

**AMENDMENT NO. 3**  
**To County Franchise Agreement with Garaventa Enterprises**

This is Amendment No. 3 (“Third Amendment”) to the Franchise Agreement between Contra Costa County (“County”), a political subdivision of the State of California, and Garaventa Enterprises, a California corporation (“Contractor”). County and Contractor may hereafter be collectively referred to as the “Parties.”

**R E C I T A L S**

A. This Third Amendment amends the existing agreement between the parties, which consists of the Franchise Agreement With Garaventa Enterprises, effective May 9, 1995 (the “Original Agreement”), and Amendment No. 2 To Franchise Agreement with Garaventa Enterprises, effective May 17, 2011 (“Amendment No. 2”), collectively referred to as the “Existing Franchise Agreement.” Amendment No. 1 to Franchise Agreement with Garaventa Enterprises, dated January 18, 2000 (“Amendment No. 1”), was terminated on May 17, 2011.

B. Contractor has proposed to implement a three-cart collection system (“3-Cart System”) to serve all of its residential customers in the Franchise Area described in the Existing Franchise Agreement (“Customers”). The 3-Cart System is described in Exhibit A, attached hereto and incorporated herein by reference.

C. Implementation of the 3-Cart System (“System Implementation”) requires completion of all of the following:

(1) Written notice by Contractor to all Customers, advising them of the planned launch and estimated commencement date of the 3-Cart System, and describing the 3-Cart System consistent with Exhibit A;

(2) The purchase by Contractor of a sufficient number of wheeled carts and plastic bags to provide to all Customers, consistent with Exhibit A;

(3) The delivery by Contractor of the carts and bags to the Customers, consistent with Exhibit A;

(4) Contractor’s commencement of collection utilizing the 3-Cart System;

(5) Written notice by Contractor to all Customers, advising them of the 3-Cart Residential Rate Structure approved by the County Board of Supervisors on January 25, 2011, and the effective date of rates to be charged to customers under that structure;

(6) Contractor's incorporation of authorized rates under the 3-Cart Residential Rate Structure into bills sent to all Customers.

D. Contractor wishes to amortize the cost of carts and bags used in the 3-Cart System over a period of time that is longer than the remaining years in the term of the Existing Franchise Agreement. Contractor desires an extension of the term of the Existing Franchise Agreement to permit this amortization. County desires that the term extension be conditioned upon System Implementation to the County's satisfaction.

E. The franchise fee under the Existing Franchise Agreement ("Franchise Fee") has not been adjusted since its establishment on June 16, 1998, at the rate of 5 percent of Contractor's gross annual revenues generated from waste collection services performed under the Existing Franchise Agreement ("Gross Annual Revenues"). County desires to collect an additional 2 percent of Contractor's Gross Annual Revenues to help offset County's costs of administering the Existing Franchise Agreement.

F. The purpose of this Third Amendment is to provide for an extension of the term of the Existing Franchise Agreement, conditioned upon System Implementation to the County's satisfaction, and increase the Franchise Fee by requiring Contractor to pay to County an additional 2 percent of Contractor's Gross annual revenues.

NOW THEREFORE, in consideration of the above and the promises and other provisions in this Third Amendment, the Parties agree as follows:

## AGREEMENT

1. Section 3 of the Original Agreement is amended to read as follows:

“3. TERM. Subject to Section 33 (Annexation and Change of Franchise Area Boundaries) and Section 35 (Breach and Termination), the term of this Agreement and the exclusive franchise granted hereunder (“Term”) shall be 20 years, and commence on May 9, 1995. The Term will be extended automatically upon satisfaction of all of the following conditions:

- a. Contractor completes the System Implementation on or before January 15, 2012;
- b. Contractor sends written notice to County, advising of Contractor’s completion of the System Implementation, along with the following documentation:
  - (1) Written evidence of Contractor’s purchase of the carts and bags referenced in Exhibit A to the Third Amendment;
  - (2) Contact information (addresses and phone numbers) for each of Contractor’s customers in the Franchise Area;
  - (3) Evidence of Contractor’s notification of all Customers regarding System Implementation and the 3-Cart Residential Rate Structure, including a copy of the notice(s) sent, list of customers to whom notice was given, and a declaration under penalty of perjury by an authorized representative of Contractor stating that notices were provided pursuant to this Third Amendment and stating the date of said notice;

(4) Evidence of Contractor’s incorporation of rates authorized by County under the 3-Cart Residential Rate Structure into bills sent to all Customers; and

(5) Any other information or documentation requested by County regarding System Implementation; and

c. County sends written notice to Contractor, verifying the completion of the System Implementation to County’s satisfaction. The date of such notice will be referred to hereafter as the “System Implementation Date.”

