



Item No. **3c**

Meeting Date: **May 13, 2015**

AGENDA SUMMARY REPORT

To: Honorable Mayor and Council Members

From: Adrienne Moore, City Manager
Jim Lance, City Attorney

Agenda Title: DISCUSSION AND ~~POSSIBLE APPROVAL~~ OF FRANCHISE AGREEMENT AND TRANSFER STATION AGREEMENT WITH SOLID WASTES OF WILLITS

Type: Presentation Consent Regular Agenda Public Hearing Urgent Time: 30-45 min.

Summary of Request: An ad hoc committee was established in May 2014 to review the franchise agreement with Solid Wastes of Willits (SWOW), which expires October 31, 2015. Pursuant to that agreement, on July 23, 2014, the City Council authorized the issuance of notice to SWOW of non-renewal of the existing solid waste collection contract and directed the ad-hoc solid waste committee to conduct negotiations with SWOW for a new contract. Since that time, negotiations have been ongoing. On April 1, 2015, the ad hoc committee and SWOW reached an “agreement in principle” on a proposed franchise agreement, as well as an agreement to extend the term of and amend the agreement for Transfer Station Operation. *(Both are attached for review.)*

Although the matter was agendized on the City Council's April 22nd agenda, staff requested that it be pulled in order to resolve some conflicting views. The matter is now back before the Council; however, due to the late distribution of the materials, which was a result of ongoing staff work with SWOW, it is recommended that the Council engage in discussion tonight but defer action until May 27th.

Of particular issue is whether or not the City specifies the destination in the franchise agreement of mixed organics diversion, which would be a new service offered to ratepayers. The majority consensus of the City Council was to not specify the destination, other than it must be to a permitted facility. In order to avoid compromising SWOW's ability conduct fair and good faith negotiations with a subcontractor, staff advises against approving a franchise agreement until those negotiations have concluded.

Recommended Action: Review and discuss the attached 1) draft Franchise Agreement and 2) proposed agreement to extend the term of and amend the agreement for Transfer Station Operation; and direct staff to schedule both for final review and approval at the May 27, 2015, City Council meeting, to allow Solid Wastes of Willits to conclude negotiations with a permitted composting facility.

Alternative(s): Staff does not recommend any alternatives at this point.

Fiscal Impact: Minimal.

Personnel Impact: Minimal.

Reviewed by: City Manager City Attorney Finance Director Human Resources Risk

Council Action: Approved Denied Other: _____

Records: Agreement Resolution # _____ Ordinance # _____ Other _____

FRANCHISE AGREEMENT

between

CITY OF WILLITS

and

SOLID WASTES OF WILLITS, INC

November 1, 2015

Mike 4/9/15 11:01 AM

Deleted: for -
September 1, 2010

Jerry Ward 5/11/15 10:33 AM

Deleted: -
September 1, 2010

Mike 4/9/15 11:01 AM

Deleted: September 1, 2010

Jerry Ward 5/11/15 10:33 AM

Deleted: _

Table of Contents

RECITALS	6
SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE	7
SECTION 2 – DEFINITIONS	8
SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS	15
SECTION 4 - TERM AND SCOPE OF AGREEMENT	16
A. Term of Agreement	16
B. Scope of Agreement	17
C. Limitations to Scope	17
D. Subcontracting	19
E. Franchise Area Limits	19
SECTION 5 - SERVICES PROVIDED BY GRANTEE	20
City to Approve All Services	20
A. 20	20
C. Recyclable Material Buy-Back Facility	21
D. Hours of Collection	22
E. Collection on Holidays	22
SECTION 6 - SPECIAL PROGRAMS AND SERVICES PROVIDED BY GRANTEE	23
A. Source Reduction and Waste Diversion Programs	23
B. Public Education	23
C. Billing	24
D. Other Special Services	25
E. Containers - Refusal to Pick Up	25
F. Containers - Noticing Violators	25
G. Promotion of Waste Diversion to New Customers	25
SECTION 7 – STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL	27
A. Manner of Collection	27
B. Vehicles and Equipment - Standards	27
C. Vehicles - Identification	28
D. Vehicles and Equipment - Inspection	28
E. Vehicles - Shovel, Broom and Fire Extinguisher Required	28
F. Container Requirements	28
G. Personnel	29
SECTION 8 - PUBLIC ACCESS TO GRANTEE	31
A. Name and Office Hours	31
B. Service Complaints	31
C. Overcharge	31

SECTION 9 - SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS.....	32
A. Responsibility to Identify Hazardous Waste.....	32
B. Response to Hazardous Waste Identified at Disposal Site or Processing Site.....	32
C. Notification for Hazardous Waste.....	32
D. Rights Reserved as to Hazardous Wastes.....	33
SECTION 10 - DISPOSAL AND PROCESSING	34
A. Solid Waste Disposal.....	34
B. Recyclable Materials Processing and Marketing.....	34
C. Change in Designated Disposal Location or Recyclable Materials Processing Site.....	35
D. Grantee's Responsibility in Lieu of Direction by City.....	36
E. Invalidation of City Flow Control Voids Franchise.....	36
SECTION 11 - OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS	37
SECTION 12 - PRIVACY.....	38
A. Customers Rights of Privacy.....	38
B. Use of Customer Lists.....	38
SECTION 13 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS.....	39
A. Customer List and Routes.....	39
B. Record-keeping and Inspection.....	39
C. Financial and Operational Records.....	39
D. Collection Service Records.....	39
E. Transfer, Processing, and Disposal Records.....	40
F. Customer Service Records.....	40
G. CERCLA Defense Records.....	40
H. Quarterly Reports.....	40
I. Annual Financial Report.....	41
J. Annual Operations Report.....	42
K. Annual Disclosure Statement.....	42
L. Reporting Requirements.....	43
M. Failure to Report.....	44
SECTION 14 - GRANTEE'S RATES.....	45
A. City's Powers.....	45
B. Rate Requirements.....	45
SECTION 15 - RATE ADJUSTMENT PROCEDURES.....	47
A. Pass-through Rate Adjustment.....	47
B. Cost-of-Living & Fuel Rate Adjustments.....	48
C. Larger Rate Increases.....	49
D. Rate Decreases.....	50
E. Recycling Commodity Value Adjustment.....	51
SECTION 16 - FEES.....	53
A. Franchise Fee - Amount.....	53

B. Franchise Fee - Quarterly Payments and Revenue Statements	54
C. Franchise Fee - Deposit	54
D. Franchise Fee - Delinquency Penalty	54
E. Refund of Franchise Fees	54
SECTION 17 - BONDS, INSURANCE, AND INDEMNIFICATION	55
A. Bonds	55
B. Insurance	55
C. Indemnification	57
SECTION 18 - FRANCHISE TRANSFER, ISSUANCE, AND RENEWAL	51
A. Franchise Transfer	51
B. General Standards of Responsibility	52
C. Opportunity to Demonstrate Rehabilitation	53
SECTION 19 - TERMINATION	54
A. Events of Default	54
B. Right to Suspend, Amend, or Terminate	55
C. Procedures	55
D. Agreement - Revocation - Equipment Use by City	56
E. Liquidated Damages	56
SECTION 20 - RIGHTS OF CITY TO PERFORM DURING EMERGENCY	59
A. Provision of Emergency Services	59
B. Franchise Revocation - Emergency Actions	59
C. Labor Dispute - City Assumption of Duties - Authorized	59
D. Labor Dispute - City Assumption of Duties - Use of Revenue	60
E. Labor Dispute - City Assumption of Duties – Employees	60
SECTION 21 - GENERAL PROVISIONS	61
A. Entire Agreement	61
B. Force Majeure	61
C. Notice Procedures	61
D. Independent Contractor	62
E. Roadway Damage	62
F. Property Damage	62
G. Compliance with City Code	62
H. Severability	63
I. Waiver or Modification	63
J. Forum Selection	63
K. Court Costs and Attorney Fees	63

List of Exhibits

- A. Source Reduction and Waste Diversion Programs
- B. City-Approved Rates

Jim Lance 5/11/15 1:57 PM
 Deleted: RECITALS - 6 - [1]

Mike 4/9/15 5:56 PM
 Deleted: County

- C. Performance Bonding Requirements
- D. Public Education and Community Outreach Programs
- E. Liquidated Damages

Mike 4/10/15 10:28 AM

Deleted: Map of Solid Waste Refuse Collection Area No. 3

Jim Lance 5/7/15 7:35 AM

Deleted: Agreement with Cold Creek Compost

Jim Lance 5/7/15 7:35 AM

Deleted: FF - Liquidated Damages -

FRANCHISE AGREEMENT BETWEEN CITY OF WILLITS AND SOLID WASTES OF WILLITS, INC.

This Franchise Agreement ("Agreement") is entered into this day of 2015, between the City of Willits ("City") and Solid Wastes of Willits, Incorporated, a California corporation ("Grantee"), for the Collection, Transportation, and Disposal of Solid Waste and the Collection, Transportation, Processing, and marketing of Recyclable Materials within the incorporated territory of the City.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City Council of the City has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the Collection and recovery of Solid Waste from certain residential, industrial and commercial areas in the City; and

WHEREAS, City and Grantee are mindful of the provisions of local, state, and federal laws governing the safe Collection, Transport, Recycling and Disposal of Solid Waste, including, but not limited to, AB 939, the Resource Conservation and Recovery Act ("RCRA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

WHEREAS, Grantee has represented and warranted to City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the Franchise Area for the Collection and safe Transport to Disposal facilities of Solid Waste, the City Council of the City determines and finds that the public interest, health, safety and well-being would be best served if Grantee were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the City Council of the City declares its intention of maintaining reasonable rates for Collection and Transportation of Solid Waste and Discarded Recyclable Materials within the area covered by this grant of franchise; and

WHEREAS, City and Grantee executed a Franchise Agreement on November 1, 2000 that granted a Franchise Agreement to Grantee City and City and Grantee now wish to make a new, comprehensive Agreement to extend the term and make other changes that shall replace all previous writings that constituted the Franchise Agreement for City the City of Willits.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- Mike 4/9/15 3:53 PM Deleted: County of Mendocino
Mike 4/9/15 3:53 PM Deleted: Area No. Three
Mike 4/9/15 11:06 AM Deleted: COUNTY OF MENDOCINO
Mike 4/9/15 11:06 AM Deleted: for
Jim Lance 5/6/15 2:28 PM Deleted: amended
Mike 4/9/15 11:07 AM Deleted: August, ... 2010...015...

- Jim Lance 5/6/15 2:28 PM Deleted: Board of Supervisors
Mike 4/9/15 11:08 AM Deleted: County ...ity has determined that
Mike 4/9/15 11:08 AM Deleted: County

- Jerry Ward 5/11/15 10:35 AM Deleted:
Mike 4/9/15 11:09 AM Deleted: WHEREAS, County
Jerry Ward 5/11/15 10:36 AM Deleted: City
Mike 4/9/15 11:08 AM Deleted: has not, and, by this Agreement does not, instruct Grantee on its Collection methods, nor supervise the Collection of waste; and
Mike 4/9/15 11:09 AM Deleted: County ...ity that it has the experi
Mike 4/9/15 11:09 AM Deleted: Board of Supervisors ...ity Council
Mike 4/9/15 3:51 PM Deleted: County ...ity and Grantee execute

- Jerry Ward 5/11/15 10:36 AM Deleted:

SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND COMMERCIAL FRANCHISE

A. City grants to Grantee, for the term of and in accordance with this Agreement (including all extensions or renewals), an exclusive privilege, duty and right to make and enter into independent arrangements with residents of single family units, residents and/or owners of multifamily units and Persons in charge of commercial, industrial, institutional and other entities in the Franchise Area for the Collection, Transportation and removal to Solid Waste Disposal facilities, all Residential, Commercial, and Industrial Solid Waste, including Discarded Recyclable Materials generated or accumulated within the Franchise Area, with the exception of sewage sludge and seepage, which has been placed in a Grantee-provided Solid Waste Container.

B. Grantee agrees to be bound by and comply with all the requirements of this Agreement.

C. In the event of and to the extent that any of the following (Items 1-3, below) require or are amended to require that either party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the parties hereunder, then this Agreement shall be amended to provide for the satisfaction of such requirements. Furthermore, should such amendments to this Agreement result in the Grantee having to incur additional expenses in performing its obligations hereunder, or if certain cost cutting measures are implemented that justify lower rates, then Grantee or City may seek rate adjustments therefore in accordance with the procedures under Section 15, below.

- (1) The Willits Municipal Code, the California Public Resources Code, other applicable state and federal laws, rules and regulations promulgated there under;
- (2) The City-wide Integrated Waste Management Plan and the City's Source Reduction and Recycling Element and Household Hazardous Waste Element; and
- (3) Any and all amendments to said laws, plans, and regulations.

Mike 4/9/15 3:53 PM

Deleted: County of Mendocino

Mike 4/9/15 3:53 PM

Deleted: Area No. Three

Mike 4/9/15 3:52 PM

Deleted: <#> The Franchise Agreement as previously amended including revisions as to rates, is affirmed regarding the rights and obligations it assigned to the parties from its original date of execution on June 24, 2008 until the Effective Date of this amended Agreement herein. ... [8]

Jerry Ward 5/11/15 10:36 AM

Deleted: ... [9]

Mike 4/9/15 3:53 PM

Deleted: County

Mike 4/9/15 3:54 PM

Deleted: , in the areas covered by this Agreement, as shown on the map entitled "Mendocino County

Jim Lance 5/6/15 2:29 PM

Deleted: City

Mike 4/9/15 3:54 PM

Deleted: Solid Waste Refuse Collection Areas," as its boundaries are now constituted or may hereafter be amended.

Jim Lance 5/6/15 2:29 PM

Deleted: .

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 3:55 PM

Deleted: County

Jim Lance 5/6/15 2:30 PM

Deleted: City

Mike 4/9/15 5:56 PM

Deleted: County

Jim Lance 5/6/15 2:31 PM

Deleted: of Mendocino

Mike 4/9/15 5:56 PM

Deleted: County

Jim Lance 5/6/15 2:31 PM

Deleted: City

Mike 4/9/15 5:56 PM

Deleted: County

158 **SECTION 2 – DEFINITIONS**

159
160 A. "AB939" means the California Public Resources Code 40000 et. seq. and the
161 regulations promulgated by the California Department of Resources Recycling and Recovery.

162
163 B. "Adjusted Gross Revenues" means any and all revenue or compensation
164 (excluding revenues or compensation collected from Independent Government Agencies) in any
165 form derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents or any other
166 Person or entity in which Grantee has a financial interest, in Collecting, Transporting, arranging,
167 handling, and/or Disposing of Solid Waste or Recyclable Material generated in the Franchise
168 Area pursuant to this Agreement, excluding the redemption value of Recyclable Materials
169 purchased, occasional sale of capital equipment, and interest earned.

170
171 C. "Agreement" means this Franchise Agreement between the City and Grantee.

172
173 D. "Applicable Law" means all federal, State, and local laws, regulations, rules,
174 orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency
175 having jurisdiction over the Collection, Transportation, Processing, and Disposal of Solid Waste
176 and Recyclable Materials that are in force on the Effective Date and as they may be enacted,
177 issued or amended during the Term of this Agreement.

178
179 E. "Approved Mixed Organics Waste Processing Site" means a duly licensed and
180 permitted Mixed Waste Organic Processing Facility with sufficient capacity and ability to
181 lawfully process mixed organic waste collected by Grantee from customers within the City of
182 Willits, as may be proposed by Grantee and approved by City.

183
184 F. "Approved Recyclable Materials Processing Site" means the Solid Wastes of
185 Willits Material Processing Facility, 351 Franklin Avenue, Willits, CA.

186
187 G. "Authorized Recycling Entity" means that person, partnership, joint venture or
188 corporation authorized by a franchise agreement or permit with the City to collect Discarded
189 and/or Non-Discarded Recyclables Materials. An Authorized Recycling Entity may be a
190 municipal collection service, private refuse hauler, private recycling enterprise, or private
191 nonprofit corporation or association.

192
193 H. "Bin" shall mean a container designed for mechanical emptying with a close
194 fitting cover and of a design approved by the City with capacity of approximately one to six
195 cubic yards.

196
197 I. "Bulky Waste" means and includes, but not by way of limitation, discarded white
198 goods (i.e., major household appliances), furniture, tires, carpets, mattresses, and similar large
199 items, which cannot be placed in a covered Container.
200

Mike 4/10/15 10:42 AM
Deleted: County of Mendocino
Mike 4/10/15 10:42 AM
Deleted: Area No. Three

Mike 4/9/15 3:56 PM
Deleted: County

Mike 4/9/15 6:19 PM
Deleted: Green Waste

Deleted: the Pacific Recycling Solutions Green Waste Processing Facility, 4260 N. State Street, Ukiah, CA.

Jim Lance 5/6/15 2:33 PM
Deleted: Cold Creek Compost, 6000 Potter Valley Road, Ukiah, CA 95482, or

Jim Lance 5/6/15 2:34 PM
Deleted: such other

Jim Lance 5/6/15 2:37 PM
Deleted: facility

Jim Lance 5/6/15 2:39 PM
Deleted: SWOW EXCEPTION #1

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:58 PM
Deleted: Department

Mike 4/9/15 5:58 PM
Deleted: <#>"Board" means the Board of Supervisors of Mendocino County. -

215 J. "Cart" means a plastic container with a hinged lid and wheels that is serviced by
216 an automated or semi-automated Collection vehicle. A Cart has capacity of 20-, 35-, 65-, or 95-
217 gallons (or similar volumes).
218

219 K. "Collection" means the act of collecting Solid Waste, Recyclable Materials, and
220 other material at the place of generation in the Franchise Area.
221

222 L. "Commercial Solid Waste" includes all types of Solid Wastes generated by
223 commercial, industrial, governmental, and other sources, which have been placed in an
224 authorized Grantee-provided Solid Waste Container used for the temporary storage of Solid
225 Waste awaiting pickup. The term "Commercial Solid Waste" does not include Hazardous
226 Wastes generated by commercial, industrial, governmental, and other sources and which are
227 placed in separate Containers and which are covered by Hazardous Waste manifests.
228

229 M. "Compactor" means a mechanical apparatus that compresses materials and/or
230 the Container that holds the compressed materials. Compactors include two to four cubic yard
231 Bins serviced by front-end loader Collection vehicles and 6 to 50 cubic yard Debris Boxes
232 serviced by roll-off Collection vehicles.
233

234 N. "Containers" mean Carts, Bins, Compactors, and Debris Boxes
235

236 O. "City" means the City of Willits, a general law city pursuant to the laws of the
237 State of California, and any authorized officer or agent designated by the City of Willits to
238 represent it in any matter herein.
239

240 P. "Customer" means any Person receiving Solid Waste or Recyclable Material
241 service under the provisions of this Agreement.
242

243 Q. "Debris Box" means an open-top Container with a capacity of 10 to 50 cubic
244 yards that is serviced by a roll-off Collection vehicle.
245

246 R. "Designated Collection Location" shall mean that location at which only an
247 Authorized Recycling Entity may collect materials.
248

249 S. "Demolition and Construction Debris" means:
250

251 (1) Discarded materials generally considered to be not water soluble and
252 nonhazardous in nature, including but not limited to steel, glass, brick, concrete,
253 asphalt material, pipe, gypsum, wallboard, and lumber from the construction or
254 destruction of a structure as part of a construction or demolition project or
255 from the renovation of a structure and/or landscaping, and including rocks,
256 soils, tree remains, trees, and other vegetative matter that normally
257 results from land clearing, landscaping and development operations for a

Mike 4/10/15 10:42 AM
Deleted: County of Mendocino
Mike 4/10/15 10:42 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County of Mendocino, State of California.
Jim Lance 5/6/15 2:41 PM
Deleted: ... [10]

Mike 4/15/15 8:50 AM
Deleted: Location
Jerry Ward 5/11/15 10:07 AM
Deleted: .
Mike 4/9/15 5:59 PM
Deleted: "Department" means Solid Waste Director, County of Mendocino, at the office designated by the County of Mendocino to administer this Franchise Agreement. .

