

# ORIGINAL

## CITY OF MAPLE VALLEY, WASHINGTON

### ORDINANCE NO. O-09-390

**AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON, REPEALING ORDINANCE NO. O-09-387, GRANTING A FRANCHISE TO FIORITO ENTERPRISES, INC. & RABANCO COMPANIES dba KENT-MERIDIAN DISPOSAL COMPANY, PROVIDING FOR ACCEPTANCE OF FRANCHISE, AND SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, RCW 35A.14.900 requires that a code city, upon annexation of new territory, grant a franchise of not less than seven years and pay the garbage hauler that operated under an existing permit by the State of Washington for any measurable damages it sustains as a result of cancellation of the original franchise because of annexation; and

WHEREAS, the City of Maple Valley adopted Ordinance 0-09-388, published on July 21, 2009, to annex the area known as Maple Ridge Highlands effective July 26, 2009; and

WHEREAS, it is essential that residential, commercial and industrial solid waste be properly collected and recycled or disposed of in order to avoid adverse environmental and social effects; and

WHEREAS, Fiorito Enterprises, Inc. & Rabanco Companies, dba Kent Meridian Disposal ("Rabanco") has operated a municipal solid waste collection business within unincorporated King County pursuant to Tariff 26 and/or its predecessor or successors series and Certificate G-60; and

WHEREAS, Maple Valley City Code 12.15.005 requires that an initial authorization or renewal of a franchise will be accomplished by approval of an ordinance; and

WHEREAS, the Council finds that the grant of the franchise contained in this ordinance is in the best interests of the public; and

WHEREAS, the City granted a franchise to Rabanco pursuant to Ordinance O-09-387; and

WHEREAS, Rabanco is willing to accept a franchise from the City, but has requested certain modifications to Ordinance O-09-387 which the City finds reasonable;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Ordinance O-09-387 is repealed as of the effective date of this Ordinance.

Section 2. Notice to Hauler. The publication of Ordinance 0-09-388 on July 21, 2009 shall constitute the City's notification to the hauler, Rabanco, of the effective date of annexation of the area known as Maple Ridge Highlands, pursuant to RCW 35A.14.900.

Section 3. Franchise Granted. In satisfaction of the City's obligations under applicable law, including without limitation, RCW 35A.14.900, the City hereby grants to Rabanco, its successors and assigns, retroactive to July 26, 2009, a continued franchise for a period of ten years. The franchise term will end July 26, 2019. The franchise authorizes Rabanco to collect solid waste within the applicable annexation area known as Maple Ridge Highlands, in the City of Maple Valley. Rabanco unconditionally accepts this franchise to collect solid waste inside the City of Maple Valley, within the annexation area of Maple Ridge Highlands, as more fully described in Ordinance 0-09-388, incorporated herein as if fully set forth. The Public Works Director shall administer this franchise and monitor Rabanco's compliance with the terms and provisions herein. Nothing in this franchise exceeds either the scope of Rabanco's solid waste certificate in the annexed area at the time of annexation. At the time the franchise terminates, Rabanco shall surrender all route, customer and other information as required by the Public Works Director, under such arrangements as may be convenient to both parties, but in no event shall Rabanco fail to surrender such information thirty (30) days prior to the franchise termination date. The City reserves full authority to regulate and tax Rabanco as authorized by law, and to exercise its powers to adopt new regulations, amend existing regulations, including imposing new or additional taxes provided that such additional new or additional taxes shall be authorized for pass through to customers, comparable to tax supplements authorized by the Washington Utilities and Transportation Commission for regulated haulers under RCW 81.77.030. Rabanco agrees to indemnify and hold harmless the City, its officers, elected and appointed officials, agents and employees from all loss or liability for Rabanco's actions in connection with the enjoyment of this franchise. This provision survives expiration or revocation of this franchise. Rabanco's obligation to indemnify and hold harmless the City shall not in any way be modified by the grant of immunity to employers under Title 51 RCW, such immunity being waived for purposes of that obligation. This provision has been mutually negotiated between the parties. All Rabanco's records relating to operation of this franchise are subject to inspection and copying by the Public Works Director, or his/her designee. Rabanco shall provide a copy of its annual report for Certificate G-60 to the WUTC, to the Public Works Director, relating to its operations hereunder. Rabanco agrees to provide evidence of insurance coverage to include General Commercial Liability with limits no less than \$3,000,000 each occurrence; \$5,000,000 general aggregate and a \$2,000,000

