador City, CA 95601

If to the Contractor, address to:

Paul Molinelli, Sr., President
ACES
P.O. Box 321
Pine Grove, CA 95665

ARTICLE O. SEVERABILITY.

Each article, part, term and provision of this Franchise shall be considered severable. If for any reason any article, part, term or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation of a court or agency having valid jurisdiction, such determination shall not impair the operation or affect the remaining portions, articles, parts, terms or provisions of this Franchise and the latter will continue to be given full force and effect and bind the parties hereto. The invalid article, part, term or provision shall be deemed not to be a part of this Franchise.

ARTICLE P. ENTIRE FRANCHISE.

This Franchise and the documents and applicable state and local laws referred to herein shall be the entire, full and complete Franchise between the parties and shall supersede to obligate the Contractor to perform accordingly hereunder.

1. **Force Majeure.** Franchisee shall not be in default under this Franchise Agreement in the event that the collection, transportation and/or disposal services of Franchisee are temporarily interrupted or discontinued for reasons outside the reasonable control of the Franchisee, including but not limited to riots, wars, sabotage, civil disturbance, insurrection, explosion, natural disasters such as floods, earthquakes, disturbances, excessive snow, acts of God, or other similar or dissimilar events which are

beyond the reasonable control of Franchisee. Other events do not include the financial inability of the Franchisee to perform or the failure of the Franchisee to obtain any necessary permits or licenses from other governmental agencies of the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Franchisee.

2. Independent Contractor. Franchisee is an independent contractor and not an officer, agent, servant or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, employees, grantees, and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Franchisee. Neither Franchisee nor its officers, employees, agents or subgrantees shall obtain any rights to retirement or other benefits which accrue to City's employees.

3. Right of Entry. Franchisee shall have the right, until receipt of written notice revoking permission to pass is delivered to Franchisee, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting Solid Waste pursuant to this Franchise Agreement.

4. Law to Govern: Venue. The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Amador.

5. Successors and Assigns. Subject to the other terms and conditions herein, this Agreement shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of the City and Franchisee.

6. Fees and Assigns. Franchisee shall not, nor shall it permit any agent, employee or subgrantee employed by it to request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Franchise Agreement.

7. Entire Agreements and Amendment. No amendment of this Franchise Agreement shall be valid unless in writing duly executed by the Parties. This Franchise Agreement contains the entire Agreement between the Parties and no promises, representations, warranty or covenant not included in this Agreement have been or are relied upon by either party. This Franchise Agreement is intended to supersede and replace all prior agreements between the parties, except as otherwise specifically provided in this Agreement.

8. Compliance with Franchise Agreement. Grantee shall comply with those provisions of the City Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Franchise Agreement, provided that such provisions are not inconsistent with the terms of this Franchise Agreement.

9. **Police Powers.** Nothing in this Agreement is intended to or may limit City's authority pursuant to its Police Powers.

10. **Exhibits Incorporated.** Exhibits are attached to and incorporated in this Franchise Agreement by reference.

11. **Joint Drafting.** This Franchise Agreement was drafted jointly by the Parties to the Franchise Agreement, therefore no presumption shall arise from the identity of the drafter.

12. **Judicial Review.** Nothing in this Agreement shall be construed to prevent either party from seeking redress to the courts for the purposes of legal review of administrative proceedings in regard to rate setting or City's actions taken pursuant to this Agreement, or for the purpose of interpreting or enforcing the provisions contained in this Agreement. Provided, however, that prior to the institution of any such judicial proceedings the parties shall first meet and confer informally in order to resolve any such dispute. The parties may utilize the services of a mutually acceptable mediator for purposes of dispute resolution. In that event, each party shall pay for the costs of one-half of the mediation.

ARTICLE Q. OPERATING MEMORANDUM

In order to carry out the purpose and intent of this Agreement, close cooperation between the parties will be required. To insure proper documentation for future reference and practice, City Mayor and Franchisee may enter into Operating Memorandums consistent with the provisions of this Agreement in order to carry out its terms. Operating Memorandum shall not be used to amend this Agreement, only to clarify the procedures and practices to be used in its implementation. All such memorandums shall be on file in the office of the City Clerk following their execution.

ARTICLE R. MISCELLANEOUS

1. **Compliance with Hazardous Waste Laws.** The Parties hereto recognize that federal, state and local agencies with responsibility for defining Hazardous Waste and for regulating the collection, hauling or disposing of such substances, are continually providing new definitions, tests and regulations concerning these substances. Under this Agreement, it is Franchisee's responsibility to keep current with the regulations and tests on such substances and to identify such substances and to comply with all federal, state and, to the extent not inconsistent with this Agreement, local regulations concerning such substances. Franchisee shall make every reasonable effort to prohibit the collection and disposal of Hazardous Waste in its operation.