The System Implementation Date will be the effective date of the Term extension. The period of the Term extension will be either (1) 10 years, through and including May 8, 2025; or (2) until termination of the 3-Cart System, whichever is shortest.

The 3-Cart System will be considered to have been terminated upon occurrence of all of the following: (1) Contractor ceases collection of garbage, greenwaste or mixed recyclables according to the schedule set forth in Exhibit A; (2) County sends written notice to Contractor, directing Contractor to resume collection according to such schedule; and (3) Contractor fails to resume collection within 14 days of the date of the notice.”

2. Section 23 of the Original Agreement is amended to read as follows:

**“23. ADMINISTRATIVE SERVICES AND FRANCHISE FEES.**

a. Administrative Services Fees. As directed by County, Contractor shall pay County fees to cover the costs incurred by County in (1) the administration of this Agreement and , (2) the

services and programs provided by County pertaining to solid waste. These fees will be referred to as “Administrative Services Fees.” The amount, time and frequency of payment of such fees may be established by County from time to time. No Administrative Services Fees are payable as of the date of the Third Amendment. Administrative Services Fees that are established after the date of the Third Amendment will be payable from Contractor to County on the earlier of either (1) the effective date of rates charged by Contractor to customers that incorporate such Administrative Services Fees; or (2) the first day of the second calendar month immediately following County’s determination of a maximum rate that incorporates such Administrative Services Fees.

b. Franchise Fee. As directed by County, Contractor shall pay County a percentage of Contractor’s Gross Annual Revenues as a Franchise Fee. The time and frequency of payment of the Franchise Fee may be established by County from time to time. As of the date of the Third Amendment, the Gross Annual Revenues percentage is 5 percent. Effective on the System Implementation Date, the Gross Annual Revenues percentage will be 7 percent. Following the date of the Third Amendment, County may adjust the Gross Annual Revenues percentage subject to applicable legal requirements. Such adjustment would be effective on the earlier of (1) the effective date of rates charged by Contractor to Customers that incorporate a Franchise Fee based on such adjusted rate; or (2) the first day of the second calendar month immediately following County’s determination of a maximum rate that incorporates a Franchise Fee based on such adjusted rate.

c. Pass-Through. Administrative Services Fees and the Franchise Fee shall be considered reasonable costs and subject to “pass-through” as described in Section 8 on Rates.”

3. Entire Agreement. The Existing Franchise Agreement as amended by this Third Amendment shall be construed together as one and the same agreement and is the entire agreement between the Parties.

IN WITNESS WHEREOF, the Parties have entered into this Third Amendment as of the date last set forth in the signatures below.

**Contractor**

**Garaventa Enterprises,**  
a California corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Officer

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Officer

Date: \_\_\_\_\_

**County**

**County of Contra Costa**

By: \_\_\_\_\_  
Chair, Board of Supervisors

Attest: David Twa, Clerk of the Board of  
Supervisors and County Administrator

By: \_\_\_\_\_  
Deputy

Date: \_\_\_\_\_

[Note: Two officers must sign on behalf of corporations. The first must be the chairman of the board, president or any vice president; the second must be the secretary, assistant secretary, chief financial officer or any assistant treasurer. (Corp. Code, § 313; Civ. Code, § 1190.)

# EXHIBIT A

## 3-Cart Collection System

The purpose of this Exhibit A is to define the residential 3-Cart Collection System ("3-Cart System") referenced in Recital B of the Third Amendment to County Franchise Agreement with Garaventa Enterprises.

The 3-Cart System consists of all of the following:

### **1. GARBAGE COLLECTION**

Garaventa Enterprises ("Contractor") will provide all residential customers in the Franchise Area described in the Existing Franchise Agreement with Garaventa Enterprises (8758 customers as of July 15, 2011) with new brown wheeled garbage carts. Contractor will ask customers to select the size of their garbage carts, which may be any of the following sizes: 20-gallon minimum, 32-gallon minimum, 64-gallon minimum, or 95-gallon minimum. Customers who do not elect to choose a cart size will receive the following sized carts by default:

- 20-gallon can and 32-gallon can customers will be provided with wheeled carts roughly equivalent in capacity to their existing cans.
- 96-gallon wheeled cart customers will be provided with 64-gallon wheeled carts.

Contractor will continue to collect garbage on a weekly schedule.

### **2. GREENWASTE COLLECTION**

Contractor will provide green wheeled greenwaste carts (between 95-100 gallons in capacity) to all residential customers in the Franchise Area, except for those customers specified below. Contractor will instruct customers to deposit all greenwaste into these carts for collection, in place of existing customer-supplied bags or containers. Greenwaste will be collected curbside for recycling on a bi-weekly schedule.

Residential customers in possession of Contractor-supplied 96-gallon green garbage carts will not receive new wheeled greenwaste carts. Contractor will instruct these customers to use their existing garbage carts for greenwaste collection.