- 271 construction project.
272
273 (2) Clean cardboard, paper, plastic, wood, and metal scraps from any
274 construction and/or landscape project.
275
276 (3) Non-construction and demolition debris wood scraps.
277
278 (4) Insignificant amounts of other non-hazardous wastes that are generated
279 at construction or demolition projects provided such amounts are consistent
280 with best management practices of the industry.
281
282 (5) Mixing of construction and demolition debris with other types of Solid
283 Waste will cause it to be classified as other than construction and demolition
284 debris.
285

286 T. **“Designated Recyclable Material Buy-Back Site”** means the Grantee’s buy-
287 back Recycling center to be operated at the Willits Transfer Station, 350 Franklin Avenue,
288 Willits or other locations approved by City, in accordance with all regulations of the California
289 Department of Resource Recycling and Recovery.

290
291 U. **“Designated Disposal Location”** means the Willits Transfer Station, 350
292 Franklin Avenue, Willits, California.

293
294 V. **“Designated Waste”** means non-Hazardous Waste which may pose special
295 Disposal problems because of its potential to contaminate the environment and which may be
296 disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance
297 issued by the California Department of Health Services. Designated Waste consists of those
298 substances classified as Designated Waste by the State of California, in California Code of
299 Regulations Title 23, Section 2522 as may be amended from time to time.

300
301 W. **“Discarded Recyclable Materials”** means any Recyclable Materials which the
302 Generator disposes of without selling or donating.

303
304 X. **“Disposal or Dispose (or variation thereof)”** means the ultimate Disposal of
305 Solid Waste at a Disposal Site.

306
307 Y. **“Disposal Site”** means a facility for ultimate Disposal of Solid Waste as defined
308 in Public Resources Code Section 401.22.

309
310 Z. **“Franchise Area,”** means the incorporated city limits of the City of Willits.

311
312 AA. **“Franchise Fee”** means the fee or assessment paid by the Grantee to the City, and
313 which, inter alia, is intended to compensate City for its expenses in administering this Agreement

Mike 4/10/15 10:42 AM
Deleted: County of Mendocino
Mike 4/10/15 10:42 AM
Deleted: Area No. Three

Mike 4/9/15 6:00 PM
Deleted: opened
Mike 4/9/15 6:00 PM
Deleted: Boonville

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 6:00 PM
Deleted: Ukiah

Mike 4/9/15 6:00 PM
Deleted: 3551 Taylor Drive, Ukiah CA

Mike 4/9/15 6:01 PM
Deleted: un

Mike 4/9/15 6:01 PM
Deleted: portions of the County

Mike 4/9/15 6:02 PM
Deleted: within the Solid Waste Refuse Collection Area No. Three (3) designated on the map entitled "Mendocino County Solid Waste Refuse Collection Areas" (included as Exhibit E) including all amendments and changes thereto.

Jim Lance 5/6/15 2:44 PM
Deleted: imposed

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 2:43 PM
Deleted: City on

Jim Lance 5/6/15 2:44 PM
Deleted: solely because of its status as party to this Agreement,

Mike 4/9/15 5:56 PM
Deleted: County

332 and other Solid Waste-related costs and activities, and as consideration for Grantee's use of
333 public streets and for City's maintenance thereof resulting from Grantee's performance of this
334 agreement.

Mike 4/10/15 10:42 AM

Deleted: County of Mendocino

Mike 4/10/15 10:42 AM

Deleted: Area No. Three

Mike 4/9/15 6:02 PM

Deleted: activities.

335
336 BB. "Generator" means any Person as defined by the Public Resources Code, whose
337 act or process produces Solid Waste or Recyclable Materials as defined in the Public Resources
338 Code, or whose act first causes Solid Waste to become subject to regulation.

339
340 CC. "Grantee" shall mean the Person granted the franchise to arrange for the
341 Collection of Solid Wastes and Recyclable Materials pursuant to this Agreement.

342
343 DD. "Green Waste" means those discarded materials that will decompose and/or
344 putrefy, including but not limited to, green trimmings, grass, weeds, leaves, pruning's, branches,
345 dead plants, brush, tree trimmings, dead trees, and small pieces of unpainted and untreated
346 wood. Green Waste to be placed in a Container for Collection shall not exceed six inches in
347 diameter and four feet in length. Tree stumps and logs are not to be considered "Green Waste"
348 unless they are reduced to a chipped form; they shall be considered Bulky Waste. Biodegradable
349 plant material, which is mixed with other kinds of Solid Waste, shall not be considered "Green
350 Waste".

Mike 4/9/15 6:03 PM

Deleted: , and other types of organic waste.

351
352 EE. "Hazardous Waste or Materials" means any waste materials or mixture of
353 wastes defined as such pursuant to the Resource Conservation and Recovery Act, 42 U.S.C.
354 Section 6901 et seq., or the Comprehensive Environmental Response, Compensation and
355 Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., and all future amendments to either
356 of them, or as defined by the California Environmental Protection Agency or the California
357 Department of Resources Recycling and Recovery, or either of them. Where there is a conflict
358 in the definitions employed by two or more agencies having jurisdiction over Hazardous or Solid
359 Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing
360 definition.

Jerry Ward 5/11/15 10:08 AM

Deleted: -

361
362 FF. "Holidays" are defined as New Year's Day and Christmas Day.

363
364 GG. "Independent Government Agencies" means any Federal, State or local
365 government agencies, including but not limited to special districts, school districts,
366 Indian reservations, California Department of Parks and Recreation, California State
367 Department of Corrections, United States Forest Service, Bureau of Land Management,
368 United States Corp of Engineers, which due to provisions of California State Law do not
369 have to comply or recognize the Grantee as the City's exclusively franchised Solid
370 Waste Collector.

Mike 4/9/15 5:56 PM

Deleted: County

371
372 HH. "Industrial Solid Waste" means Solid Waste in an amount exceeding an average
373 of five hundred pounds (500 lbs.) per operating day produced by any Person principally engaged
374 in the business of Processing or manufacturing agricultural, animal or other products or materials

379 whose principal outlet for such products is wholesale rather than retail, and by any Person
380 engaged in the business of building construction or demolition. Industrial Solid Waste excludes
381 Non-Discarded Recyclable Materials.

382
383 II. **“Mixed Organic Waste”** shall mean Green Waste, food scraps, paper tissues,
384 paper napkins and towels, coffee grounds and filters, pizza boxes, and food-soiled paper plates
385 and cups.

386
387 JJ. **“Multi-Family Units”** shall mean any residential building, boardinghouse,
388 apartment building, condominium complex, stock cooperative complex consisting of two or
389 more independent dwelling units which receives Solid Waste and/or Recyclable Material
390 services. Multi-Family Units does not include motels, hotel, or automobile courts.

391
392 KK. **“Non-Discarded Recyclable Materials”** means any Recyclable Materials, as
393 defined herein, that the Generator retains, sells, or donates.

394
395 LL. **“Occupant”** means the Person in possession or control of the Premises, including
396 but not limited to Persons such as tenant, lessee, licensee, manager, custodian, or caretaker.

397
398 MM. **“Owner”** means the Person having dominion of or title to Premises.

399
400 NN. **“Person”** means any individual, firm, corporation, partnership, joint venture,
401 association, special district, school districts, limited liability company or partnership, group or
402 combination thereof, includes the plural as well as the singular.

403
404 OO. **“Premises”** means a parcel of real property to the center of any alley adjacent
405 thereto, located in Franchise Area, upon which is situated any dwelling house or other place of
406 human habitation, including each unit of a multiple dwelling building, or of a mobile home park;
407 or upon which is conducted any business, occupation, or activity which results in the production
408 or accumulation of Solid Waste.

409
410 PP. **“Processing”** means to prepare, treat, or convert through some special method.

411
412 QQ. **“Processing Site”** means any plant or site used for the purpose of sorting,
413 cleansing, treating or reconstituting Recyclable Materials for the purpose of making such material
414 available for reuse.

415
416 RR. **“Rate Period”** means a 12-month period, commencing January 1 and concluding
417 December 31 for which rates are calculated.

418
419 SS. **“Recyclable Material(s)”** includes materials which are reused or Processed or are
420 in the future reused or Processed into a form suitable for reuse through reprocessing or
421 remanufacture, consistent with the requirements of the Public Resources Code. No materials

Mike 4/10/15 10:42 AM
Deleted: County of Mendocino
Mike 4/10/15 10:42 AM
Deleted: Area No. Three

Mike 4/9/15 6:05 PM
Deleted: , with the exception that Rate Period One shall commence September 1, 2010 and conclude December 31, 2010.

425 shall be considered Recyclable Materials unless such material is separated from Solid Waste.
426 Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons,
427 and store advertisements); mixed paper (including office paper, computer paper, magazines, junk
428 mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books,
429 grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes,
430 cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass
431 containers of any color (including brown, clear, and green glass bottles and jars); aluminum
432 (including beverage containers, foil, food containers); steel, tin or bi-metal cans; plastic
433 containers (no. 1 to 7); aseptic beverage boxes and non-hazardous scrap metal items weighing 10
434 lbs. or less.

435
436 TT. **"Residential Solid Waste"** means all types of Solid Waste which originate from
437 residents of Single-Family Units and Multi-Family Units.

438
439 UU. **"Responsible Party"** means: 1) Any individual or any corporation, partnership or
440 business association or an officer, director, or management employee of a corporation,
441 partnership, or business association that has the authority to make discretionary decisions with
442 respect to the operations or financial management of the Grantee; or, 2) Any corporation, sole-
443 proprietorship, partnership, or business association, or officer, director, or management
444 employee of such entity, that holds at least five percent (5%) equity or debt interest in the
445 Grantee. If any holder of such debt or equity is not a natural person, the term "responsible party"
446 includes only the debtor, equity holding Person and officers, directors, and management
447 employees of the debt or equity holder who are empowered to make discretionary decisions with
448 respect to the operation or financial management of the Grantee.

449
450 VV. **"Segregated Recyclable Materials"** means those Recyclable Materials which: 1)
451 Have been source separated by the Person from whom they are being collected; or, 2) Are
452 physically separated from other waste material following Collection.

453
454 WW. **"Single-Family Unit"** means a dwelling which receives individual Solid Waste
455 and/or curbside Recyclable Material service.

456
457 XX. **"Solid Waste"** means and includes all putrescible and non-putrescible solid and
458 semisolid wastes (including semi-liquid or wet wastes with insufficient moisture so as not to be
459 free flowing), ashes, Recyclable Materials that have not been separated from Solid Waste,
460 demolition and construction wastes and other discarded materials resulting from domestic,
461 institutional, commercial, industrial, agricultural and community operations and activities. Solid
462 Waste shall be expressly deemed to include Bulky Wastes as defined herein. Solid Waste does
463 not include Hazardous Wastes or Designated Waste.

464
465 YY. **"Solid Waste Collector"** means a Person who collects or Transports Solid Waste
466 under authority granted by the City including its agents and employees.

467

Mike 4/10/15 10:42 AM
Deleted: County of Mendocino
Mike 4/10/15 10:42 AM
Deleted: Area No. Three

Mike 4/9/15 6:06 PM
Deleted: Board or Department
Jim Lance 5/6/15 2:52 PM
Deleted: his/her

470 ZZ. **“Solid Waste Ordinance”** means Chapter 8.08 of the Willits Municipal Code
471 and amendments thereto, as adopted by the City Council.

472
473 AAA. **“Subcontractor”** means a party who has entered into a contract, expressed or
474 implied, with the Grantee for the performance of an act that is necessary for the Grantee’s
475 fulfillment of its obligations under this Agreement.

476
477 BBB. **“Transportation”** means the act of transporting or state of being transported.

478
479 CCC. **“Waste Stream”** means the total amount of Solid Waste generated in a given
480 area, such as the City or a specific Franchise Area. Waste Stream does not include Recyclable
481 Materials that have been separated from Solid Waste by the Generator so that the Recyclable
482 Materials never become discarded waste.

Mike 4/10/15 10:42 AM

Deleted: County of Mendocino

Mike 4/10/15 10:42 AM

Deleted: Area No. Three

Mike 4/9/15 6:07 PM

Deleted: "Solid Waste Ordinance" means Title 9A of the Mendocino County Code, as currently adopted by the Mendocino County Board of Supervisors and future

Jim Lance 5/6/15 3:00 PM

Deleted: o Title 9A

Jim Lance 5/6/15 3:00 PM

Deleted: Board of Supervisors

Mike 4/9/15 5:56 PM

Deleted: County

490 **SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS**

491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507

Grantee warrants that it will comply with all applicable laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the California Public Resources Code Section 40000 et. seq., and all other applicable laws of the State of California, the City, ordinances of the City, the City's Source Reduction and Recycling Element, the City's Household Hazardous Waste Element, the City-wide Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the services provided by Grantee under this agreement. In the event of conflict between regulations or statutes, Grantee shall comply with the regulation or statute containing the most stringent applicable standards. Grantee shall comply with all final and binding judgments entered against Grantee regarding its services performed under this agreement.

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 6:07 PM
Deleted: of Mendocino
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County of Mendocino's County

514 **SECTION 4 - TERM AND SCOPE OF AGREEMENT**

515
516 **A. Term of Agreement**

517
518 (1) **Effective Date and Commencement Date.** The Effective Date of this
519 Agreement shall be the date the latter of the two Parties signs the Agreement.

520
521 The Commencement Date shall be November 1, 2015 and shall be the date on
522 which Grantee initiates provision of Collection, Transportation, and Processing
523 services required by this Agreement.

524
525 Between the Effective Date and Commencement Date, Grantee shall perform all
526 activities necessary to prepare itself to start Collection, Transportation, and Processing, services
527 required by this Agreement on the Commencement Date.

528
529 (2) **Term.** The Term of this Agreement shall continue in full force from 12:01 a.m.
530 on November 1, 2015 (Commencement Date), to midnight December 31, 2030
531 unless the Agreement is extended by City pursuant to Section 4A(3) or terminated
532 in accordance with Section 19C.

533
534 (3) **Option to Extend Term.** Notwithstanding the provisions of Section 4 A (2)
535 above, this Agreement shall be automatically extended for an additional ten (10)
536 year term, unless City provides Grantee with not more than three (3) or less than
537 one (1) year written notice prior to the expiration date of its intent not to renew
538 this Agreement for such additional term. If City fails to provide written notice to
539 Grantee as specified herein, the Agreement will be extended as provided herein.
540 In order to assure that the City is timely aware of the automatic ten (10) year
541 extension of the Term provision, Grantee, anytime during the period thirty-six
542 (36) to eighteen (18) months prior to the end of the initial Term of the Agreement,
543 shall provide written notice to the attention of the City Manager, that under
544 paragraph 4 A (3) of the Franchise Agreement, the ten (10) year renewal Term
545 will automatically commence at the end of the initial Term, without City action.
546 Failure by the Grantee to give such notice to the City will eliminate the automatic
547 ten (10) year extension of the Agreement, and such automatic extension will be
548 replaced with a ten (10) year extension, if mutually agreed to by the parties. The
549 Grantee shall make such notice to the City using either USPS Certified mail, or by
550 using any national delivery service that provides proof of delivery.

551
552 (4) **City's Rights upon Expiration or Termination.** At the expiration or
553 termination of this Agreement, the City may proceed with a competitive bidding
554 or request for proposal process or exercise any other option available under
555 applicable law.

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Mike 4/9/15 6:08 PM
Deleted: September 1, 2010

Mike 4/9/15 6:09 PM
Deleted: September 1, 2010

Jim Lance 5/6/15 3:04 PM
Deleted: _____,

Mike 4/9/15 6:09 PM
Deleted: 2024

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 3:33 PM
Deleted: City shall, at the CountyCity's sole discretion, have the option to extend this Agreement on one or more occasions provided that the combined extension period(s) do not extend beyond December 31, 2029for ten (10) years. If the CountyCity extends the Agreement, it shall give written notice to Grantee 180 calendar days prior to the extended expiration date of this Agreement.

Mike 4/9/15 6:10 PM
Deleted: The County's written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement.

Jim Lance 5/6/15 3:05 PM
Deleted: SWOW
EXCEPTION #2

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/15/15 8:55 AM
Deleted: Revocation

Mike 4/15/15 8:55 AM
Deleted: revocation

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 3:34 PM
Deleted: A

Jim Lance 5/6/15 3:34 PM
Deleted: L

584 **B. Scope of Agreement**

585
586 The Grantee shall have the exclusive right to service any Occupant or Owner to make all
587 Solid Waste and Recyclable Material Collections within the Franchise Area, except as described
588 in Section 4C or except as otherwise precluded by Applicable Law.

589 The Grantee, or its Subcontractor(s) shall be responsible for the following services:

- 590
591
592 (1) Collecting all Solid Waste, Mixed Organic Waste and Recyclable Materials
593 generated in the Franchise Area and placed by Generator for Collection.
594
595 (2) Transporting collected materials to the Designated Disposal Location, Approved
596 Mixed Organic Waste Processing Site, or Approved Recyclable Materials
597 Processing Site.
598
599 (3) Processing and marketing of Recyclable Materials Collected in the Franchise
600 Area by Grantee.
601
602 (4) Collecting Demolition and Construction Debris generated within the Franchise
603 Area.
604
605 (5) Operating a Recyclable Material buy-back center located at the Designated
606 Recyclable Material Buy-Back Site.
607
608 (6) Furnishing all labor, supervision, vehicles, Containers, other equipment,
609 materials, supplies, and all other items and services necessary to perform its
610 obligations under this Agreement.
611
612 (7) Paying all expenses related to provision of services required by this Agreement
613 including, but not limited to, taxes, regulatory fees, pass-through costs, utilities,
614 etc.
615
616 (8) Providing all services required by this Agreement in a thorough and professional
617 manner so that residents, businesses, and the City are provided timely, reliable,
618 courteous and high-quality service at all times.
619
620 (9) Complying with Applicable Law.
621
622 (10) Performing or providing all other services necessary to fulfill its obligations under
623 this Agreement.

624 **C. Limitations to Scope**

625 The materials listed below in this Section may be Collected and Transported by other
626
627

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Mike 4/9/15 6:20 PM
Deleted: Green Waste

Mike 4/9/15 5:56 PM
Deleted: County

Jerry Ward 5/11/15 10:08 AM
Deleted: - ... (11)

632 | Persons. Such Persons shall do so in accordance with the City Code.

633

634 | (1) **Industrial Recyclable Materials.** Recyclable Materials from a Generator of
635 | Industrial Solid Waste that are not disposed of and are recycled including, but not
636 | limited to, wood chips from the forest products industry used as boiler fuel, and
637 | agricultural waste used to produce compost. If Solid Waste residue in Recyclable
638 | Materials exceeds 5% by volume it shall be considered Solid Waste and not Industrial
639 | Recyclable Material and shall be collected by Grantee

640

641 | (2) **Non-Discarded Recyclable Materials,** provided the transporter is paid no direct or
642 | in-kind fee for the service and compensates the Generator for the Recyclable
643 | Materials.

644

645 | (3) **Materials Hauled by Owner, Occupant, or a Cooperative of Persons, or its**
646 | **Contractor.** Solid Waste and/or Recyclable Materials that are removed from any
647 | Premises by the Owner, Occupant, or a cooperative of persons and are
648 | Transported, without compensation, to a Disposal Site or Processing Site by (i)
649 | the Owner, Occupant or cooperative of persons of such Premises, (ii) by full-time
650 | employee(s) of Owner, Occupant, or cooperative of persons that uses the
651 | Owner's, Occupant's, or cooperative of persons' equipment to Transport
652 | materials; or (iii) by a contractor whose removal of the Solid Waste and/or
653 | Recyclable Materials, and/or Demolition and Construction Debris incidental to
654 | the service being performed and such contractor removes materials at no
655 | additional or separate fee using contractor's own equipment and labor;

656

657 | (4) **Containers Recycled.** Containers delivered for recycling under the California
658 | Beverage Container Recycling Litter Reduction Act, Section 14500, California
659 | Public Resources Code et. seq. as may be amended from time to time;

660

661 | (5) **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains
662 | from slaughterhouse or butcher shops, grease waste, or used cooking oil;

663

664 | (6) **Sewage Treatment By-Product.** By-products of sewage treatment including
665 | sludge, sludge ash, grit, and screenings;

666

667 | (7) **Hazardous Wastes.** Household Hazardous Waste, Hazardous Waste, and
668 | Designated Waste regardless of its source.