products-completed operations aggregate limit. Rabanco agrees to provide Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$3,000,000 per accident. Rabanco shall provide Contractor's Pollution Liability insurance with limits no less than \$3,000,000 combined single limit per occurrence for bodily injury, personal injury, property damage, cleanup costs and legal defense expense.

Section 4. Service and Charges. Rabanco shall continue to offer and provide the same collection services within the annexed territory of Maple Ridge Highlands to the customer charges provided for under its WUTC G-certificate tariff for Kent-Meridian Disposal. Operating standards shall be equivalent to and consistent with those required under WUTC regulations for Kent-Meridian Disposal. Rabanco must notify the public at least 45 days prior to any rate increases as provided in RCW 35.21.157. Proposed rate increases must be fair and reasonable. Compliance with WUTC approved rates for similar service in the area is presumed fair and reasonable. All rates shall be subject to review by the Public Works Director, who shall provide a recommendation on proposed rate increases to the City Council the approval for which shall not be unreasonably withheld. Rabanco agrees to provide, safe, reliable solid waste collection service adequate and sufficient to satisfy all customer needs. Service levels at least commensurate with the levels currently provided by Rabanco within the franchise area shall be presumed adequate and sufficient.

Section 5. Negotiated Franchise. This Franchise may be replaced by a continuation franchise on terms mutually negotiated between Rabanco and the City or be replaced through a competitive bid process determined by the City. The City will begin the competitive bid process prior to the end of the franchise period, at its discretion, but the franchise period will be in effect for the entire ten year period set forth in Section 3 prior to a grant of new franchise, or entry by the City into a contract for solid waste hauling services.

Section 6. Compliance with Law. Rabanco shall comply with all City, County, State and Federal laws and regulations applicable to the services provided under this Franchise. Such compliance shall include, but not be limited to, collecting and paying utility and other taxes, and otherwise complying with City Code.

Section 7. Acceptance of Franchise. The City tenders this franchise and Rabanco accepts the same in full satisfaction of any and all claims for measurable damages caused by cancellation of any state certificate whether arising under RCW 35A.14.900 or any other authority. Rabanco acknowledges that City has granted, provided it is fully performed by the City, a franchise term in excess of the minimum requirements of law, and the term granted is accepted in full settlement and compromise of any additional claims for damage or additional compensation because of the City's take-over of annexed territory upon the expiration of this franchise or for any other reason. The signature of Rabanco on this Ordinance shall be deemed acceptance of all franchise terms.

Section 8. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 9. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 10. Public Emergency Declared. This ordinance is necessary for the protection of the public health and a public emergency is hereby declared.

Section 11. Effective Date. This Ordinance is effective immediately upon adoption.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF  
ON THE 28<sup>th</sup> DAY OF SEPTEMBER, 2009.**

**CITY OF MAPLE VALLEY**

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**Laure A. Iddings, Mayor**

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
**Irvalene M. Moni, CMC, PRP, City Clerk**

**Approved as to form:**

\_\_\_\_\_  
**Christy A. Todd, City Attorney**

**Date of Publication:** \_\_\_\_\_, 2009

**Effective Date:** \_\_\_\_\_, 2009

**Terms of Franchise Accepted:**

**By:** \_\_\_\_\_  
**Fiorito Enterprises, Inc. & Rabanco Companies**

**Its:** \_\_\_\_\_

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