2. **Non-Collection Tags.** When solid waste is not collected from any solid waste customer, Franchisee shall notify its customer why the collection was not made and shall attach tags approved by the City to the waste not so collected which clearly identify the reasons for such non-collection.

3. **No Collection or Disposal of Hazardous Waste.** Except as provided in this subsection, Franchisee shall not collect, handle, process, transport, arrange for the transport of or dispose of Hazardous Waste pursuant to this Franchise Agreement.

ATTACHMENTS:

Attachment 1	Copies of the initial certificates of insurance, policy endorsements
Attachment 2	Rate Schedule
Attachment 3	Equipment List

AGREED AND ACCEPTED:

CITY OF AMADOR CITY



Date: 11/12/09

ACES WASTE SERVICES, INC.



Date: 11/12/09

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**AGREEMENT TO EXTEND
FRANCHISE AGREEMENT TERM**

THIS AGREEMENT TO EXTEND FRANCHISE AGREEMENT TERM ("Agreement") is effective as of September 1, 2019 ("Effective Date"), and is entered into by and between the City of Amador City, a California municipal corporation ("City") and Aces Waste Services, Inc., a California corporation ("Company") (individually, a "Party" or collectively, the "Parties").

RECITALS:

A. WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (the "Act", California Public Resources Code Sections 40000 *et seq.*) has declared that it is in the public interest to require local agencies to make adequate provision for solid waste handling within their jurisdictions to meet the goals and objectives of the Act.

B. WHEREAS, in accordance therewith, the public health safety and welfare, and Amador City Municipal Code, Chapter 8.13 require measures be taken by the City to provide for collection and disposal of refuse.

C. WHEREAS, on November 12, 2009, the City entered into a Franchise Agreement with Company for solid waste collection, disposal and recycling services. ("Franchise Agreement") with a term ending on August 30, 2019. (A true and correct copy of the Franchise for Solid Waste Collection, Disposal and Recycling Services, dated November 12, 2009, is attached hereto as *Exhibit A.*)

D. WHEREAS, pursuant to Article C., Section 2. of the Franchise Agreement, the City and Company desire to exercise the mutual option to extend the term of the Franchise Agreement for a term of five (5) years for an term ending August 30, 2024.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1.

1.1 Franchise Term

The Parties agree to extend the term of the Franchise Agreement for a period of five (5) years with a term starting on September 1, 2019 and ending on August 30, 2024, pursuant to Article C., Section 2. of the Franchise Agreement.

1.2 No Other Effect on Franchise Agreement

This Agreement shall not affect or alter any other provision of the Franchise Agreement, which provisions in their entirety shall remain in full force and effect.

1.3 Severability

If any provision of this Agreement is for any reason determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, including, but not limited to, a change in applicable federal, state or local law, the invalidity or unenforceability of that provision shall not affect any of the remaining provisions of this Agreement, which provisions shall be enforced as if such invalid or unenforceable provision had not been included.

1.4 Exhibits

Each of the exhibits identified in this Agreement is attached hereto and is incorporated by this reference.

1.5 Authority and Effective Date

The persons signing below represent that they have the requisite authority to bind the entities on whose behalf they are signing. This Agreement shall become effective on the Effective Date.

TO EFFECTUATE THIS AGREEMENT, each of the Parties has caused this Agreement to be executed by its duly authorized representative.


AGREED AND ACCEPTED

CITY OF AMADOR CITY,
a California municipal corporation

ACES WASTE SERVICES, INC.,
a California corporation

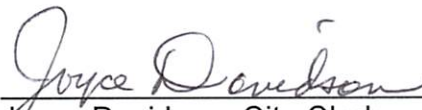


David Groth, Mayor



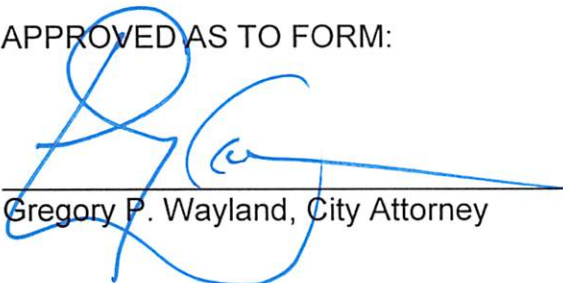
Paul Molinelli Sr., President

ATTEST:



Joyce Davidson, City Clerk

APPROVED AS TO FORM:



Gregory P. Wayland, City Attorney

EXHIBIT A

**Franchise for Solid Waste Collection,
Disposal and Recycling Services
(Effective November 12, 2009)**