669

670 | (8) **State and Federal Wastes.** Materials generated by state and federal agencies,
671 | special districts, school districts, State parks, State correction facilities, and Indian
672 | reservations.

673

674 | (9) **Other Materials.** Lead-acid batteries, waste oil, tires, and scrap metal not
675 | covered as Discarded Recyclable Materials.

Mike 4/10/15 10:41 AM

Deleted: County of Mendocino

Mike 4/10/15 10:41 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/15/15 8:55 AM

Deleted: 2

Mike 4/15/15 8:55 AM

Deleted: 3

Mike 4/15/15 8:55 AM

Deleted: 4

Mike 4/15/15 8:55 AM

Deleted: 5

Mike 4/15/15 8:55 AM

Deleted: 6

Mike 4/15/15 8:56 AM

Deleted: 7

Jerry Ward 5/11/15 10:10 AM

Deleted: .

Mike 4/15/15 8:56 AM

Deleted: 8

Jerry Ward 5/11/15 10:10 AM

Deleted: .

Franchise Agreement

686
687
688
689
690
691
692
693
694
695
696
697

D. Subcontracting

Grantee shall not engage any Sub-grantees for Collection, Transportation, Processing, or Disposal of Solid Waste or Recyclable Materials services without the prior written consent of the City.

E. Franchise Area Limits

No Persons shall be granted a right to collect Solid Waste, Mixed Organic Waste or Discarded Recyclable Material in Grantee's Franchise Area unless approved by the City due to an emergency, a lack of service by the Grantee, or as allowed according to Section 20 herein.

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County
Jerry Ward 5/11/15 10:10 AM
Deleted: -

Mike 4/9/15 6:22 PM
Deleted: <#>Franchise Area Defined ... [12]

Mike 4/15/15 8:56 AM
Deleted: refuse

Mike 4/9/15 6:22 PM
Deleted: Board of Supervisors

704 **SECTION 5 - SERVICES PROVIDED BY GRANTEE**

705
706 **A. City to Approve All Services.**

707
708 The Solid Waste, Mixed Organic Waste and Recyclable Materials collection services
709 Grantee shall offer and provide to Customers residing or doing business in the Franchise
710 Area during the term of this Agreement are subject to the prior review and approval of
711 the City.

712
713 **B. Collection Service**

714 Grantee shall collect, in a manner consistent with public health and safety, Solid Waste
715 and Mixed Organic Waste from its Customers in the Franchise Area as frequently as scheduled
716 by Customer, but not less than once per week. Recyclable Materials shall be collected once every
717 other week. Solid Waste service shall be provided in the Container Sizes and Collection
718 frequencies as set forth in the Rate Table, Exhibit B to this Agreement, and the billings
719 to Customers for Solid Waste service shall incorporate at no extra cost Recyclable
720 Material Collection, except as set forth herein.

721
722 (1) **Single-Family Units**

723
724 The Grantee shall collect Solid Waste (except Bulky Wastes), Mixed Organic
725 Waste and Recyclable Materials from Single-Family Units, which have been
726 placed, kept, or accumulated in Grantee-provided Containers, at the curbside or
727 other authorized Collection location if the Customer is physically unable to move
728 the Collection Containers to the curb and is eligible for such service at no
729 additional charge or from a Customer who is willing to pay the additional charge
730 set by the City for such service.

731
732 Grantee shall provide each Customer with a either a 20-, 35-, 65-, or 95-gallon
733 gray Solid Waste Cart, as requested by the Customer. Grantee shall provide each
734 Customer a 65- or 95-gallon blue Recyclable Material Carts, as requested by the
735 Customer. Grantee shall provide each Customer with a 65-gallon or 95-gallon
736 green Mixed Organic Waste Cart, as requested by the Customer.

737
738 To the greatest extent possible, Single-Family Unit customers shall place
739 Containers at the City-maintained road. With the approval of the City, Grantee
740 may service private roads if specific road conditions (roadway width, overhead
741 clearances, adequate turnaround and pavement conditions), number of customers,
742 and/or a past practice justify such service. The Grantee may require the
743 applicable road owner or road association to execute a release of liability. If
744 Grantee elects to service a private road, then the off-road service rate will not be
745 charged.
746

- Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
- Mike 4/10/15 10:41 AM
Deleted: Area No. Three
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/9/15 6:23 PM
Deleted: -
- Mike 4/9/15 6:23 PM
Deleted: -
- Jim Lance 5/11/15 1:50 PM
Deleted: c
- Jim Lance 5/11/15 1:51 PM
Deleted: during the term of this Agreement
- Jim Lance 5/11/15 1:51 PM
Deleted: are subject to prior review and approval of the City
- Mike 4/9/15 6:23 PM
Deleted: Board of
- Jerry Ward 5/11/15 10:12 AM
Deleted: - ... [13]
- Jim Lance 5/11/15 1:52 PM
Deleted: In order to protect the public health and safety,
- Jim Lance 5/6/15 3:41 PM
Deleted: , Mixed Organic Waste
- Jim Lance 5/11/15 1:53 PM
Deleted: Recyclable Materials
- Mike 4/9/15 6:24 PM
Deleted: Except, the Grantee may propose ... [14]
- Mike 4/9/15 5:56 PM
Deleted: County
- Jim Lance 5/6/15 3:49 PM
Deleted: -
- Jim Lance 5/6/15 3:49 PM
Deleted: -
- Jim Lance 5/6/15 3:49 PM
Deleted: -
- Mike 4/9/15 6:25 PM
Deleted: maximum of two
- Jim Lance 5/6/15 3:49 PM
Deleted: -
- Jim Lance 5/6/15 3:50 PM
Deleted: s
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/15/15 8:59 AM
Deleted: Department

776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804

805
806
807
808
809

810
811
812
813
814

(2) Multi-Family Premises

Grantee shall Collect Solid Waste and Mixed Organic Waste from Multi-Family Premises as frequently as scheduled by Customer, but not less than once per week. Grantee shall collect Recyclable Materials every other week. Grantee shall allow a Multi-Family Premises to use Carts or Bins for Collection that are shared by the Occupants of the Premises. Grantee shall provide one or more Carts (with a capacity of 35-, 65-, or 95-gallons) or Bins (with a capacity of one to six cubic yards) to such Premises as requested by Customer. Grantee shall Collect Solid Waste, Mixed Organic Wastes and Recyclable Materials from Carts and Bins at a location selected by Customer and approved by the City.

(3) Commercial and Industrial Premises

Grantee shall Collect Solid Waste, Mixed Organic Waste from Commercial and Industrial Premises as frequently as scheduled by Customer, but not less than once per week. Grantee shall collect Recyclable Materials every other week. Grantee shall provide one or more Carts (with a capacity of 35-, 65-, or 95-gallons) or Bins (with a capacity of one to fifty cubic yards) to such Premises as requested by Customer. Grantee shall Collect Solid Waste, Mixed Organic Wastes and Recyclable Materials from Carts and Bins at a location selected by Customer. Upon receiving a call for new service from any Commercial or Industrial Customer, Grantee's Customer service representative shall specifically ask the Customer what Recyclable Materials the Customer expects to generate and shall encourage the Customer to accept Recyclable Materials and Mixed Organic Waste Containers, emphasizing that recycling Containers are provided without additional charge except as provided herein, and shall make all reasonable efforts to encourage the Customer to divert Solid Waste from disposal.

Recyclable Materials Carts or Bins may be used by the Customer for single-stream mixing of all Recyclable Materials as defined in this Agreement, except that, if Grantee determines that there is sufficient volume of one type of Recyclable Material, the Grantee may require Customer to use Segregated Recycled Material Bin(s) for that material.

Commercial and Industrial Customers may choose to utilize the same sizes of Carts as provided to Single-Family Units.

C. Recyclable Material Buy-Back Facility

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino

Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Jim Lance 5/6/15 3:46 PM
Deleted: , Mixed Organic Wastes

Jim Lance 5/6/15 3:46 PM
Deleted:

Mike 4/9/15 6:26 PM
Deleted: Except, Grantee may propose to County service standards and rates for every other week or monthly solid waste and recyclable material collection, which County has the right to approve.

Mike 4/9/15 6:27 PM
Deleted: Solid Waste

Jim Lance 5/6/15 3:49 PM
Deleted:

Jim Lance 5/6/15 3:49 PM
Deleted:

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 3:51 PM
Deleted: SWOW EXCEPTION #3

Jim Lance 5/6/15 3:52 PM
Deleted: Mixed Organic Wastes and

Mike 4/9/15 6:28 PM
Deleted: Except, Grantee may propose to County service standards and rates for every other week or monthly solid waste and recyclable material collection, which County has the right to approve.

Mike 4/9/15 6:28 PM
Deleted: recycling

Mike 4/9/15 6:29 PM
Deleted: Recyclable Material

Jerry Ward 5/11/15 10:10 AM
Deleted: -

836 Grantee shall operate and maintain a buy-back Recycling center at the Designated
837 Recyclable Material Buy-Back Site. At a minimum, Grantee shall purchase California
838 Redemption Value (CRV) containers. In addition, Grantee shall accept for drop-off the
839 following Recyclable Materials: clean shrink wrap, aluminum and tin cans, glass beverage and
840 food containers, plastics 1-7, newspaper, office paper, junk mail, magazines, telephone
841 directories, paper board, electronics, Green Waste, motor oil, appliances, scrap metal, used oil
842 filters and corrugated cardboard. Operating hours shall, at a minimum, be from 9:00 a.m. to 4
843 p.m., Tuesday through Saturday or days and hours approved by City.

844
845 **D. Hours of Collection**

846
847 No Collections shall be made in residential areas prior to 5:00 a.m. or after 6:00 p.m. No
848 Collections shall be made at schools, churches, hospitals, offices, or commercial establishments
849 within 200 feet of said residential districts prior to 5:00 a.m. or after 9:00 p.m. unless a
850 modification of these hours is allowed in writing by the City, which modification may be
851 revoked at the sole discretion of the City. Special arrangements may be made pursuant to the
852 City Code for all categories of Collections provided by the Grantee.

853
854 **E. Collection on Holidays**

855 If the day of Collection on any given route falls on a Holiday, Grantee shall provide
856 Collection service for such route on the work day either before or following such Holiday and
857 shall not provide Collection service on such Holiday, and all subsequent Collection days during
858 that Holiday week shall be adjusted at the discretion of Grantee. Grantee shall be responsible for
859 Customer notification of Holiday Collection arrangements. If the day of Collection on any given
860 route falls on any remaining Holiday, Grantee may continue to provide Collection service for
861 such route on that workday.

862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Mike 4/9/15 6:30 PM
Deleted: :30
Mike 4/10/15 5:21 PM
Deleted: Wednesday
Mike 4/9/15 5:56 PM
Deleted: County
Jerry Ward 5/11/15 10:11 AM
Deleted: - ... [15]

Mike 4/9/15 6:30 PM
Deleted: Department
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 6:31 PM
Deleted: Solid Waste Ordinance

887 **SECTION 6 - SPECIAL PROGRAMS AND SERVICES PROVIDED BY GRANTEE**

888

889 **A. Source Reduction and Waste Diversion Programs**

890

891 Grantee shall provide special programs as are required by federal, state, or local
892 regulations, including but not limited to, the City Integrated Waste Management Plan, the Source
893 Reduction and Recycling Element, and the Household Hazardous Waste Element and as
894 itemized in Exhibit A. If City directs changes in recycling or Mixed Organic Waste services,
895 Grantee shall be entitled to recovery of any additional costs through the pass-through rate
896 adjustment procedure of Section 15(A). When introducing new or expanded diversion programs,
897 City shall define the objective of the program and cooperate with Grantee to consider Grantee's
898 proposal for the methods to achieve the objective, and City shall consider alternative methods so
899 that objectives are achieved while minimizing any costs or operational problems that the new
900 program may cause to Grantee. In exercising its right to direct changes in recycling or Mixed
901 Organic Waste services, City will consider the impact upon rates and the likelihood Grantee can
902 recover all costs with the change.

903

904 **B. Public Education.**

905

906 Grantee's public education program shall focus on providing information to Customers in
907 accordance with the specific requirements described in Exhibit D. Educational media shall
908 include, but not be limited to, newsletters, flyers, door hangers, notification tags, and direct
909 contact. Information shall be provided for initial start of service, to solicit feedback about the
910 service and suggested improvement/change, and to educate Customers about source reduction,
911 reuse, Mixed Organic Waste and Recycling opportunities. Materials shall be printed on paper
912 containing the highest levels of recycled content material as is reasonably practical with a
913 minimum requirement of 30% post-consumer content based on Federal standards. Grantee shall
914 allow the City to review and approve all public education materials and may require bilingual
915 English-Spanish text.

916

917 Within 30 days of the Commencement Date, Grantee shall do the following: (1) apply a
918 new all-weather instructional sticker, approved by the City, to all green Mixed Organic Waste
919 Carts and Bins that states the acceptable and unacceptable materials for the Containers. The
920 sticker shall be written in English and Spanish and shall be not less than 100 square inches in
921 size; and (2) mail an informational flier to all Customers, approved by the City, in English and
922 Spanish, announcing the expanded Mixed Organic Waste program.

923

924 Beginning 60 days after the Commencement Date and finishing 120 days after the
925 Commencement Date, Grantee shall inspect each Mixed Organic Waste Container prior to
926 emptying it and shall affix a correction notice informing the Customer of any unacceptable items
927 that are found within. The names of Customers receiving such notices shall be recorded and
928 Grantee shall perform a follow-up inspection of those Containers within 30 days. In the event of
929 continued contamination of a Mixed Organic Waste Container, Grantee shall notify the City and
930 remove the Container from the Customer's possession; or take other corrective action as directed

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County of Mendocino County
Mike 4/9/15 6:31 PM
Deleted: -wide

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 6:32 PM
Deleted: Green Waste

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 6:32 PM
Deleted: Green Waste
Mike 4/9/15 5:56 PM
Deleted: County

Jerry Ward 5/11/15 10:14 AM
Deleted: - ... [16]

Mike 4/9/15 5:56 PM
Deleted: County

942 | by City.
 943 | If Grantee fails to perform some or all of the requirements of the public education
 944 | program described in this Section and in Exhibit D, the Grantee shall pay the City Liquidated
 945 | Damages as described in Exhibit E.

947 | **C. Billing**

948 |
 949 | (1) **General.** Subject to City approval and regulation of same, Grantee shall set,
 950 | impose and collect all rates from its customers within the City and perform the
 951 | services required by this Agreement. Use of Grantee’s curbside collection
 952 | services described herein are not mandated by City and are instead provided and
 953 | made available on contractual arrangement between Grantee and its customers.
 954 | Grantee shall bill all Customers and collect billings in accordance with City-
 955 | approved rates.

956 |
 957 | The Grantee shall prepare, mail, and collect bills (or shall issue written receipts
 958 | for cash payments) for Collection services provided by Grantee. The City shall
 959 | have the right to review, and approve the Billing format.

960 |
 961 | Grantee shall arrange to allow its Customers to pay bills through the following
 962 | means: check, cash or credit card.

963 |
 964 | Grantee shall maintain copies of all Billings and receipts, each in chronological
 965 | order, for five years for inspection and verification by City at any reasonable time
 966 | upon request. The Grantee may, at its option, maintain those records in computer
 967 | form, on microfiche, or in any other manner, provided that the records can be
 968 | preserved and retrieved for inspection and verification in a timely manner.

969 |
 970 | Grantee shall be responsible for collection of payment from Customers with past
 971 | due accounts (“bad debt”). Grantee shall make reasonable efforts to obtain
 972 | payment from delinquent accounts through issuance of late payment notices,
 973 | telephone requests for payments, and assistance from collection agencies.
 974 | Accounts that are delinquent for a period of ninety-days (90) or more
 975 | may be terminated by Grantee.

976 |
 977 | (2) **Bill Inserts.** City may direct Grantee to insert mailers (which shall be a single
 978 | sheet of paper no larger than 8.5 inches by 11 inches) relating to service with the
 979 | Bills. The mailers shall be printed on double-sided, post consumer content paper
 980 | and shall fit in standard envelopes. Grantee also agrees to insert with the Billings,
 981 | mailers describing activities of the City government. City will provide not less
 982 | than 30 calendar days’ notice to Grantee before the date of any proposed mailing,
 983 | to permit Grantee to make appropriate arrangements for inclusion of the City’s
 984 | materials. City will provide Grantee the mailers at least 15 calendar days before
 985 | the mailing date.

Mike 4/10/15 10:41 AM

Deleted: County of Mendocino

Mike 4/10/15 10:41 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: County

Jim Lance 5/6/15 4:19 PM

Deleted: The CountyCity shall establish the rates that Grantee may charge Customers for Solid Waste, Mixed Organic Waste and Recyclable Materials services.

Jim Lance 5/6/15 4:22 PM

Deleted: B

Mike 4/9/15 5:56 PM

Deleted: County

1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042

(3) **Review of Billings.** Grantee shall review its Billings to Customers to determine (i) if the amount the Grantee is billing each Customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container, backyard service) Grantee is providing such Customer, and (ii) that all parties receiving service are invoiced for service. Grantee shall review all Customer accounts at least every year, unless City directs Grantee to do otherwise. Grantee shall submit to City every year, a written report of the billing review 30 days after the end of each Rate Period. The scope of the review, the Grantee’s work plan, and the format of the report (including supporting exhibits) shall be submitted to the City for approval no later than 60 days prior to commencement of the Billing review process. Should Grantee fail to perform any such review, the City may perform this review itself or through use of an agent, at Grantee’s expense.

D. Other Special Services

Grantee shall provide Solid Waste Disposal and Recyclable Materials Collection service without charge to periodic public events sponsored by non-profit organizations, upon request of the City.

Grantee shall provide documentation for any construction and demolition contractor who rents an Industrial debris box to be scavenged for divertible material at the Designated Disposal Site.

Grantee can provide other special services as related to this Agreement at its discretion provided said services and charges for such services are approved by the City.

E. Containers - Refusal to Pick Up

Grantee shall notify the City whenever the Grantee has refused to pick up a Container because the Container contains dangerous and prohibited material. Grantee shall notify the City when any violation of City ordinances pertaining to solid waste is observed.

F. Containers - Noticing Violators

Whenever a Grantee gives or intends to give a Customer violation report to the City, Grantee shall place a notice on the Container or otherwise give the Owner or Occupant notice of the substance of his/her report to the City.

G. Promotion of Waste Diversion to New Customers

Upon the initial call for service, Grantee will make all reasonable efforts to promote the maximum amount of waste diversion by the new customer. Grantee’s customer service representatives will utilize specific scripts, provided to City, for each category of customer

- Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
- Mike 4/10/15 10:41 AM
Deleted: Area No. Three
- Mike 4/10/15 9:47 AM
Deleted: other
- Mike 4/9/15 5:56 PM
Deleted: County
- Jim Lance 5/6/15 4:34 PM
Deleted: a
- Jim Lance 5/6/15 4:35 PM
Deleted: their
- Mike 4/9/15 5:56 PM
Deleted: County
- Jerry Ward 5/11/15 10:15 AM
Deleted: - ... [17]
- Mike 4/10/15 9:47 AM
Deleted: All other provisions of this agreement notwithstanding, Grantee shall provide an optional service at customer's choice to have any debris box rented to a construction or demolition project customer hauled to any disposal and/or processing facility identified by County as providing scavenging or processing service at the lowest total cost to the customer. Grantee shall charge customers in such instances the authorized debris box rental rate as set forth in Exhibit B adjusted to reflect any different disposal gate fee or actual increment in truck hauling expense. -
- Mike 4/10/15 9:48 AM
Deleted: Department
- Mike 4/10/15 9:48 AM
Deleted: Department
- Mike 4/10/15 9:48 AM
Deleted: the County
- Mike 4/10/15 9:48 AM
Deleted: Solid Waste Ordinance is observed.
- Mike 4/10/15 9:49 AM
Deleted: Department
- Mike 4/10/15 9:49 AM
Deleted: Department
- Mike 4/10/15 9:49 AM
Deleted: Whenever an authorized represer... [18]
- Mike 4/9/15 5:56 PM
Deleted: County

1079 (residential, commercial and debris box) for use during calls for service that will at a minimum
1080 include:

- 1081
- 1082 (1) Statement to Customer that his/her costs may be reduced by recycling and Mixed Organic
1083 Waste diversion.
- 1084 (2) Question to Customer about what waste materials he/she will generate that may be recycled.
- 1085 (3) Recommendation of specific services appropriate for the Customer, identifying those that are
1086 free or reduced rate.