Residential customers who reside in the Marsh Creek Road area described and depicted in Exhibit 1 attached hereto ("Marsh Creek Area") will not be provided with wheeled greenwaste carts, due to the exceptional cost of servicing this rural area with three separate collection trucks. Contractor will instead provide these customers with 52 green plastic bags, each with a minimum capacity of 32 gallons and thickness of at least 1.2 millimeters, for greenwaste collection, one bag to be used for collection each week. Contractor will instruct these customers to place bags containing greenwaste adjacent to or inside their garbage carts for collection by garbage collection trucks. Contractor will recycle materials placed in these bags. This method of collection is considered a component of the 3-Cart System, notwithstanding the use of bags in place of carts for greenwaste disposal and collection.

Contractor will collect greenwaste from the green carts on a bi-weekly schedule.

### **3. MIXED RECYCLABLES COLLECTION**

Contractor will provide blue wheeled recycling carts (between 95-100 gallons in capacity) to all residential customers in the County franchise area, except as otherwise specified below. Contractor will instruct these customers to deposit all mixed recyclables (including bottles, cans and paper) in

these carts for curbside collection, in place of the two existing 14 gallon recycling crates previously supplied by the Contractor.

Residential customers who reside in the Marsh Creek Area will not be provided with wheeled recycling carts. Contractor will instead provide these customers with 52 blue plastic bags, each with a minimum capacity of 32 gallons and thickness of at least 1.2 millimeters, for mixed recyclables collection, one bag to be used for collection each week. Contractor will instruct these customers to place bags containing mixed recyclables adjacent to or inside their garbage carts for collection by garbage collection trucks. Contractor will recycle mixed recyclables placed in the bags. This method of collection is considered a component of the 3-Cart System, notwithstanding the use of bags in place of carts for mixed recyclables disposal and collection.

Contractor will collect mixed recyclables from the blue carts on a bi-weekly schedule.

County reserves the right to modify the 3-Cart System pursuant to Section 17 of the original Franchise Agreement.

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# EXHIBIT A

## 3-Cart Collection System

The purpose of this Exhibit A is to define the residential 3-Cart Collection System ("3-Cart System") referenced in Recital B of the Third Amendment to County Franchise Agreement with Garaventa Enterprises.

The 3-Cart System consists of all of the following:

### **1. GARBAGE COLLECTION**

Garaventa Enterprises ("Contractor") will provide all residential customers in the Franchise Area described in the Existing Franchise Agreement with Garaventa Enterprises (8758 customers as of July 15, 2011) with new brown wheeled garbage carts. Contractor will ask customers to select the size of their garbage carts, which may be any of the following sizes: 20-gallon minimum, 32-gallon minimum, 64-gallon minimum, or 95-gallon minimum. Customers who do not elect to choose a cart size will receive the following sized carts by default:

- 20-gallon can and 32-gallon can customers will be provided with wheeled carts roughly equivalent in capacity to their existing cans.
- 96-gallon wheeled cart customers will be provided with 64-gallon wheeled carts.

Contractor will continue to collect garbage on a weekly schedule.

### **2. GREENWASTE COLLECTION**

Contractor will provide green wheeled greenwaste carts (between 95-100 gallons in capacity) to all residential customers in the Franchise Area, except for those customers specified below. Contractor will instruct customers to deposit all greenwaste into these carts for collection, in place of existing customer-supplied bags or containers. Greenwaste will be collected curbside for recycling on a bi-weekly schedule.

Residential customers in possession of Contractor-supplied 96-gallon green garbage carts will not receive new wheeled greenwaste carts. Contractor will instruct these customers to use their existing garbage carts for greenwaste collection.

Residential customers who reside in the Marsh Creek Road area described and depicted in Exhibit 1 attached hereto ("Marsh Creek Area") will not be provided with wheeled greenwaste carts, due to the exceptional cost of servicing this rural area with three separate collection trucks. Contractor will instead provide these customers with 52 green plastic bags, each with a minimum capacity of 32 gallons and thickness of at least 1.2 millimeters, for greenwaste collection, one bag to be used for collection each week. Contractor will instruct these customers to place bags containing greenwaste adjacent to or inside their garbage carts for collection by garbage collection trucks. Contractor will recycle materials placed in these bags. This method of collection is considered a component of the 3-Cart System, notwithstanding the use of bags in place of carts for greenwaste disposal and collection.

Contractor will continue to collect greenwaste from carts on a bi-weekly schedule.

### **3. MIXED RECYCLABLES COLLECTION**

Contractor will provide blue wheeled recycling carts (between 95-100 gallons in capacity) to all residential customers in the County franchise area, except as otherwise specified below. Contractor will instruct these customers to deposit all mixed recyclables (including bottles, cans and paper) in

these carts for curbside collection, in place of the two existing 14 gallon recycling crates previously supplied by the Contractor.