1087

1088 **H. City Facilities**

1089

1090 Grantee shall provide as many Containers as the City reasonably needs for Solid Waste,
1091 Mixed Organic Waste, and Recyclables at City Hall, City Public Works Corporation Yard, City
1092 Police Department, City Recreation Grove and such other City properties that the City shall
1093 designate in writing to Grantee; and Grantee shall additionally collect, transport and dispose of
1094 all Solid Waste and Recyclables deposited in any permanent or temporary street-side public
1095 receptacles provided and maintained by the City. The frequency of collection shall be as
1096 designated by the City. There shall be no charge by Grantee for the cost of the services
1097 described in this paragraph.

Mike 4/10/15 10:41 AM
Deleted: County of Mendocino
Mike 4/10/15 10:41 AM
Deleted: Area No. Three

Jerry Ward 5/11/15 10:16 AM
Deleted:

Jerry Ward 5/11/15 10:15 AM
Deleted: -

Jerry Ward 5/11/15 10:16 AM
Deleted: -

1101 **SECTION 7 – STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT,**
1102 **AND PERSONNEL**

1103
1104 **A. Manner of Collection**
1105

1106 All Collection equipment shall be designed and operated such that no material is allowed
1107 to blow or drop from vehicles during Transport. Adequacy of load covers or control measures
1108 shall be determined by the City. All Collections shall be made as quietly as possible, and the use
1109 of any unnecessarily noisy trucks or equipment is declared unlawful.
1110

1111 **B. Vehicles and Equipment - Standards**
1112

1113 (1) **General.** All Collections shall be made with a vehicle and equipment of design
1114 approved by the City according to industry standards. Grantee shall maintain all
1115 of its properties, facilities, and equipment used in providing service under this
1116 Agreement in a safe, neat, clean, and operable condition at all time.
1117

1118 (2) **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam
1119 cleaned as necessary, to present a clean appearance of the exterior and interior
1120 compartment of the vehicle.
1121

1122 (3) **Maintenance.** Grantee shall inspect each vehicle daily to ensure that all
1123 equipment is operating properly. Vehicles that are not operating properly shall be
1124 taken out of service until they are repaired and operate properly. Grantee shall
1125 perform all scheduled maintenance functions in accordance with the
1126 manufacturer's specifications and schedule or in accordance with California
1127 Highway Patrol standards, whichever are more stringent. All vehicles shall be
1128 painted in a uniform manner that does not create a resemblance between
1129 Grantee's vehicles and City utility vehicles. Grantee shall keep accurate records
1130 of all vehicle maintenance, recorded according to vehicle, date, and mileage, and
1131 shall make such records available to the City upon request to the extent necessary
1132 to perform the inspections described in Section 7D.
1133

1134 (4) **Repairs.** Grantee shall repair, or arrange for the repair of, all of its vehicles and
1135 equipment for which repairs are needed because of accident, breakdown, or any
1136 other cause so as to maintain all equipment in a safe and operable condition.
1137 Grantee shall maintain accurate records of repair, which shall include the
1138 date/mileage, nature of repair and the signature of a maintenance supervisor that
1139 the repair has been properly performed.
1140

Mike 4/10/15 10:40 AM
Deleted: County of Mendocino
Mike 4/10/15 10:40 AM
Deleted: Area No. Three

Mike 4/10/15 9:55 AM
Deleted: Solid Waste or Recyclable Material
Mike 4/10/15 9:55 AM
Deleted: Department

Mike 4/10/15 9:56 AM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189

C. Vehicles - Identification

The Grantee shall have printed or stenciled in a prominent place on the exterior of each vehicle used in the Collection of Solid Waste and Recyclable Materials the following information in at least four-inch letters: 1) Truck number; 2) Grantee's name; and, 3) Grantee's telephone number.

D. Vehicles and Equipment - Inspection

All vehicles and equipment of Grantee shall be available for inspection at Grantee's place of business or another location within the Franchise Area as designated by the City, on an annual basis. Vehicles and equipment shall conform to the requirements of the California Vehicle Code, this Agreement, and rules or regulations of the Board. City shall give Grantee twenty-four (24) hours verbal notification of inspection.

E. Vehicles - Shovel, Broom and Fire Extinguisher Required

The Grantee shall equip each Collection vehicle with a shovel, broom, and fire extinguisher of a type approved by the City.

F. Container Requirements

- (1) **General.** Grantee shall provide all Carts, Bins, and Debris Boxes to all Customers as part of its services. Grantee-provided Containers shall be designed and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of one cubic yard or more shall meet applicable federal, state, and local regulations for Bin safety and be covered with attached lids. Grantee shall obtain City's written approval of Cart colors before acquisition. All Containers, except Carts, shall be painted the Grantee's standard color.
- (2) **Cleaning, Painting, and Maintenance.** All Containers shall be maintained in a safe, serviceable, and functional condition. Grantee shall steam clean and repaint all Containers, except Carts, at least every two years, or more frequently, to present a clean appearance. Customers using Carts shall be responsible for cleaning such Carts. If any Cart is impacted by graffiti, Grantee shall replace the cart within 72 hours. If any Containers, except Carts, are impacted by graffiti, Grantee shall either replace the Container with a Container which is free of graffiti or repaint the entire Container with the Grantee's standard color for such Container within 30 days. Repainting of the Container shall restore the Container's aesthetic values to its condition before it sustained the graffiti damage.
- (3) **Repair and Replacement.** Grantee shall repair and, if the repair must be

Mike 4/10/15 10:40 AM
Deleted: County of Mendocino
Mike 4/10/15 10:40 AM
Deleted: Area No. Three

Mike 4/10/15 9:57 AM
Deleted: Department
Mike 4/10/15 9:57 AM
Deleted: Department

Mike 4/10/15 9:58 AM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County

1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237

performed off of the Premises, replace all Containers damaged by Collection operations within a one-week period. If the repair or replacement cannot be completed within one week, the Grantee shall notify Customer and a Container of the same size or larger shall be made available until the proper Container can be replaced.

At no additional cost, Grantee shall replace Customer Carts that have been stolen or damaged once per year. Grantee shall allow Customer to exchange Containers for a Container of a different size at no additional cost once per year. Grantee shall charge Customers for additional Cart replacements at City-approved rates.

G. Personnel

- (1) **General.** Grantee shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.
- (2) **Provision of Field Supervision.** Grantee shall designate at least one qualified employee as supervisor of field operations. The field supervisor will devote time in the field checking on Collection operations, including responding to complaints.
- (3) **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Grantee shall use the Class II California Department of Motor Vehicles employer “Pull Notice Program” to monitor its drivers for safety.
- (4) **Customer Service Representative Training.** Customer service representatives shall be trained on specific City service requirements upon hire and annually thereafter. A City information sheet shall be provided to each Customer service representative for easy reference of City requirements and general Customer needs. The information sheet, training agenda, and associated documentation shall be forwarded to the City.
- (5) **Safety Training.** Grantee shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Grantee shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or infectious waste. Upon the City’s request, Grantee shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.
- (6) **No Gratuities.** Grantee shall not permit its employees to accept, demand, or

Mike 4/10/15 10:40 AM
Deleted: County of Mendocino
Mike 4/10/15 10:40 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260

solicit, directly or indirectly, any additional compensation, or gratuity from members of the public for Collection services.

(7) **Employee Conduct and Courtesy.** Grantee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Grantee shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Grantee shall take all appropriate corrective measures.

(8) **Uniforms.** While performing services under this Agreement, all of the Grantee’s employees performing field service shall be dressed in clean uniforms and shall wear badges that include the employee’s name and/or employee number, and Grantee’s name. No portion of this uniform may be removed while working.

Mike 4/10/15 10:40 AM
Deleted: County of Mendocino
Mike 4/10/15 10:40 AM
Deleted: Area No. Three

1261 **SECTION 8 - PUBLIC ACCESS TO GRANTEE**

1262
1263
1264

A. Name and Office Hours

1265 Grantee shall not use a firm name containing the words "City" or " other words implying
1266 City ownership. The Grantee shall establish and maintain a Customer service office where
1267 service may be applied for and complaints made. Grantee's Customer service office shall be
1268 open to the public from 8:30 a.m. to 4:00 p.m. Monday through Friday. The office may be
1269 closed on Saturdays, Sundays, and Holidays. Such office shall be equipped with a listed
1270 telephone number to which calls from Grantee's Customers may be placed and shall have a
1271 responsible Person in charge or an answering machine in service during normal business hours.

1272
1273
1274

B. Service Complaints

1275 Customer service complaints may be made directly to the Grantee by telephone or in
1276 writing. Grantee is responsible for rectifying the complaints and for maintaining a log of
1277 complaints received, date received, actions taken, and date of actions, as specified in Section 13.

1278
1279
1280

C. Overcharge

1281 All charges or fees for service by a Grantee shall be approved by the City, except a lower
1282 charge than approved by the City may be negotiated (to provide for consideration of the weight
1283 of the material collected and/or the distance from the operations yard or transfer station) for
1284 Industrial Solid Waste Service as provided in Section 14 (B) 6. Any Customer contending they
1285 have been required to pay a charge not approved by the City, or has in any manner been subject
1286 to an overcharge, may file a written complaint with the City setting forth the facts of such alleged
1287 miss-charge, and the City shall notify the Grantee of the complaint, shall investigate the matter
1288 of the complaint, and shall determine the appropriate charge.

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 10:00 AM
Deleted: Mendocino" or
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 10:01 AM
Deleted: toll-free

Mike 4/10/15 10:01 AM
Deleted: Board
Mike 4/10/15 10:01 AM
Deleted: Board
Mike 4/10/15 10:02 AM
Deleted: Board
Mike 4/10/15 10:02 AM
Deleted: Department
Mike 4/10/15 10:02 AM
Deleted: Department

1298 **SECTION 9 - SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS**

1299
1300 **A. Responsibility to Identify Hazardous Waste**
1301

1302 Grantee shall keep current with the regulations regarding Hazardous Waste substances
1303 and identification of such substances and to comply with all federal, state, and local regulations
1304 concerning such substances. Grantee shall make every reasonable effort to prohibit the
1305 Collection and the Disposal of Hazardous Waste in any manner inconsistent with Applicable
1306 Law.

1307
1308 Grantee shall conduct visual inspections of Solid Waste, Mixed Organic Waste and
1309 Recyclable Materials that it Collects, Transports, Disposes, or Processes pursuant to this
1310 Agreement for the purpose of discovering, identifying, and refusing to Collect, Transport,
1311 Dispose, and/or Process Hazardous Wastes or materials.

1312
1313 **B. Response to Hazardous Waste Identified at Disposal Site or Processing Site**
1314

1315 If materials Collected by Grantee are delivered to a facility owned or operated by Grantee
1316 or an affiliate of Grantee, for purposes of transfer, Processing, or Disposal, load checkers and
1317 equipment operators at such facility shall conduct inspections in areas where Collection vehicles
1318 unload Solid Waste, Mixed Organic Waste and Recyclable Materials to identify Hazardous
1319 Wastes or unacceptable materials. Facility personnel shall remove these materials for disposal or
1320 storage in approved, on-site, hazardous materials storage Container(s). Grantee shall make
1321 reasonable efforts to identify and notify the Generator of Hazardous Wastes. Grantee shall
1322 arrange for removal of the Hazardous Wastes by permitted haulers in accordance with
1323 Applicable Laws and regulatory requirements.

1324
1325 If unacceptable material is delivered to the Designated Disposal Location or Processing
1326 Sites by Grantee before its presence is detected, and the Generator cannot be identified or fails to
1327 remove the material after being requested to do so, the Grantee shall arrange for its proper
1328 Disposal. The Grantee shall make a good faith effort to recover the cost of Disposal from the
1329 Generator, and the cost of this effort, as well as the cost of Disposal shall be charged to the
1330 Generator.

1331
1332 **C. Notification for Hazardous Waste**
1333

1334 Grantee shall, if required based on reportable levels, notify all agencies with jurisdiction,
1335 including the California Department of Toxic Substances Control, and, if appropriate, the
1336 National Response Center, of reportable quantities of Hazardous Waste, found or observed by
1337 Grantee in Solid Waste and/or Recyclable Materials anywhere within the City, including on, in,
1338 under or about City property, including streets, easements, rights of way and City waste
1339 containers. In addition to other required notifications, if Grantee observes any substances which
1340 it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully
1341 disposed of or released on City property, including streets, storm drains, or public rights of way,
1342 Grantee also will notify the City Director of Public Works or his/her designated City employee.

Mike 4/10/15 11:01 AM
Deleted: County of Mendocino
Mike 4/10/15 11:02 AM
Deleted: Area No. Three

Mike 4/10/15 10:03 AM
Deleted: a
Mike 4/10/15 10:03 AM
Deleted: all

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 10:05 AM
Deleted: Environmental Health
Mike 4/9/15 5:56 PM
Deleted: County

1352
1353
1354
1355
1356
1357
1358

D. Rights Reserved as to Hazardous Wastes.

The City reserves the right to contract with other parties to have household Hazardous Wastes Collected, Transported, Disposed of, Processed and/or diverted.

Mike 4/10/15 11:01 AM

Deleted: County of Mendocino

Mike 4/10/15 11:02 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: County

1360 **SECTION 10 - DISPOSAL AND PROCESSING**

1361
1362 **A. Solid Waste Disposal**

1363 Grantee shall Transport and Dispose of all Solid Waste Collected in the Franchise Area at
1364 the Designated Disposal Location. Grantee shall pay all costs associated with the Transporting
1365 and Disposing of Solid Waste.

1366
1367
1368 **B. Recyclable Materials Processing and Marketing**

- 1369
1370 (1) **Processing.** Grantee shall Transport and deliver all Recyclable Materials
1371 collected in the Franchise Area to the Approved Recyclable Materials Processing
1372 Site. Grantee shall pay all costs associated with the Transporting and Processing
1373 of all Recyclable Materials.

1374
1375 Grantee shall maintain accurate records of the quantities of Recyclable Materials
1376 Collected, Transported, and Processed at the Approved Recyclable Materials
1377 Processing Site and shall cooperate with the City in any audits or investigation of
1378 such quantities.

1379
1380 Grantee shall keep all existing permits and approvals necessary for use of the
1381 Recyclable Materials Processing Site in full regulatory compliance. Upon
1382 request, Grantee shall provide copies of notices of violation or permits to the City.

- 1383
1384 (2) **Marketing.** Provided that the Approved Processing Center is owned and/or
1385 operated by Grantee or by an Affiliate of Grantee, Grantee shall be responsible for
1386 marketing Recyclable Materials collected in the Franchise Area and shall be
1387 compensated for such Recyclable Materials at not less than fair market value.

1388
1389 Provided that the Approved Processing Center is owned and/or operated by
1390 Grantee or by an Affiliate of Grantee, Grantee shall prepare and maintain a City-
1391 approved marketing plan for all Recyclable Materials collected in the Franchise
1392 Area. The plan shall be in place on or before the Commencement Date of this
1393 Agreement. The marketing plan shall fully describe the Grantee's marketing
1394 methods and approach, targeted primary and contingent markets, pricing policy
1395 and assumed salvage value for each collected type of Recyclable Material
1396 products, and contingency plans if market conditions are severe.

1397
1398 Provided that the Approved Processing Center is owned and/or operated by
1399 Grantee or by an Affiliate of Grantee, Grantee shall provide proof to the City that
1400 all Recyclable Materials collected are marketed for Recycling or reuse in such a
1401 manner that materials shall be considered as diverted in accordance with the State
1402 regulations established by the California Integrated Waste Management Act of
1403 1989 (Division 30 of the California Public Resources Code), as amended,

Mike 4/10/15 10:38 AM
Deleted: County of Mendocino
Mike 4/10/15 10:38 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/11/15 1:55 PM
Deleted: ding

Jim Lance 5/11/15 1:55 PM
Deleted: ding

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/11/15 1:56 PM
Deleted: ing

Mike 4/9/15 5:56 PM
Deleted: County

1411 supplemented, superseded, and replaced from time to time. No Recyclable
1412 Material shall be transported to a domestic or foreign location if Solid Waste
1413 Disposal of such material is its intended use.
1414

Mike 4/10/15 10:38 AM
Deleted: County of Mendocino
Mike 4/10/15 10:38 AM
Deleted: Area No. Three

1415 Provided that, the Approved Processing Center is owned and/or operated by
1416 Grantee or by an Affiliate of Grantee, Grantee shall provide City upon request
1417 with a list of broker/buyers it uses each month as required in Section 13. City
1418 may audit one broker or buyer per month to confirm that materials are being
1419 recycled. If Grantee becomes aware that a broker or buyer has illegally handled
1420 or disposed of material generated within the Franchise Area or elsewhere, Grantee
1421 shall immediately inform the City and terminate its contract or working
1422 relationship with such party. If Grantee has provided City with a list of
1423 broker/buyers for the month, Grantee shall provide a monthly list only to the
1424 extent that the list differs from the list provided in the prior(s) months.
1425

Jim Lance 5/11/15 1:56 PM
Deleted: ding
Mike 4/9/15 5:56 PM
Deleted: County...ity upon request ... [19]

1426 (3) **Disposal of Recyclable Materials Prohibited.** Recyclable Materials may not be
1427 disposed of in lieu of Recycling the material.
1428

Jerry Ward 5/11/15 10:17 AM
Deleted: -
Mike 4/10/15 10:17 AM
Deleted: In accordance with Section 9A.08.080 of the Mendocino County Code,

1429 **C. Change in Designated Disposal Location or Recyclable Materials Processing Site**
1430

1431 The Grantee shall Transport all Solid Waste, Green Waste, and Recyclable Materials
1432 Collected from the Franchise Area to the Designated Disposal Location, Approved Mixed
1433 Organic Waste Processing Site and the Approved Recyclable Materials Processing Site,
1434 respectively.
1435

Mike 4/10/15 10:18 AM
Deleted: Green Waste

1436 The City has the right, at its option, to control the Collection, Disposal, and diversion of
1437 all Solid Waste, Mixed Organic Waste and Recyclable Materials generated within the Franchise
1438 Area. As part of the rights agreed to herein, the parties hereto agree that:
1439

Mike 4/9/15 5:56 PM
Deleted: County

1440 (1) The City has the right to direct Solid Waste to be Disposed of at any Solid Waste
1441 facility or in any manner, respectively, the City may designate; and
1442

Mike 4/9/15 5:56 PM
Deleted: County...ity has the right to ... [20]

1443 (2) The City has the right to direct Solid Waste to be diverted at any transfer or
1444 Processing station the City may designate; and
1445

Mike 4/9/15 5:56 PM
Deleted: County...ity has the right to ... [21]

1446 (3) The City has the right to direct Discarded Recyclable Materials collected by
1447 Grantee to be Processed at or marketed to a specific facility when in the best
1448 interest of the City and provided the collector would receive a reasonable,
1449 competitive market value for the Recyclable Materials; and
1450

Mike 4/9/15 5:56 PM
Deleted: County...ity has the right to ... [22]

Mike 4/10/15 10:26 AM
Deleted: -

1451 (4) The City has the right to direct Mixed Organic Waste collected by Grantee to be
1452 processed at or marketed to a specific facility when in the best interest of the
1453 City and provided the Grantee would receive or pay a reasonable, competitive
1454 market price for the Mixed Organic Waste. In exercising its rights to direct

Mike 4/15/15 9:02 AM
Deleted: (4)...he County...ity has ... [23]

Jim Lance 5/6/15 4:43 PM
Deleted: P

Mike 4/9/15 5:56 PM
Deleted: County...ity and provided ... [24]

1493 | Mixed Organic Waste, City will consider the impact upon rates, and the
1494 | likelihood Grantee can recover all costs with the specific facility.

1495 |
1496 | (5) If City directs a change in the Designated Disposal Location, Approved Mixed
1497 | Organic Waste Processing Site or Approved Recyclable Materials Processing
1498 | Site which impacts Grantee's operational costs, then either party to this
1499 | Agreement may apply for a rate increase or decrease through the provisions of
1500 | Section 15A Pass-through Rate Adjustment.

1501 |
1502 | (6) Any change in the Designated Disposal Location, Approved Mixed Organic
1503 | Waste Processing Site or Approved Recyclable Materials Processing Site made by
1504 | City under this section must comply with all federal, state, and local laws and
1505 | regulations.

1506 |
1507 | **D. Grantee's Responsibility in Lieu of Direction by City.**

1508 |
1509 | Throughout the term of this Agreement, unless the City gives notice as provided for
1510 | herein and subject to the terms of this Agreement, it shall be the Grantee's sole responsibility and
1511 | duty to Dispose of the Solid Waste Collected and Process the Mixed Organic Waste and
1512 | Recyclable Materials Collected in a safe manner and in compliance with all federal, state, and
1513 | local laws and regulations. Grantee agrees that it shall Dispose of all Solid Waste Collected and
1514 | Process all Mixed Organic Waste and Recyclable Materials Collected in the Franchise Area at a
1515 | Solid Waste facility or Processing facility that is fully licensed and appropriately permitted and,
1516 | to Grantee's knowledge, is not in material violation of any health, safety or Hazardous Materials
1517 | laws, rules, regulations or orders as long as the cost of disposal and recycling is at no greater cost
1518 | to ratepayer.

1519 |
1520 | **E. Invalidation of City Flow Control Voids Franchise.**

1521 |
1522 | Should a court of competent jurisdiction rule any provision in this Franchise Agreement
1523 | related to flow control unlawful or unconstitutional, then the entire Franchise Agreement shall
1524 | become null and void upon the election of the City. However, this Agreement shall not become
1525 | null and void, and shall remain in full force and effect, as long as the Grantee continues to direct
1526 | Solid Waste, Mixed Organic Waste and Recyclable Materials as instructed by the City and
1527 | abides by all other terms of this section. City deems control of the waste stream a vital
1528 | component of its waste Disposal program which ensures to the general benefit and welfare of the
1529 | public. This provision will preserve the City's ability to pursue any legal methods whereby flow
1530 | control of waste stream can be achieved.

1531 |
1532 |

Mike 4/10/15 10:38 AM

Deleted: County of Mendocino

Mike 4/10/15 10:38 AM

Deleted: Area No. Three

Mike 4/15/15 9:03 AM

Deleted: Green Waste

Mike 4/9/15 5:56 PM

Deleted: County

Jim Lance 5/6/15 4:44 PM

Deleted: <#> City acknowledges the obligations of Grantee pursuant to the Agreement with Cold Creek Compost attached herein as Exhibit E.
SWOW EXCEPTION #1 - ... [25]

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/10/15 10:26 AM

Deleted: Green Waste

Mike 4/10/15 10:26 AM

Deleted: Green Waste

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

Jerry Ward 5/11/15 10:17 AM

Deleted: -

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/10/15 10:36 AM

Deleted: Green

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

1554 **SECTION 11 - OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS**

1555
1556 All Solid Waste, prior to being placed in a Grantee-provided Container and placed at a
1557 designated Collection point, shall be the property of the Generator or producer, if known. In the
1558 event said Generator or producer of the Solid Waste is unknown, the Solid Waste shall become
1559 the property of the Owner of the parcel upon which said Solid Waste has been deposited. All
1560 Solid Waste, upon being placed in a Grantee-provided Container and all Mixed Organic Waste
1561 and Recyclable Materials, upon being placed in a Grantee-provided Container, and placed at a
1562 designated Collection point, shall become the property of the Grantee. Upon being legally
1563 deposited in a Disposal site approved by the Department, or transferred to a Processing facility or
1564 transfer station not owned by the Grantee, all Solid Waste, Mixed Organic Waste and Recyclable
1565 Materials shall forthwith become the property of the permitted operator of the approved transfer
1566 station, Disposal site, or Processing facility.
1567

Mike 4/10/15 11:02 AM
Deleted: County of Mendocino
Mike 4/10/15 11:02 AM
Deleted: Area No. Three

Jim Lance 5/6/15 4:54 PM
Deleted: SWOW EXCEPTION #4

1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589

SECTION 12 - PRIVACY

A. Customers Rights of Privacy

Grantee shall use its best efforts to observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition of a particular Customer's Solid Waste, Mixed Organic Waste or Recyclable Materials shall not be revealed to any Person, private agency or company, unless upon request of federal, state, or local law enforcement personnel, the authority of a court of law, a statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Grantee from preparing, participating in, or assisting in the preparation of waste characterization studies or Waste Stream analysis which may be reasonably necessary to comply with AB 939 or any other reports requested by the City under the Agreement or required or requested by any governmental agency.

B. Use of Customer Lists

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

Mike 4/10/15 11:02 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

1591 **SECTION 13 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS**

1592
1593 **A. Customer List and Routes**

1594
1595 Grantee shall supply the City, upon request, with the name of the Owner or Occupant of
1596 each Premise served, the address of the property, the service level subscribed to, and current
1597 maps and schedules of Collection routes.

Mike 4/10/15 11:08 AM
Deleted: Department

1598
1599 **B. Record-keeping and Inspection**

1600
1601 Grantee shall maintain detailed records of all receipts and expenditures received or
1602 incurred in the operation of such business, including all revenues collected for services rendered.
1603 The City, its officers, employees, and agents, shall be entitled to inspect, and audit such books
1604 and records upon reasonable notice during normal business hours for the purposes of
1605 determining actual billings and franchise fee payments and as necessary to determine any
1606 adjustment to rates in accordance with Sections 15 A and C of this Agreement. The City will
1607 make reasonable effort to protect proprietary information, if labeled.

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

1608
1609 **C. Financial and Operational Records**

1610
1611 Grantee shall maintain accurate and complete accounting records containing the
1612 underlying financial and operating data relating to and showing the basis for computation of all
1613 costs associated with providing services. The accounting records shall be prepared in accordance
1614 with Generally Accepted Accounting Principles (GAAP) consistently applied.

1615
1616 **D. Collection Service Records**

1617
1618 Records shall be maintained by Grantee for City relating to:

Mike 4/9/15 5:56 PM
Deleted: County

- 1619
1620 (1) Customer services and billing;
- 1621
1622 (2) Weight and volume of material Collected by type (e.g., Solid Waste and
1623 Recyclable Materials);
- 1624
1625 (3) Routes;
- 1626
1627 (4) Facilities, equipment and personnel used;
- 1628
1629 (5) Facilities and equipment operations, maintenance and repair;
- 1630
1631 (6) Tonnage of Solid Waste, Mixed Organic Waste and Recyclable Materials listed
1632 by Processing Site or Disposal Site where such materials were delivered;
- 1633

- 1638 (7) Recyclable Materials Collection participation and setout rates;
- 1639
- 1640 (8) Recyclable Materials sales revenue;
- 1641
- 1642 (9) End use and markets for Recyclable Materials.
- 1643

1644 **E. Transfer, Processing, and Disposal Records**

1645
1646 Grantee shall maintain records of transfer, Disposal, and Processing of all Solid Waste,
1647 Mixed Organic Waste and Recyclable Materials Collected by Grantee.

1648
1649 **F. Customer Service Records**

1650
1651 Records shall be maintained by Grantee for City related to:

- 1652
- 1653 (1) Categories (compliments, missed pickups, complaints, damage, etc.) of calls;
- 1654
- 1655 (2) Complaint log noting the name and address of complainant, date and time of
- 1656 complaint, nature of complaint, and nature and date of resolution;
- 1657
- 1658 (3) New Customer accounts.
- 1659

1660 **G. CERCLA Defense Records**

1661
1662 City views its ability to defend itself against Comprehensive Environmental Response,
1663 Compensation and Liability Act (CERCLA), and related litigation as a matter of great
1664 importance. For this reason, the City regards its ability to prove where Solid Waste Collected are
1665 taken for transfer or Disposal, as well as where they are not taken, to be matters of concern.
1666 Grantee shall maintain, retain and preserve records which can establish where Solid Waste
1667 Collected was Disposed (and therefore establish where it was not). This provision shall survive
1668 the expiration or earlier termination of this Agreement. Grantee shall maintain these records for
1669 a minimum of 3 years beyond expiration or earlier termination of the Agreement and Grantee
1670 shall then provide these records to City in an organized and indexed manner rather than
1671 destroying or Disposing of them.

1672
1673 **H. Quarterly Reports**

1674
1675 Quarterly reports, itemized by month, shall present the following information:

- 1676
- 1677 (1) Solid Waste Services. Total tonnage Collected and Disposed.
- 1678
- 1679 (2) Recyclable Materials & Mixed Organic Waste
- 1680

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:22 PM
Deleted: Green

1686 Tonnage Collected and Recycled and tonnage of residue Disposed. If the
1687 Approved Recyclable Materials Processing Site handles Recyclable Materials
1688 Collected in the Franchise Area and from other parties, provide a description of
1689 how the quantities of Recyclable Materials are tracked and allocated to the
1690 Franchise Area.

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

- 1691
- 1692 (3) Customer Service.
- 1693
- 1694 (a) Number of Customer calls that pertain to compliments, missed pickups,
1695 scheduled clean-ups, Billing concerns, damage claims, etc.
- 1696
- 1697 (b) Number of complaints received, whether delivered in person, telephone,
1698 mail, or others means. The report shall show the date the complaint was
1699 received, actions taken to rectify the complaint, and the date the actions
1700 were taken.
- 1701
- 1702 (4) Account Information. In table format, the number of Customers and service
1703 levels.
- 1704

Jerry Ward 5/11/15 10:18 AM
Deleted: -

1705 **I. Annual Financial Report**

1706 Grantee shall maintain accounting records specific to the Franchise Area, separate from
1707 other activities.

Jim Lance 5/6/15 4:56 PM
Deleted: SWOW
EXCEPTION #5

1710 Grantee shall, at its own expense, be required to annually provide the City with a copy of
1711 a compiled or reviewed financial statement, or an independent financial audit report. The audit
1712 report shall be prepared by a certified public accountant. The accountant shall be entirely
1713 independent of the Grantee, shall have no financial interest whatsoever in the business of the
1714 Grantee, and shall be approved by the City Finance Director.

Mike 4/9/15 5:56 PM
Deleted: County

1715 The annual financial statement or audit report must include an Income Statement for the
1716 Franchised Area operations. The Income Statement should disclose revenue by line of business
1717 and expenses by line of business and detail expense descriptions.

1720 In addition, the Grantee shall make available to the City, or its designee, upon request:

Mike 4/9/15 5:56 PM
Deleted: County

- 1721
- 1722 (1) Supporting documentation to determine the reasonableness of revenues
1723 (e.g., average number of monthly residential, industrial, and commercial
1724 Customers and average monthly rates for each type of Customer service).
- 1725
- 1726 (2) Supporting documentation (invoices and descriptive schedules) for major
1727 expense line items including but not limited to depreciation, salaries,
1728 repair and maintenance, equipment rental, and Disposal expense.

1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776

- (3) Supporting documentation for all transactions with affiliated companies.
- (4) Any other information specifically related to the Agreement, which is reasonably required by City staff for review of rate adjustment requests.

In the event of the failure of the Grantee to provide any such report, the City may employ a qualified accountant or consultant or the City Finance Director to prepare the report, and the Grantee shall be liable for and pay the associated costs and expenses of the accountant or City Finance Director.

J. Annual Operations Report.

The Grantee shall submit a written annual report, in a form approved by the City, including but not limited to:

- (1) Information as required pursuant to Section 13H of this Agreement, summarized for the preceding four quarters.
- (2) Identification of severe market depressions for Recyclable Materials and contingency plans for such events in the future.
- (3) Summary assessment of the overall Solid Waste, Mixed Organic Waste and Recyclable Materials programs from Grantee’s perspective, including but not limited to, (i) highlights of significant accomplishments, (ii) problems, and (iii) recommendations and plans to improve the programs.
- (4) A revenue statement, showing quarterly Franchise Fee payments and a summary of corresponding quarterly revenue.
- (5) Grantee shall report any events of non-compliance with any provisions of the City Code, state and federal law, regulatory orders, and regulations imposed by other regulatory agencies, and the conditions contained in the Agreement during the prior 12-month period.

K. Annual Disclosure Statement.

In conjunction with the annual operations report, as described in Section 13J, Grantee shall file a disclosure statement which contains the following information:

- (1) A listing of all Subcontractors to this Agreement (including the name, address, and social security or tax identification number of the Subcontractor);

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

Mike 4/10/15 1:25 PM
Deleted: Mendocino County

Mike 4/10/15 1:26 PM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:26 PM
Deleted: Auditor-Controller

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:26 PM
Deleted: Auditor-Controller

Mike 4/10/15 1:26 PM
Deleted: Department

Mike 4/10/15 1:27 PM
Deleted: Mendocino County

- 1785 (2) A listing of all felony convictions or pleas of nolo contendere of the Grantee or
1786 Subcontractor by final judgment in any state or federal court within the preceding
1787 three years;
1788
1789 (3) A listing of any instances in which a permit or contract held by the Grantee or
1790 Subcontractor was terminated by a final judgment in any state or federal court
1791 within the preceding three years;
1792
1793 (4) A listing of all final adjudications finding the Grantee or Subcontractor in
1794 contempt of any state or federal court order enforcing any state and federal law
1795 within the preceding three years;
1796
1797 (5) A listing of all final convictions or pleas of nolo contendere of the Grantee or
1798 Subcontractor, under state or local laws governing safety of operations,
1799 compliance with environmental and other franchise requirements in the City,
1800 whether misdemeanors or infractions.
1801

1802 If the Grantee or Subcontractor is a chartered lending institution or a publicly held
1803 company or a wholly-owned subsidiary of such a company required to file annual or quarterly
1804 reports under the Securities and Exchange Act of 1934, the Grantee or Subcontractor may
1805 provide the above required information by submitting quarterly or annual reports for the
1806 preceding three years. If these reports are incomplete or if they fail to contain the information
1807 requested in subsection D items 1, 2, 3, 4, and 5 herein, the Grantee or Subcontractor shall make
1808 such information available to City. The City may also require, at applicant/grantees' expense,
1809 preparation and submittal of a Dunn and Bradstreet, or comparable, report.
1810

1811 If Grantee or Subcontractor has filed a disclosure statement, it shall file a supplemental
1812 disclosure statement only to the extent that its status or events differ from those covered by the
1813 original disclosure statement.
1814

1815 **L. Reporting Requirements**

1816
1817 Grantee may propose report formats that are responsive to the objectives and audiences
1818 for each report. The format of each report shall be approved by the City. Grantee agrees to mail
1819 a copy of all reports and submit all reports on computer discs, by e-mail or by modem in a format
1820 compatible with City’s software and computers at no additional charge. Grantee will provide a
1821 certification statement, under penalty of perjury, by the responsible Grantee official, that the
1822 report being submitted is true and correct to the best knowledge of such official after their
1823 reasonable inquiry.

1824 Grantee shall submit quarterly reports within 30 calendar days after the end of the
1825 reporting month. Grantee shall submit annual reports no later than 60 calendar days after the end
1826 of the reporting year.
1827

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

1833
1834
1835
1836
1837
1838
1839
1840
1841

Grantee shall submit (via mail and e-mail) all reports to the City Manager.
M. Failure to Report
The refusal, failure, or neglect of the Grantee to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by the Grantee in such report shall be deemed a material breach of the Agreement, and shall subject the Grantee to all remedies, legal or equitable, which are available to the City under the Agreement or otherwise.

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino

Mike 4/10/15 11:03 AM
Deleted: Area No. Three

Mike 4/10/15 1:28 PM
Deleted: :

Jerry Ward 5/11/15 10:18 AM
Deleted: - ... [26]

Mike 4/10/15 1:28 PM
Deleted: Solid Waste Director, County of Mendocino, at the office designated by County for administration of this Agreement. .

Mike 4/9/15 5:56 PM
Deleted: County

1849 **SECTION 14 - GRANTEE'S RATES**

1850
1851 **A. City's Powers**

1852
1853 The Grantee’s rates and charges imposed on City Customers for the services it performs
1854 under this Agreement are subject to the prior review, approval and regulation by City. City
1855 approves the rates specified in Exhibit B.

1856
1857 **B. Rate Requirements**

1858
1859 (1) Grantee shall provide the services described in this Agreement and be
1860 compensated by its Customers at the rates specified in Exhibit B.

1861
1862 (2) The rates specified in Exhibit B shall be effective as of the Commencement Date
1863 and shall remain in effect until January 1, 2017.

1864
1865 (3) The rates specified in Exhibit B may be modified in accordance with the Rate
1866 Adjustments as described in Section 15 of this Agreement.

1867
1868 (4) All charges or fees for service by a Grantee shall be fixed and approved by the
1869 City.

1870
1871 (5) Charges for Industrial Solid Waste removal service may be negotiated between
1872 the Grantee and the Customer. If the negotiated charges are less than the rates
1873 specified in Exhibit B, Grantee shall notify the City in writing of each Customer
1874 that is offered and charged a lower rate. In no event shall the Grantee charge a
1875 rate in excess of those specified in Exhibit B without prior written approval by the
1876 City, except for weight overages as provided for in this section.

1877
1878 (6) Grantee may not charge residential and commercial Customers at rates other
1879 than those specified in Exhibit B except that the City may authorize a
1880 Customer to receive reduced service for a reduced charge and may approve an
1881 agreement between the Customer and the Grantee to provide additional
1882 service for an additional charge. These authorized reduced or additional
1883 charges may be revised by the City from time to time after a public hearing
1884 thereon and a determination by the City that a change is in the public interest
1885 and is mutually agreed upon by both parties.

1886
1887 (7) Grantee may charge an extra commercial Container overload charge. This
1888 extra charge may be levied by Grantee for each occurrence of a Container
1889 overload. Overload shall be defined as an excess of solid waste mounded such
1890 that Container covers cannot completely close. The Container overload charge
1891 shall be based on the amount of excess solid waste causing the overload

Mike 4/10/15 11:03 AM
Deleted: County of Mendocino
Mike 4/10/15 11:03 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 5:00 PM
Deleted: City shall set and regulate all
Jim Lance 5/6/15 5:00 PM
Deleted: assessed

Jim Lance 5/6/15 5:02 PM
Deleted: by Grantee for any and all services and
activities it performs or engages in the Franchise
Area, and which are covered under this Agreement.

Mike 4/10/15 3:46 PM
Deleted: .
Mike 4/10/15 1:30 PM
Deleted: September 1, 2010

Mike 4/10/15 3:46 PM
Deleted: .
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:31 PM
Deleted: Department
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 1:31 PM
Deleted: Board

Mike 4/10/15 1:31 PM
Deleted: Board
Mike 4/10/15 1:31 PM
Deleted: Board

1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950

condition. The Container overload charge shall be calculated by the number of 35-gallon Containers that the excess solid waste fills multiplied by the 35-gallon Container once per month rate as set forth in Exhibit B.

- (8) All compensation paid to the Grantee shall be paid by its Customers and the City is in no way obligated to provide the Grantee any compensation for services described in this Agreement.