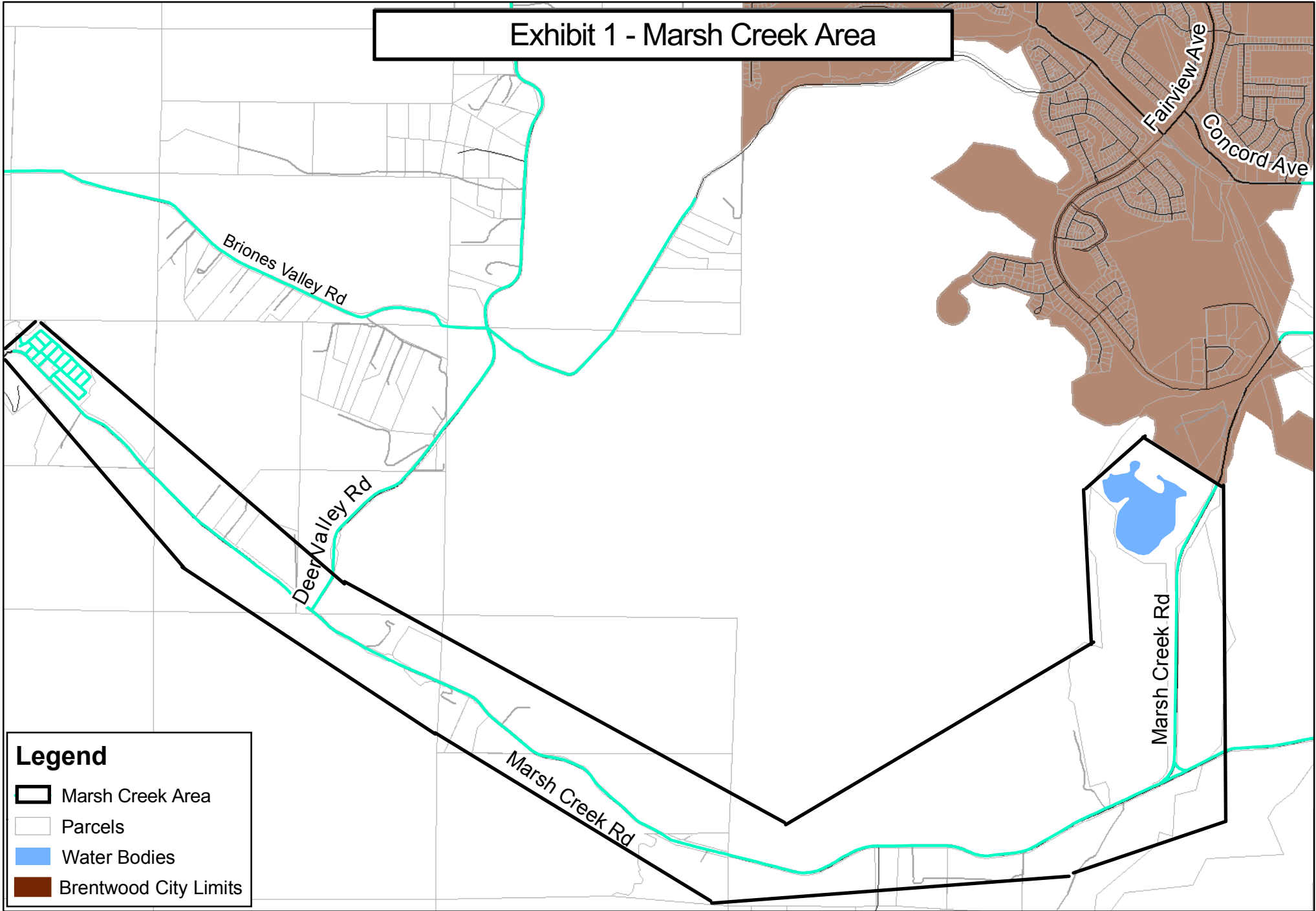
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Contractor will collect mixed recyclables from carts on a bi-weekly schedule.

County reserves the right to modify the 3-Cart System pursuant to Section 17 of the original Franchise Agreement.

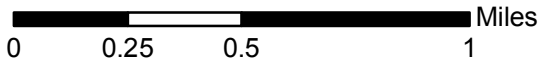
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# Exhibit 1 - Marsh Creek Area



**Legend**

- Marsh Creek Area
- Parcels
- Water Bodies
- Brentwood City Limits



Map created 6/23/2011  
by Contra Costa County Department Conservation and Development  
Community Development Division-GIS Group  
651 Pine Street, 4th Floor North Wing, Martinez, CA 94553-0095  
37:59:48.455N 122:06:35.384W  
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