Mike 4/10/15 11:03 AM

Deleted: County of Mendocino

Mike 4/10/15 11:03 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: County

1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994

SECTION 15 - RATE ADJUSTMENT PROCEDURES

A. Pass-through Rate Adjustment

(1) At any time that the City establishes a surcharge, increases an existing surcharge, increases the Franchise Fee rate, or increases the Disposal charge at City-owned facilities, Grantee may apply to the City for a pass-through rate adjustment to offset the new or increased fees. In applying for a pass-through rate adjustment the Grantee must:

- (a) Submit a request for the increase, in writing, to the City;
- (b) Specify the amount of the requested increase for each rate given in Exhibit B; and,
- (c) Provide documentation that the specified rate increase is reasonable and appropriate and does not include rate increases for any other reason than to recover the direct cost of the additional pass-through expense.

Provided that the City staff have received and considered the request and documentation described above, and has concluded that the requested rate adjustment is reasonable and appropriate and is solely to recover the direct cost of the additional pass-through expense, the rates given in Exhibit B shall be amended by the City.

(2) If a jurisdiction other than the City establishes or increases surcharges or fees that affect Grantee's expenses, the same procedures as described in (1), above, apply.

(3) There shall be no retroactive adjustments because of Grantee's failure to request a pass through rate adjustment increase. However, Grantee shall be allowed to retroactivity bill Customers from the date of pass-through rate adjustment approval to the end of the billing cycle in the next billing period.

(4) At any time that the City either eliminates a surcharge on Grantee's Customers, decreases an existing surcharge on Grantee's Customers, decreases the Franchise Fee rate, decreases the Disposal charge at the City owned facilities, City may apply to the Grantee for a pass-through rate adjustment to offset the eliminated or decreased fees. In applying for a pass-through rate adjustment the City must:

- a) Submit a request for the decrease, in writing to the Grantee;
- b) Specify the amount of the requested decrease for each rate given in Exhibit B; and,

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Mike 4/10/15 1:32 PM
Deleted: Board
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 1:32 PM
Deleted: Department

Mike 4/10/15 1:33 PM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 1:33 PM
Deleted: Executive Officer or his/her designated County employee.
Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:33 PM
Deleted: Board
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038

c) Provide documentation that the specified rate decrease is reasonable and appropriate and does not include rate decrease for any other reason than to recover the direct cost of the decreased or eliminated pass-through expense.

Provided that the Grantee has received and considered the request and documentation described above, and the requested rate adjustment is reasonable and appropriate and is solely to recover the direct cost of the decreased or eliminated pass-through expense, the rates given in Exhibit B shall be amended by the City.

(5) If a jurisdiction other than the City eliminates or decreases surcharges or fees that affect Grantee's expense, the same procedures as described in (4), above, apply.

(6) In the case of a jurisdiction other than the City eliminating or decreasing surcharge or fees that affect Grantee's expenses, Grantee shall be responsible for notifying the City in writing. If Grantee fails to notify City of eliminated or decreased surcharges or fees per this section, then the City may apply for and request a retroactive pass through rate adjustment decrease.

(7) A change in Grantee's costs caused by a change in the initial gate fee at the Designated Solid Waste Disposal site or Approved Mixed Organic Waste Processing Site shall cause a pass-through rate adjustment as set forth in (1) or (4) above.

B. Cost-of-Living & Fuel Rate Adjustments

(1) Beginning with the 2016 Rate Period, four to six months prior to the end of a Rate Period, Grantee may apply for cost-of-living (COLA) and a fuel rate adjustment to become effective on January 1, 2017, and annually thereafter. The rate adjustments shall be based on: 1) 90% of the change in the value of the most recently published All Urban Consumers Consumer Price Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before, and 2) 100% of the change in the value of the most recently published Series ID:wpu057303; Commodity Code 0573-03 #2 Diesel Fuel compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before. Grantee shall notify the City of the adjustments to take place and shall provide the City with its computations and documentation therefore.

For calculation of adjustments, the rates will be divided into three components –

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:34 PM
Deleted: Executive Officer or his/her designated County employee. .

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 5:04 PM
Deleted:

Jerry Ward 5/11/15 10:19 AM
Deleted: .

Mike 4/10/15 1:57 PM
Deleted: Four

Mike 4/10/15 1:58 PM
Deleted: , or by October 1, 2010 for the first Rate Period

Mike 4/10/15 1:58 PM
Deleted: 2011

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 1:59 PM
Deleted: would

2070 Fuel, Pass-through and All Other. The Fuel Component would equal 12.0% of the first
2071 year rate. The Pass-through Component would equal 20.7%. The All Other Component
2072 would equal 67.3% of the rate. When the first adjustment to rates occurs, it will be done in
2073 the following manner:

2074 Fuel Component: Existing Billed Rate x 12.0% x Diesel Fuel Index

2075 Pass-through Component: None, since pass-through increases, if any, will be
2076 made pursuant to Section 15(A) above.

2077 All Other Component: Existing Billed Rate x 67.3% x CPI Index

2078 The sum of the above, together with any Recycling Commodity Value Adjustment as provided in
2079 subsection (E) below, equals the New Rate. Following completion of each annual financial
2080 statement by Grantee, the adjustment factors will be reviewed to correspond to the percentage of
2081 fuel, disposal cost and other expenses out of total operating expenses.

2082
2083 **C. Larger Rate Increases**

2084
2085 No sooner than one year after this Agreement becomes effective, and no more frequently
2086 than annually thereafter, Grantee may apply for a rate adjustment in excess of the Cost-of-Living
2087 Rate Adjustment described in (B), above. Grantee may apply for either the Cost-of-Living Rate
2088 Adjustment or the larger rate increase as described in this section, but may not apply for both for
2089 the same Rate Period. In applying for such a rate increase the Grantee must:

2091 (1) Notify the City, in writing, of Grantee's intent to seek a rate increase in excess of
2092 the Cost-of-Living Rate Adjustment limitation;

2093
2094 (3) If requested by City, obtain and submit to the City an independent financial report,
2095 of Grantee's operations. The City shall select or approve the auditor to perform
2096 the financial report. The cost of the financial report shall be paid by the Grantee.
2097 The financial report must, at a minimum, determine the profitability of Grantee's
2098 operations specific to services provided under this Agreement.

2100 (3) Submit a reviewed financial statement for the most-recently completed Rate
2101 Period.

2102
2103 Using information provided in the financial report, as well as records required to be
2104 maintained by Guarantee under Section 13 of this Agreement, the City shall perform a rate
2105 setting study to determine appropriate rates based on projected profitability of the Grantee. The
2106 appropriate profit margin, and the means of determining profitability, shall be included as part of
2107 the rate setting study. The rate setting study shall be conducted by the City, or by a qualified
2108 contractor selected by the City. The cost of the rate study shall be paid by the Grantee.

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino

Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Mike 4/10/15 2:13 PM
Deleted: 8.4

Mike 4/10/15 2:14 PM
Deleted: 10.9

Mike 4/10/15 2:14 PM
Deleted: 80.7

Mike 4/10/15 2:14 PM
Deleted: 8.4

Mike 4/10/15 2:15 PM
Deleted: 80.7

Jerry Ward 5/11/15 10:19 AM
Deleted: -

Jim Lance 5/6/15 5:08 PM
Deleted: SWOW EXCEPTION #6

Mike 4/10/15 2:15 PM
Deleted: Department

Mike 4/13/15 11:10 AM
Deleted: Obtain

Mike 4/10/15 2:15 PM
Deleted: Department

Jim Lance 5/6/15 5:05 PM
Deleted:

Jim Lance 5/6/15 5:05 PM
Deleted: audit

Jim Lance 5/6/15 5:06 PM
Deleted: report

Mike 4/9/15 5:56 PM
Deleted: County

Jim Lance 5/6/15 5:05 PM
Deleted: SWOW EXCEPTION #6

Mike 4/15/15 11:10 AM
Deleted: -

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

2130
2131
2132
2133
2134
2135
2136
2137
2138
2139
2140
2141
2142
2143
2144
2145
2146
2147
2148
2149
2150
2151
2152
2153
2154
2155
2156
2157
2158
2159
2160
2161
2162
2163
2164
2165
2166
2167
2168
2169
2170
2171
2172

City shall then hold at least one public meeting, at a convenient time and place within the Grantee's Franchise Area, to solicit public comment on the proposed rate increases, as determined by the rate setting study. This public meeting shall be duly noticed and shall be held no less than 14 days before the City Council considers adoption of the rate increases.

Provided that the City has received the required information, as described in (1) and (2), above, has completed the rate setting study, and has held at least one public meeting and considered public input, the City Council may adopt the new rates by amending Exhibit B.

City recognizes that a substantial reduction in Grantee's revenue caused by Customers changing to smaller Solid Waste containers because of increased Mixed Organic Waste diversion and increased Recyclables Materials diversion could provide cause for a rate review under this subsection.

D. Rate Decreases

The City may, at any time, request a rate decrease provided that some change in conditions has occurred to warrant a rate decrease. Such a rate decrease will require a full disclosure audit and formal rate structuring. In requesting such a rate decrease, the City must:

- (1) Notify the Grantee, in writing, of City's intent to seek a rate decrease;
- (2) At City's sole discretion, the City may obtain a financial report of Grantee's operations. The Grantee shall comply with a full disclosure review. The City shall select the auditor to perform the financial report. The cost of the financial report shall be paid by the City. The financial report must, at a minimum, determine the profitability of Grantee's operations specific to services provided under this Agreement.

Using information provided in the financial report, as well as records required to be maintained by Guarantee under section 13 of this Agreement, the City shall perform a rate setting study to determine appropriate rates based on projected profitability of the Grantee. The appropriate profit margin, and the means of determining profitability, shall be included as part of the rate setting study. The rate setting study shall be conducted by the City, or by a qualified contractor selected by the City. The cost of the rate study shall be paid by the City.

City shall then hold at least one public meeting, at a convenient time and place within the Grantee's Franchise Area, to solicit public comment on the proposed rate decrease, as determined by the rate setting study. This public meeting shall be duly noticed and shall be held no less than 14 days before the City Council considers adoption of the rate decrease.

Provided that the City has received the required information, as described in (1) and (2),

- Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
- Mike 4/10/15 11:05 AM
Deleted: Area No. Three
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/10/15 2:16 PM
Deleted: Board
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/10/15 2:16 PM
Deleted: Board
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/13/15 11:12 AM
Deleted: Obtain
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/9/15 5:56 PM
Deleted: County
- Jim Lance 5/6/15 5:10 PM
Deleted: . SWOW EXCEPTION #5
- Mike 4/9/15 5:56 PM
Deleted: County
- Mike 4/10/15 2:19 PM
Deleted: Board
- Jerry Ward 5/11/15 10:19 AM
Deleted: -
- Mike 4/9/15 5:56 PM
Deleted: County

2192 above, has completed the rate setting study, and has held at least one public meeting and
2193 considered public input, the City Council may adopt the new rates by amending Exhibit B.

2194 **E. Recycling Commodity Value Adjustment**

2197 The gross market commodity value of Discarded Recyclable Materials collected by
2198 Grantee pursuant to this Agreement shall be estimated from the tons collected and the average
2199 composite market value as calculated by the following weighted profile, with each category
2200 multiplied by the market price including any California Redemption Value, FOB at the
2201 Designated Recycling Processing Facility. The values below, updated to the 12 months ending
2202 June, 2015, shall constitute the baseline for comparison.

		COMPOSITE MARKET VALUE EFFECTIVE 4/1/2014			
		Scrap			Weighted
Composition	Commodity	Value/Ton	CRV/Ton		Value/Ton
14.75%	OCC	\$ 146.25			\$ 21.57
44.08%	Mixed Paper	89.67			39.53
0.53%	HDPE Color	399.58	\$ 80.00		2.54
0.51%	HDPE Natural	604.25	80.00		3.49
1.94%	PET	385.67	1,020.00		27.27
1.25%	Rigid Plastics	114.50			1.43
1.82%	Tin	148.17			2.70
24.41%	Glass 3 Mix	(40.00)	84.00		10.74
0.71%	Alum. Cans	1,330.17	2,780.00		29.18
10.00%	Refuse	76.64			(7.66)
Total Composite Market Value Per Ton					\$ 130.78

2205 Four to six months before the end of the Rate Period, beginning with the Rate Period
2206 ending December 31, 2016, Grantee shall calculate the average composite market value per ton
2207 over the previous 12 months, and use it to determine the change in the gross commodity value of
2208 Discarded Recyclable Material collected by Grantee compared to the previous Rate Period. Rates
2209 will be adjusted to that 50% of the change in gross commodity value will be applied

Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three
Mike 4/10/15 2:19 PM
Deleted: Board
Mike 4/13/15 11:18 AM
Deleted: to the Rate Period ending Decem... [27]
Mike 4/10/15 2:43 PM
Deleted: 1-1-10
Mike 4/10/15 2:43 PM
Deleted: 100.00
Mike 4/10/15 2:44 PM
Deleted: 4.75
Mike 4/10/15 2:44 PM
Deleted: 89.77
Mike 4/10/15 2:44 PM
Deleted: 39.57
Mike 4/10/15 2:44 PM
Deleted: 285.00
Mike 4/10/15 2:45 PM
Deleted: 140.00
Mike 4/10/15 2:45 PM
Deleted: 2.25
Mike 4/10/15 2:45 PM
Deleted: 503.00
Mike 4/10/15 2:45 PM
Deleted: 140.00
Mike 4/10/15 2:45 PM
Deleted: 3.28
Mike 4/10/15 2:46 PM
Deleted: 332.00
Mike 4/10/15 2:46 PM
Deleted: 1,300.00
Mike 4/10/15 2:46 PM
Deleted: 31.66
Mike 4/10/15 2:46 PM
Deleted: 62.00
Mike 4/10/15 2:46 PM
Deleted: 0.78
Mike 4/10/15 2:47 PM
Deleted: 5.00
Mike 4/10/15 2:47 PM
Deleted: 0.09
Mike 4/10/15 2:47 PM
Deleted: 86.00
Mike 4/10/15 2:47 PM
Deleted: 11.23
Mike 4/10/15 2:47 PM
Deleted: 1,055.00
Mike 4/10/15 2:47 PM
Deleted: 2,960.00
Mike 4/10/15 2:48 PM
Deleted: 28.51
Mike 4/10/15 2:48 PM
Deleted: (67.83)
Mike 4/10/15 2:48 PM
Deleted: (6.78)
Mike 4/10/15 2:48 PM
Deleted: 125.34
Mike 4/10/15 2:49 PM

2272 proportionately to reduce rates in case of a gain and increase rates in case of a decline.

2273

2274 Example. If the average composite market value per ton during the Rate Period ending
2275 December 31, 2010 was 100.34/ton and Grantee collected 1,200 tons of Discarded Recyclable
2276 Material pursuant to the Agreement, rates would be adjusted to equal the following change in
2277 gross recyclable commodity value.

2278

2279 | $\$125.34 - \$100.34 = \$25.00/\text{ton} \times 1,200 \times 50\% = \$15,000$ added to rates.

2280

Mike 4/10/15 11:05 AM

Deleted: County of Mendocino

Mike 4/10/15 11:05 AM

Deleted: Area No. Three

Jerry Ward 5/11/15 10:19 AM

Deleted: - [28]

2283
2284
2285
2286
2287
2288
2289
2290
2291
2292
2293
2294
2295
2296
2297
2298
2299
2300
2301
2302
2303
2304
2305
2306
2307
2308
2309
2310
2311
2312
2313
2314
2315
2316
2317
2318
2319
2320
2321
2322
2323
2324
2325

SECTION 16 - FEES

A. Franchise Fee - Amount

In consideration of the [City's administrative time and expense in the oversight and management of this Agreement and other solid waste-related costs and activities, and as consideration for Grantee's use of public streets and for City's maintenance thereof resulting from](#)

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Jim Lance 5/6/15 5:11 PM
Deleted: <#> CountyCity Rate Setting Authority ... [29]

2329 Grantee's performance of this Agreement. Grantee shall pay a Franchise Fee to the City calculated
2330 as 12% of the Adjusted Gross Revenues collected for service. The Franchise Fee may be revised
2331 by the City from time to time after a public hearing thereon and a determination by the City that a
2332 change is in the public interest, such increases or decreases determined by the City shall be subject
2333 to pass-through rate adjustment.

2334
2335 **B. Franchise Fee - Quarterly Payments and Revenue Statements**

2336
2337 Grantee shall pay the Franchise Fee in quarterly payments due within 30 days after the
2338 close of each calendar quarter. Along with the quarterly payment, Grantee shall include a
2339 quarterly revenue statement, certified by an officer of the Grantee that shows the basis for the
2340 calculation thereof.

2341
2342 **C. Franchise Fee - Deposit.**

2343
2344 Franchise fees shall be paid to the City which shall deposit them to the City General
2345 Fund.

2346
2347 **D. Franchise Fee - Delinquency Penalty**

2348
2349 Payments are delinquent if not received by the City within 30 days as provided above.
2350 All fees are subject to a delinquency penalty of ten percent (10%), which attaches on the first day
2351 of delinquency, plus an additional ten percent (10%) for each additional month the payment
2352 remains delinquent. These penalties are in addition to the franchise termination provisions of
2353 Section 19.

2354
2355 **E. Refund of Franchise Fees**

2356
2357 Once Franchise Fee payments are made to the City, Grantee may not ask for refund of all
2358 or part of Franchise Fees unless such request is based on a mathematical error in its calculation
2359 or a double payment of such payment.

2360
2361
2362

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino

Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Jim Lance 5/7/15 8:08 AM
Deleted: exclusive rights provided herein,

Mike 4/9/15 5:56 PM
Deleted: County

Jerry Ward 5/11/15 10:22 AM
Deleted: .

Mike 4/10/15 3:47 PM
Deleted: Board

Mike 4/10/15 3:47 PM
Deleted: Board

Mike 4/10/15 3:47 PM
Deleted: Board

Jerry Ward 5/11/15 10:19 AM
Deleted: .

Mike 4/10/15 3:48 PM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/15/15 9:18 AM
Deleted: .

2375 **SECTION 17 - BONDS, INSURANCE, AND INDEMNIFICATION**

2376
2377 **A. Bonds**

2378
2379 (1) The City may require the Grantee to post a performance bond at a value up to
2380 25% of the estimated annual revenues generated through this Agreement. If,
2381 however, the Grantee has previously satisfactorily demonstrated that Grantee has
2382 the financial means and capabilities to perform required services, the City may
2383 waive the performance bond requirement, or may reduce the required amount of
2384 the performance bond.

2385
2386 The amount and specifications of the performance bond required for this
2387 Agreement are described in Exhibit C.

2388
2389 (2) If the City should impose a surcharge, pertaining to Solid Waste Collection and/or
2390 Disposal fees, on Grantee's Customers, Grantee may be required to post a fidelity
2391 bond. Should this occur, the amount, terms, and conditions of the fidelity bond
2392 shall be determined by the City and shall be included in this Agreement through
2393 amendment of Exhibit C.

2394 **B. Insurance**

2395 Insurance policies are to be secured by the Grantee and remain in full force and effect at
2396 all times to provide protection against liability for damages which may be imposed for the
2397 negligence of the Grantee or that Persons employees or agents, including, but not limited to,
2398 general liability and automobile liability insurance. Grantee shall also provide liability coverage
2399 under California Workers' Compensation laws. The amounts of insurance required are to be
2400 established herein. Said amounts shall not be construed to limit the Grantee's liability.

2401
2402 The insurance requirements provided herein may be modified or waived in writing by the
2403 City, provided the City determines that such waiver or modification does not unreasonably
2404 increase the risk of exposure to the City, including the fact that the parent of Grantee may be
2405 self-insured up to a certain acceptable amount.

2406
2407 (1) Workers' Compensation Insurance. Grantee shall obtain and maintain in full
2408 force and effect throughout the entire term of this Agreement full Workers'
2409 Compensation Insurance in accord with the provisions and requirements of the
2410 Labor Code of the State of California. Endorsements that implement the required
2411 coverage shall be filed and maintained with the Department throughout the term
2412 of this Agreement.

2413
2414 (2) Comprehensive General Liability. Grantee shall obtain and maintain in full force
2415 and effect throughout the entire term of this Agreement a Broad Form
2416
2417

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 3:49 PM
Deleted: Board of Supervisors

Mike 4/10/15 3:49 PM
Deleted: Board of Supervisors

Mike 4/9/15 5:56 PM
Deleted: County

2425 Comprehensive General Liability (occurrence) policy with a minimum limit of
2426 TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION
2427 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property
2428 damage, with any self-insured retention not exceeding TWO HUNDRED
2429 THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect Grantee
2430 and City from any claim for damages for bodily injury, including accidental
2431 death, as well as from any claim for property damage which may arise from
2432 operations performed pursuant to this Agreement, whether such operations are by
2433 Grantee itself, or by its agents, employees and/or Subcontractors. Copies of the
2434 policies or endorsements evidencing the above-required insurance coverage shall
2435 be filed with the City. Endorsements are required to be made a part of all of the
2436 following insurance policies required by this Section:
2437

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

2438 (a) "The City, its employees, agents, and officers, are hereby added as
2439 insured's as respects liability arising out of activities performed by or on
2440 behalf of Grantee."
2441

Mike 4/9/15 5:56 PM
Deleted: County

2442 (b) "This policy shall be considered primary insurance as respects any other
2443 valid collectible insurance the City may possess including any self-insured
2444 retention the City may have, and any other insurance the City does possess
2445 shall be considered excess insurance and shall not contribute with it."
2446

Mike 4/10/15 3:50 PM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County

2447 (c) "This policy shall act for each insured, as though a separate policy had
2448 been written for each. This, however, will not act to increase the limit of
2449 liability of the insuring company."
2450

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

2451 (d) "Thirty (30) days prior written notice by certified mail, return receipt
2452 requested, shall be given to the City in the event of suspension,
2453 cancellation, reduction in coverage or in limits or non-renewal of this
2454 policy for whatever reason. Such notice shall be sent to the City."
2455

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 3:50 PM
Deleted: Department

2456 (3) Vehicle Liability. Grantee shall obtain and maintain in full force and effect
2457 throughout the entire term of this Agreement a vehicle liability policy with a
2458 minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence
2459 for bodily injury and TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)
2460 per occurrence for property damage. Said insurance shall protect Grantee and
2461 City from any claim for damages for bodily injury, including accidental death, as
2462 well as from any claim for property damage which may arise from operation of
2463 owned and non-owned vehicles. Copies of the policies or endorsements
2464 evidencing the above-required insurance coverage shall be filed with the City.
2465

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 3:51 PM
Deleted: Department

2466 The limits of such insurance coverage, and companies, shall be subject to review and
2467 approval by the City every year and may be increased at that time and match the coverage

Mike 4/9/15 5:56 PM
Deleted: County

2479 provided by the City's own liability insurance policy. The City shall be included as a named
2480 insured on each of the policies, or policy endorsements.

2481 C. Indemnification

2482 (1) Indemnification of City

2483
2484 (a) Grantee shall defend the City with counsel reasonably acceptable to the
2485 City and indemnify the City from and against any and all liabilities, costs,
2486 claims and damages which are caused by Grantee's negligence or failure to
2487 comply with applicable laws and regulations, including but not limited to
2488 liabilities, costs, claims and damages described in Section 17B, above.

2489 (b) Grantee agrees that it shall protect and defend the City with counsel
2490 reasonably acceptable to City, indemnify and hold harmless City, its
2491 officers, employees and agents from and against any and all losses,
2492 liabilities, fines, penalties, claims, damages, liabilities or judgments
2493 (including attorney's fees), arising out of or resulting in any way from
2494 Grantee's exercise of this Agreement, unless such claim is due to the sole
2495 negligence or willful acts of the City, its officers, employees, agents or
2496 contractors, or from City's grant of this Agreement to Grantee.

2497 (c) In addition, Grantee shall defend the City with counsel reasonably
2498 acceptable to the City, indemnify and hold the City harmless from any and
2499 all litigation and claims, damages and liabilities arising there from,
2500 brought to enforce or to challenge this Agreement and/or Grantee's
2501 exclusive rights granted there under; provided, however, that Grantee's
2502 obligations hereunder extend only to actions brought against or by Persons
2503 not parties to this Agreement.

2504 (2) Indemnification of Grantee.

2505 (a) Except as provided by subparagraph (3) AB939 Indemnification, the
2506 City shall defend, with counsel reasonably acceptable to Grantee,
2507 indemnify and hold Grantee harmless from any and all fines,
2508 penalties and assessments levied against or threatened to be
2509 levied against the City and/or Grantee for the City's failure to meet
2510 the requirements of AB939, its amendments or any successor
2511 legislation and/or all rules and regulations promulgated
2512 hereunder if said failure is due solely to the negligence or
2513 misconduct of the City, including but not limited to the City's
2514 failure to adopt Source Reduction and Recycling Elements

Mike 4/10/15 11:05 AM

Deleted: County of Mendocino

Mike 4/10/15 11:05 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: County

Jerry Ward 5/11/15 10:23 AM

Deleted: . . .

Mike 4/9/15 5:56 PM

Deleted: County

33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

mandated under AB939.

(b) In the event that the City directs the Grantee to Dispose of or Transport Solid Waste, Mixed Organic Waste

(c) and/or Recyclable Materials to a specific facility, the Grantee shall not be held liable for damages at or to that facility, or to the City as a result of the acts or omissions of that facility, unless the damages are caused by the willful or negligent acts of the Grantee.

(3) AB939 Indemnification. Grantee shall 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, with respect to the Waste Stream under Grantee's control, its amendments or any successor legislation and/or all rules and regulations promulgated hereunder if said failure results from Grantee's failure to comply with this Agreement and/or Grantee's failure to comply with said laws, rules or regulations, 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.

- Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
- Mike 4/10/15 11:05 AM
Deleted: Area No. Three
- Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

60 **SECTION 18 - FRANCHISE TRANSFER, ISSUANCE, AND RENEWAL**

61
62 **A. Franchise Transfer**

63
64 In the event that ownership interest of a Grantee is sold, transferred, leased, assigned,
65 mortgaged, pledged, hypothecated, or otherwise encumbered or Disposed of in whole or in part,
66 directly or indirectly, whether voluntarily or by operation of law or through any stock transfer,
67 transfer in trust, change in control, consolidation or merger, this Agreement will be considered
68 non-transferable unless all of the following conditions are met:

- 70 (1) The Grantee notifies the City, in writing, at least sixty (60) days in advance of the
71 transfer in ownership interest, as defined above, and submits a Disclosure
72 Statement in accordance with Section 13K; and
- 74 (2) The Grantee and the party to which ownership interest is being transferred
75 demonstrate that the party to which ownership interest is being transferred has the
76 financial means, experience and capabilities to fulfill the requirements of this
77 Agreement; and
- 79 (3) The party to which ownership interest is being transferred demonstrates that the
80 best interest of the public will be served, and that service levels will not decline or
81 rates increase as a result of the transfer of ownership.

Mike 4/9/15 5:56 PM
Deleted: County

82
83 If the Grantee and the party to which ownership interest is being transferred have
84 satisfactorily complied with all of the conditions described above, the City shall not
85 unreasonably deny the transfer of this Agreement. In the event that ownership interest in
86 Grantee changes as described in this section, and the City has approved the transfer of this
87 Agreement, the City has the right to require competitive bid or request for proposal of said
88 Agreement at any time during the remainder of this Agreement term. A two-year notification of
89 such intent shall be given to the Grantee provided that two or more years remain in Agreement
90 term.

Mike 4/10/15 4:08 PM
Deleted: Board
Mike 4/10/15 4:08 PM
Deleted: Board
Mike 4/10/15 4:08 PM
Deleted: Board

91
92 Any transfer of ownership interest made without having met the conditions described
93 above, and without City approval to transfer this Agreement, shall constitute good cause for
94 revocation of the Agreement.

Mike 4/10/15 4:08 PM
Deleted: Board

96 Notwithstanding the above, the present stockholders in the Grantee shall have the right to
97 transfer stock to their spouses and/or relatives within the first degree.

98
99 The Grantee shall compensate the City for all costs incurred by the City to examine the
100 transfer of the Agreement, whether or not the City agrees to the transfer.

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/9/15 5:56 PM
Deleted: County

110 **B. General Standards of Responsibility**

111
112 The City may refuse to approve the transfer of this Agreement, if the City finds by a
113 preponderance of evidence that the buyer has:

- 114 (1) Intentionally misrepresented or concealed any material fact in the disclosure
115 statement;
- 116 (2) Obtained a license, permit, contract, or franchise from the City by intentional
117 misrepresentation or concealment of a material fact;
- 118 (3) Been convicted of a felony or pleaded guilty or nolo contendere to a felony
119 involving the laws of any state or the federal government within the three years
120 preceding the issuance of the license or permit, or execution of the contract or
121 Agreement;
- 122 (4) Been adjudicated in contempt of an order of any court enforcing laws of this state
123 or the federal government within three years preceding the issuance of the license
124 or permit, or execution of the contract or Agreement; or
- 125 (5) Disregarded the public safety, as evidenced by convictions or pleas of nolo
126 contendere to the violation of state and local law governing safety of operations,
127 compliance with environmental and other franchise requirements within the City.

128
129
130 In deciding whether to renew or allow transfer of this Agreement, the City shall consider
131 the facts and mitigating factors surrounding the foregoing including:

- 132 (1) The relevance of the offense to the business for which the license, permit, contract
133 or franchise is issued;
- 134 (2) The nature and seriousness of the offense;
- 135 (3) The circumstances under which the offense occurred;
- 136 (4) The date of the offense; and
- 137 (5) The ownership and management structure in place at the time of the offense.

138
139
140 The City shall determine whether the buyer is fit to retain the rights granted under this
141 Agreement. The City shall notify the Grantee of its determination within sixty (60) days
142 following the Grantee's submittal of the disclosure form. Failure by the City to make a
143 determination, regarding the Grantee's fitness for transfer, within the time frame indicated
144 above, shall in no case result in the revocation of the Grantee's rights under the Agreement, an

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Mike 4/10/15 4:09 PM
Deleted: Board
Mike 4/10/15 4:09 PM
Deleted: Board

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 4:10 PM
Deleted: Board

Mike 4/10/15 4:10 PM
Deleted: Department
Jim Lance 5/7/15 7:08 AM
Deleted: City shall recommend to the
Mike 4/10/15 4:10 PM
Deleted: Board
Jim Lance 5/7/15 7:09 AM
Deleted: Council
Mike 4/9/15 5:56 PM
Deleted: County
Mike 4/10/15 4:10 PM
Deleted: Department
Jim Lance 5/7/15 7:09 AM
Deleted: recommendation

165 order to cease operations, or a termination of this Agreement.

166
167
168

C. Opportunity to Demonstrate Rehabilitation

169
170

In determining whether to approve of a transfer of this Agreement, the City shall first allow the buyer to submit evidence of rehabilitation and shall consider the buyer's efforts to prevent recurrence of unlawful activity. Items to be considered by the Department shall include:

171
172

- 173 (1) The record and history of implementing successful corrective actions undertaken to prevent or minimize the likelihood of recurrence of the offense;
- 174
- 175 (2) Whether the offense was an isolated incident or a series of related incidents;
- 176
- 177 (3) Whether the buyer cooperated with government bodies during investigations;
- 178
- 179 (4) The number and types of permits, contracts or franchises held by the buyer;
- 180
- 181 (5) Implementation by the buyer of formal policies, training programs, and management controls to substantially minimize or prevent the occurrence of future violations or unlawful activities;
- 182
- 183 (6) Implementation by the buyer of an environmental compliance auditing program to assess and monitor the adequacy of the internal systems to ensure compliance with environmental laws, regulations and conditions set forth in this Agreement;
- 184
- 185 (7) The buyer's discharge of individuals, or severance of the interest of or affiliation with responsible parties, which would otherwise cause the City to deny the renewal, transfer or refuse to enter into this Agreement; and
- 186
- 187 (8) Consideration of the need for this Agreement in advancing the City's welfare, health, and prosperity.
- 188
- 189
- 190
- 191
- 192
- 193
- 194
- 195
- 196

197 Where the City determines that pursuant to the above, mitigating factors exist, or, pursuant to this Section 18C, that the buyer has demonstrated rehabilitation, the City shall approve the transfer of this Agreement.

198
199

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino

Mike 4/10/15 11:05 AM
Deleted: Area No. Three

Jim Lance 5/7/15 7:12 AM
Deleted: recommend

Jim Lance 5/7/15 7:10 AM
Deleted: al to the

Mike 4/10/15 4:11 PM
Deleted: Board

Jim Lance 5/7/15 7:10 AM
Deleted: City Council

Mike 4/10/15 4:11 PM
Deleted: Department

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 4:11 PM
Deleted: Department

Mike 4/10/15 4:11 PM
Deleted: Department

Jim Lance 5/7/15 7:11 AM
Deleted: recommend to the

Mike 4/10/15 4:11 PM
Deleted: Board

Jim Lance 5/7/15 7:11 AM
Deleted: City Council

Mike 4/10/15 11:05 AM

Deleted: County of Mendocino

Mike 4/10/15 11:06 AM

Deleted: Area No. Three

212 **SECTION 19 - TERMINATION**

213
214 **A. Events of Default**
215

216 Each of the following shall constitute an event of default (“Event of Default”) hereunder:
217

218 (1) Grantee has demonstrated an inability to properly perform the franchised activity,
219 failed to comply with one or more of the terms or conditions of this Agreement, or
220 future amendment(s) to this Agreement, failed to comply with any material
221 federal, state or local laws, ordinances, rules or regulations pertaining to the
222 franchised activity, or when the franchised activity has become a nuisance or is
223 detrimental to the public health, safety or welfare. If Grantee does not perform
224 franchise services for a period in excess of 15 days, this Agreement may be
225 terminated by the City. Grantee shall not be in default of this Agreement if
226 Grantee commences such action required to cure the particular breach within 7
227 calendar days after such notice, and it continues such performance diligently until
228 completed.
229

Mike 4/9/15 5:56 PM

Deleted: County

230 (2) Any representation, warranty, or disclosure made to City by Grantee in
231 connection with or as an inducement to entering into this Agreement or any future
232 amendment to this Agreement, which proves to be false or misleading in any
233 material respect as of the time such representation or disclosure is made, whether
234 or not any such representation, warranty, or disclosure appears as part of this
235 Agreement;
236

Mike 4/9/15 5:56 PM

Deleted: County

237 (3) There is a seizure or attachment (other than a pre-judgment attachment) of, or
238 levy affecting possession on, the operating equipment of Grantee, including
239 without limit its vehicles, maintenance or office facilities, or any part thereof of
240 such proportion as to substantially impair Grantee's ability to perform under this
241 Agreement and which cannot be released, bonded, or otherwise lifted within 48
242 hours excluding weekends and Holidays;
243

244 (4) Grantee files a voluntary petition for debt relief under any applicable bankruptcy,
245 insolvency, debtor relief, or other similar law now or hereafter in effect, or shall
246 consent to the appointment of or taking of possession by a receiver, liquidator,
247 assignee (other than as a part of a transfer of equipment no longer useful to
248 Grantee or necessary for this Agreement), trustee (other than as security for an
249 obligation under a deed of trust), custodian, sequestrator (or similar official) of the
250 Grantee for any part of Grantee's operating assets or any substantial part of
251 Grantee's property, or shall make any general assignment for the benefit of
252 Grantee's creditors, or shall fail generally to pay Grantee's debts as they become
253 due or shall take any action in furtherance of any of the foregoing;
254

257 (5) A court having jurisdiction shall enter a decree or order for relief in respect of the
258 Grantee, in any involuntary case brought under any bankruptcy, insolvency,
259 debtor relief, or similar law now or hereafter in effect, or Grantee shall consent to
260 or shall fail to oppose any such proceeding, or any such court shall enter a decree
261 or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator
262 (or similar official) of the Grantee or for any part of the Grantee's operating
263 equipment or assets, or orders the winding up or liquidation of the affairs of
264 Grantee;

265 (6) If Grantee (i) is the subject of any labor unrest including work stoppage or
266 slowdown, sick-out, picketing or other concerted job action; (ii) appears in the
267 reasonable judgment of City to be unable to regularly pay its bills as they become
268 due; or (iii) is the subject of a civil or criminal judgment or order entered by a
269 federal, state, regional or local agency for violation of an Applicable Law, and the
270 City believes in good faith that Grantee's ability to perform under the Agreement
271 has thereby been placed in substantial jeopardy, the City may, at its option and in
272 addition to all other remedies it may have, demand from Grantee reasonable
273 assurances of timely and proper performance of this Agreement, in such form and
274 substance as the City believes in good faith is reasonably necessary in the
275 circumstances to evidence continued ability to perform under the Agreement. If
276 Grantee fails or refuses to provide satisfactory assurances of timely and proper
277 performance in the form and by the date required by City, such failure or refusal
278 shall be an event of default.
279

280
281 **B. Right to Suspend, Amend, or Terminate**

282
283 Upon an "Event of Default" by Grantee, the City may suspend, amend, or terminate this
284 Agreement.

285
286 **C. Procedures**

287
288 Prior to suspending, amending, or terminating this Agreement, the City may provide the
289 Grantee with written notice of the proposed action and the reasons for it. The notice shall state
290 that prior to the suspension, amendment or revocation, the Grantee is entitled to a hearing before
291 the City if the Grantee requests such a hearing in writing and the request is received by the City
292 not more than ten (10) days after notice of the proposed action has been mailed to the Grantee.

293
294 If the City does not receive a written request for a hearing within the time period
295 prescribed above, the Grantee is deemed to have waived the right to a hearing and the City may
296 immediately suspend, amend, or terminate this Agreement on the terms specified in the notice.
297

298 In the event of a serious violation, as determined by the City, or in the event of repeated
299 violations of this Agreement, the Agreement shall be terminated by the City Council.

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:06 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 4:23 PM
Deleted: granted by the Board

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 4:23 PM
Deleted: Department

Mike 4/10/15 4:23 PM
Deleted: Board

314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356

D. Agreement - Revocation - Equipment Use by City

In the event of suspension or revocation of this Agreement, the City shall have the right forthwith to take possession of all trucks and other equipment of the Grantee for the purpose of Collecting and Disposing of the Solid Waste and performing all other duties which the Grantee is obligated to perform. The City shall have the right to retain possession of such trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by the City for such purpose. The City shall pay the Grantee a reasonable rental for the use of such trucks and equipment.

E. Liquidated Damages

(1) **General.** The City and Grantee find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Grantee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

(2) **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Solid Waste and Recyclable Materials Collection service is of utmost importance to City and that City has considered and relied on Grantee's representations as to its quality of service commitment in awarding an Agreement to it. The City and Grantee recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The City and Grantee further recognize that if Grantee fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the City and

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino

Mike 4/10/15 11:06 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414

Grantee agree that the Liquidated Damages amounts established in Exhibit F of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Grantee agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit F.

City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of complaints by Customers, Owners, and Generators.

Liquidated Damages will only be assessed after Grantee has been given the opportunity but failed to rectify the damages as described in this Agreement. City shall give Grantee notice of its intention to assess Liquidated Damages. The notice will include a brief description of the incident(s) and non-performance. The City may review (and make copies at its own expense) all information in the possession of Grantee relating to incident(s) and non-performance. City may, within 10 calendar days after issuing the notice, request a meeting with Grantee. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City will provide Grantee with a written explanation of his or her determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 18E(2). The decision of City shall be final and Grantee shall not be subject to, or required to exhaust, any further administrative remedies.

- (4) **Amount.** City may assess Liquidated Damages for each calendar day or event, as appropriate, that Grantee is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit F subject to annual adjustment described below.

The amount of Liquidated Damages specified in Exhibit F shall be adjusted annually on the first day of the Rate Period. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect 75% of the changes in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the method following:

Mike 4/10/15 11:05 AM
Deleted: County of Mendocino
Mike 4/10/15 11:06 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

424 Adjusted Liquidated Damage Amount = Then-current Liquidated Damage
425 Amount x most current CPI-U/previous 12-month CPI-U

426
427 For example:

428
429 Current Liquidated Damage Amount = \$150.00

430
431 Most recently published index (May 2004) = 193.5

432
433 Index published twelve months prior to most recently published index
434 (May 2003) = 191.0

435
436 Adjusted Liquidated Damage Amount = \$150.00 x (193.5/191.0) =
437 \$151.96

438
439 If the CPI-U is discontinued or revised during the Term by the United States
440 Department of Labor, such other government index or computation with which it
441 is replaced shall be used in order to obtain substantially the same result as would
442 be obtained if the CPI had not been discontinued or revised.

- 443
444 (4) **Timing of Payment.** Grantee shall pay any Liquidated Damages assessed by
445 City within 10 calendar days of the date the Liquidated Damages are assessed. If
446 they are not paid within the 10-day period, and providing Grantee has exhausted
447 its right to administrative review in accordance with this Section, City may
448 proceed against the performance bond required by the Agreement, request
449 replacement of Grantee’s general manager, order the termination of the exclusive
450 Collection rights granted by this Agreement, or all of the above.
451

Mike 4/10/15 11:05 AM

Deleted: County of Mendocino

Mike 4/10/15 11:06 AM

Deleted: Area No. Three

Jerry Ward 5/11/15 10:24 AM

Deleted: -

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

455 | **SECTION 20 - RIGHTS OF CITY TO PERFORM DURING EMERGENCY**

457 | **A. Provision of Emergency Services**

458
459 | Grantee shall provide emergency services at the City’s request in the event of major
460 accidents, disruptions, or natural calamities. Emergency services may include, but are not
461 limited to, assistance handling salvaged materials, Processing, Disposing of Solid Waste or
462 Recyclable Materials following a major accident, disruption, or natural calamity. Grantee shall
463 be capable of providing emergency services within 24 hours of notification by the City or as
464 soon thereafter as is reasonably practical in light of the circumstances. Emergency services,
465 which exceed the Grantee’s obligations, shall be compensated in accordance with Section 15C.
466 | If Grantee cannot provide the requested emergency services, the City shall have the right to take
467 possession of the Grantee’s equipment for the purposes of providing emergency services.

469 | **B. Franchise Revocation - Emergency Actions**

470
471 | Notwithstanding provisions of this Agreement to the contrary, the City may temporarily
472 suspend this Agreement, without prior notice and a hearing, whenever an emergency exists
473 which poses an immediate threat to the public health, safety, or welfare. In such a case, the City
474 shall attempt to notify the Grantee at least twenty four (24) hours prior to the proposed action. A
475 hearing shall be held within seventy two (72) hours of the action taken to suspend the franchise.
476 | Appeals to the City Council are governed by Section 21.

478 | **C. Labor Dispute - City Assumption of Duties - Authorized**

479
480 | In the event the refuse Collection of a Grantee is interrupted by a labor dispute and
481 scheduled Collections are discontinued for more than seventy-two (72) hours, the City shall have
482 the right to forthwith take temporary possession of all facilities and equipment of the Grantee for
483 the purpose of continuing the service which the Grantee has agreed to provide in order to
484 preserve and protect the public health and safety. The City shall have the right to retain
485 possession of such facilities and equipment and to render the required service, until the Grantee
486 can demonstrate to the satisfaction of the City that required services can be resumed by the
487 Grantee; provided, however, that such temporary assumption of the Grantee's obligations under
488 this Agreement shall not be continued by the City for more than one hundred twenty (120) days
489 from the date such operations were undertaken. Should the Grantee fail to demonstrate to the
490 satisfaction of the City that required services can be resumed by the Grantee prior to the
491 expiration of the aforementioned one hundred twenty (120) days, the rights and privileges
492 granted to the Grantee may be forfeited and the franchise granted herein may be terminated.

494 | Should the City exercise its right to take temporary possession of Grantee’s facilities used
495 in providing service under this Agreement, City shall recognize Grantee’s obligations to provide
496 service in accordance with other agreements and shall cooperate with Grantee in its efforts to
497 provide such other service using the Grantees facilities in the City’s temporary possession.

Mike 4/10/15 11:06 AM

Deleted: County of Mendocino

Mike 4/10/15 11:06 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: COUNTY

Mike 4/10/15 4:25 PM

Deleted: Department

Mike 4/10/15 4:25 PM

Deleted: Department

Mike 4/10/15 4:25 PM

Deleted: Board

Mike 4/9/15 5:56 PM

Deleted: County

Jerry Ward 5/11/15 10:24 AM

Deleted: -

515 | **D. Labor Dispute - City Assumption of Duties - Use of Revenue**

516 |
517 | During any period in which the City has temporarily assumed the obligations of the
518 | Grantee under this Agreement, the City shall be entitled to the Adjusted Gross Revenues
519 | attributable to operations during such period and shall pay there from only those costs and
520 | expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable
521 | to the period. The excess, if any, of revenue over applicable or allocable costs and expenses
522 | during such period shall be deposited in the treasury to the City to the credit of the General Fund.
523 | Final adjustment and allocation of Adjusted Gross Revenues, costs and expenses to the period
524 | during which the City temporarily assumed the obligations of the Grantee shall be determined by
525 | an audit, by a certified public accountant or licensed public accountant, and prepared in report
526 | form with that person's unqualified opinion annexed thereto.

527 |
528 | **E. Labor Dispute - City Assumption of Duties – Employees**

529 |
530 | Employees of the Grantee may be employed (providing employee consents) by the City
531 | during any period in which the City temporarily assumes the obligations of the Grantee under
532 | this Agreement; provided, however, that the rate of compensation to be paid the employees, or
533 | any other employees, shall be the rate or rates in effect at the time the Grantee's service was
534 | interrupted by the labor dispute, and the terms and conditions of employment shall be the same
535 | as provided by the Grantee.

536 |
537 |

Mike 4/10/15 11:06 AM

Deleted: County of Mendocino

Mike 4/10/15 11:06 AM

Deleted: Area No. Three

Mike 4/9/15 5:56 PM

Deleted: County

546 **SECTION 21 - GENERAL PROVISIONS**

547
548 **A. Entire Agreement**
549

550 This Agreement, including the exhibits, represents the full and entire Agreement between
551 the City and Grantee with respect to the matters covered herein.

552
553 **B. Force Majeure**
554

555 Neither party shall be in default under this Agreement in the event and for so long as it is
556 impossible or extremely impracticable for it to perform its obligations due to any of the
557 following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural
558 disasters such as floods, earthquakes, landslides, fires, and volcanic eruptions, strikes, lockouts
559 and other labor disturbances or other catastrophic events which are beyond the reasonable
560 control of Grantee. Labor unrest, including but not limited to strike, work stoppage or
561 slowdown, sick-out, picketing, or other concerted job action conducted by Grantee's employees
562 or directed at Grantee is not an excuse from performance and Grantee shall be obligated to
563 continue to Collect and Dispose of Solid Waste, notwithstanding the occurrence of any or all of
564 such events; provided, however, that labor unrest or job action directed at a third party over
565 whom Grantee has no control, shall excuse performance.
566

567 A party claiming excuse under this Section must (i) have taken reasonable precautions to
568 avoid being affected by the cause, and (ii) notify the other party in writing within 5 days after the
569 occurrence of the event specifying the nature of the event, the expected length of time that the
570 party expects to be prevented from performing, and the steps which the party intends to take to
571 restore its ability to perform.

572 In the event a labor disturbance interrupts Collection, Transportation Disposal, and/or
573 Processing of Solid Waste, Mixed Organic Waste or Recyclable Materials by Grantee as required
574 under this Agreement, City may elect to exercise its rights under Section 20 of this Agreement.
575

576
577 **C. Notice Procedures**
578

579 All notices, demands, requests, proposals, approvals, consents, and other communications
580 which this Agreement requires, authorizes, or contemplates shall be in writing and shall either be
581 personally delivered to a representative of the Parties at the address below or deposited in the
582 United States mail, first class postage prepaid, addressed as follows:
583

- 584 A. If to City:
585 _____ City Manager
586 _____ City of Willits
587 _____ 111 E. Commercial Street
588 _____ Willits, CA 95490

Mike 4/10/15 11:06 AM
Deleted: County of Mendocino
Mike 4/10/15 11:06 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 4:28 PM
Deleted: Solid Waste Director ... [30]

Mike 4/10/15 4:28 PM
Deleted: P.O. Box 123

Mike 4/10/15 4:28 PM
Deleted: .

596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638

B. If to Grantee:
Solid Wastes of Willits, Inc.
Gerald W. Ward, President
PO Box 1425
Willits, CA 95490

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

Except as otherwise provided herein, the notices required or given pursuant to this title shall be deemed properly served on the day it is personally delivered or when deposited, postage prepaid, in the United States mail, addressed to the address provided to the Department.

D. Independent Contractor

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

E. Roadway Damage

Grantee shall be responsible for any extraordinary damage (not including normal wear) caused by Grantee's negligence to City's driving surfaces, whether or not paved, resulting from the weight of vehicles providing Collection services at the location of Bins and Containers on public property. This Agreement does not purport to affect, in any way, Grantee's civil liability to any third parties

F. Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees, Grantees or Subcontractors of the Grantee to private or public property shall be repaired or replaced by Grantee, at Grantee's sole expense.

G. Compliance with City Code

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 Agreement, subject to Section 1C.

Mike 4/10/15 11:06 AM
Deleted: County of Mendocino

Mike 4/10/15 11:06 AM
Deleted: Area No. Three

Mike 4/10/15 4:28 PM
Deleted: Ukiah, CA 95482

Jerry Ward 5/11/15 10:25 AM
Deleted: -

Jerry Ward 5/11/15 10:25 AM
Deleted: -

Jerry Ward 5/11/15 10:26 AM
Deleted: -

Jim Lance 5/7/15 7:18 AM
Deleted: A

Jim Lance 5/7/15 7:18 AM
Deleted: II

Mike 4/9/15 5:56 PM
Deleted: County

Jerry Ward 5/11/15 10:26 AM
Deleted: -

653 **H. Severability**

654
655 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
656 Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect
657 the validity of the remaining portions of this Agreement or any part thereof, except as
658 specifically set forth herein.

659
660 **I. Waiver or Modification**

661 No waiver, alteration, or modification of any of the provisions of this Agreement shall be
662 binding unless in writing and signed by a duly authorized representative of both parties to this
663 Agreement.

664
665
666 **J. Forum Selection**

667
668 Grantee and City stipulate and agree that any litigation relating to the enforcement or
669 interpretation of this Agreement, arising out of Grantee's performance or relating in any way to
670 the work shall be brought in Superior Court in Mendocino County.

671
672 **K. Court Costs and Attorney Fees**

673 In the event legal action is instituted by either party to enforce this Agreement, the
674 prevailing party shall be entitled to reasonable attorney fees and actual costs in connection with
675 such action.
676
677
678

Mike 4/10/15 11:06 AM
Deleted: County of Mendocino
Mike 4/10/15 11:06 AM
Deleted: Area No. Three

Mike 4/9/15 5:56 PM
Deleted: County
Jim Lance 5/7/15 7:19 AM
Deleted:
Mike 4/9/15 5:56 PM
Deleted: County

682 **IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives,
683 have affixed their hands on the day and year this Agreement first above written.

684
685 GRANTEE: Solid Wastes of Willits, Inc
686
687
688 _____
689

690 Gerald W. Ward, President
691 Solid Wastes of Willits, Inc.
692 |

693
694 Date: _____
695
696

697 **CITY OF WILLITS**
698
699
700 _____

701 Bruce Burton, Mayor
702
703
704 Date: _____
705

706 ATTEST:
707

708 City Clerk
709

710 By:
711

712 APPROVED AS TO FORM:
713

714 H. James Lance, City Attorney
715

716 By: _____
717
718 |

Mike 4/10/15 11:06 AM

Deleted: County of Mendocino

Mike 4/10/15 11:06 AM

Deleted: Area No. Three

Mike 4/13/15 11:30 AM

Deleted: P.O. Box 1425 -

... [32]

Mike 4/9/15 5:56 PM

Deleted: COUNTY

Mike 4/10/15 4:29 PM

Deleted: MENDOCINO

Mike 4/10/15 4:29 PM

Deleted: Carre Brown, Chair, BOARD OF SUPERVISORS

Mike 4/10/15 4:30 PM

Deleted: Clerk of the Board

Mike 4/10/15 4:30 PM

Deleted: Jeanine B. Nadel

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/10/15 4:30 PM

Deleted: Counsel

Mike 4/10/15 4:30 PM

Deleted: APPROVED AS TO INSURANCE REQUIREMENTS: -

... [33]

EXHIBIT A

SOURCE REDUCTION and WASTE DIVERSION PROGRAMS

1) **SINGLE STREAM RECYCLING:** A form of “single stream” curbside recycling service shall be provided to all Single-Family Units, and to any housing units with individual solid waste collection service, including mobile home parks and Multi-Family Units that use separate Carts. Single stream recycling collection service shall be every other week. The single stream recycling Cart will be 95 gallons or 65 gallons. The Cart will be of a style and color approved by the City, and will be provided to every customer. Additional Carts will be provided if needed. Recyclable Materials to be collected include, but are not limited to, newspaper, mixed paper, office paper, cardboard, paste board, press board, magazines, aluminum cans, glass containers, small pieces of scrap metal weighing less than 10 pounds and plastic containers nos. 1-7. Customers may mix all Recyclable Materials together in the Cart. There shall be no additional charge for the aforementioned service.

Jerry Ward 5/11/15 10:26 AM
Deleted: **SWOW EXCEPTION #3**
Mike 4/15/15 9:20 AM
Deleted: -
Mike 4/10/15 4:30 PM
Deleted: other
Mike 4/10/15 4:31 PM
Deleted: Department

2) **COMMERCIAL RECYCLING:** A form of Commercial Recycling will be provided to all Commercial Solid Waste customers, including Multi-Family Units that use Bins or Compactors. Commercial Recycling may be in the form of Single Stream Recycling Carts, or Bins. Where determined that there is sufficient volume one type of Recyclable Material (greater than one yard per week), the Grantee may require Commercial Solid Waste Generator to use Segregated Recyclable Material Bin(s) for the material(s) generated in sufficient volume. Otherwise, Commercial Recycling will be provided as Single Stream Recycling Carts and Bins. All Carts and Bins will be properly and neatly labeled. Collection will be at a minimum every other week. Recycling Carts will be 95 gallons. Recycling Bins may be of any size deemed necessary by Grantee for the specific Commercial Solid Waste Generator. The Bins and Carts will be of a style and color approved by the City, and will be provided to every customer. Additional Bins and Carts will be provided if needed. Recyclable Materials to be collected include, but are not limited to, newspaper, mixed paper, office paper, cardboard, paste board, press board, magazines, aluminum cans, glass containers, small pieces of scrap metal weighing less than 10 pounds and plastic containers nos. 1-7. Customers using single stream recycling may mix all Recyclable Materials together into Carts and bins. There shall be no additional charge for cart recycling service and charges for bin recycling service are set forth in Exhibit B.

Jerry Ward 5/11/15 10:27 AM
Deleted: 2) .

Mike 4/10/15 4:32 PM
Deleted: Department

3) **CONSTRUCTION AND DEMOLITION WASTE:** Grantee shall offer recycling service for segregated unpainted wood, Green Waste, scrap metal, concrete, asphalt, gypsum board (also known as “dry wall”) and carpet padding to Construction and Demolition customers and other renters of roll-off boxes in sizes between 20 and 50 cubic yards. A Debris Box for these materials will be provided at a 20% discount.

Jerry Ward 5/11/15 10:27 AM
Deleted: <#> .
<#> .
<#> .
... [34]

Mike 4/10/15 4:33 PM
Deleted: 3) .

Mike 4/15/15 9:20 AM
Deleted:

4) **MIXED ORGANIC WASTE:** Grantee shall offer all Residential and Commercial Customers Mixed Organic Waste collection in 65-gallon, 95-gallon Carts or in Bins in a style and color to be approved by the City, to be collected weekly. There shall be no additional charge for this service.

Jerry Ward 5/11/15 10:27 AM
Deleted: <#> .
<#> .
... [35]

Jerry Ward 5/11/15 10:28 AM
Deleted: -

Jim Lance 5/7/15 7:22 AM
Deleted:

5) **CANCELLATION OF RECYCLING OR MIXED ORGANIC WASTE SERVICE:** Grantee may cancel Recyclable Material or Mixed Organic Waste Service to any Customer if, after written warning, the Customer fails to prevent excessive contamination of the Container by unacceptable materials. Grantee shall notify City of any service cancellation.

Jerry Ward 5/11/15 10:28 AM
Deleted: <#> - ... [36]
Jerry Ward 5/11/15 10:28 AM
Deleted: -

EXHIBIT B

CITY-APPROVED RATES

Mike 4/9/15 5:56 PM
Deleted: COUNTY

Jerry Ward 5/11/15 10:30 AM
Deleted: - ... [37]

Unknown
Formatted: Font:Not Bold

Exhibit B

Effective January 1, 2014
1.52%

RATE SCHEDULE
CITY OF WILLITS

COMMERCIAL REFUSE RATES

	1/WEEK	2/WEEK	3/WEEK	4/WEEK	5/WEEK	SPECIAL PU
1 YARD CONTAINER	\$ 193.78	\$ 340.72	\$ 519.84	\$ 698.93	\$ 878.11	\$106.89
1.5 YARD CONTAINER	216.02	386.04	586.55	786.75	988.68	126.08
2 YARD CONTAINER	261.66	477.67	723.54	970.69	1,217.02	148.31
3 YARD CONTAINER	261.98	651.55	1,042.47	N/A	N/A	196.92
4 YARD CONTAINER	453.61	816.48	1,307.61	N/A	N/A	286.23
6 YARD CONTAINER	699.49	1,259.05	2,014.47	N/A	N/A	413.78
35 GALLON CART	\$ 26.6	51.80	75.90	N/A	N/A	18.52
65 GALLON CART	53.11	103.54	N/A	N/A	N/A	22.58
95 GALLON CART	69.29	132.51	N/A	N/A	N/A	26.64
CONATINER LOCKING FEE/MONTH				\$ 8.00		
AFTER 8:00 am PICKUP CHARGE/MONTH				8.00		
LOCKS EACH				20.00		
CONTAINER/CART DELIVERY FEE				40.21		
RECYCLE CONTAINER RENTAL/MONTH				-		
RECYCLE ONLY SERVICE				6.00		
RESTART FEE				15.00		

RESIDENTIAL REFUSE RATES

	MONTH
NO REFUSE SERVICE (Residential Base)	\$ 5.00
20 GALLON CART	12.69
35 GALLON CART	22.45
65 GALLON CART	48.39
95 GALLON CART	60.84
20 GALLON CART - roll-out	17.46
35 GALLON CART - roll-out	26.56
65 GALLON CART - roll-out	53.11
95 GALLON CART - roll-out	69.29
35 GALLON CART - SPECIAL PICKUP	18.93
65 GALLON CART - SPECIAL PICKUP	23.09
95 GALLON CART - SPECIAL PICKUP	27.24
CALL BACK CHARGE/EACH	10.00
RESTART FEE	5.00

Recycling service and recycling carts shall be offered to commercial and residential customers at no charge in addition to refuse fees specified in this rate schedule.

Unknown

Formatted: Font:Not Bold

INDUSTRIAL REFUSE RATES

	EACH	HEIGHT	WIDTH	LENGTH
4 YARD CONTAINER	\$ 144.98	4'	4'	4'
20 YARD DROP BOX	543.68	5' 5"	7' 5"	16'
30 YARD DROP BOX	657.12	5' 5"	7' 5"	20'
40 YARD DROP BOX	848.12	6'	7' 5"	22'
50 YARD DROP BOX	1,094.65	8'	7' 5"	22'
10 YARD COMPACTOR	663.90			
12 YARD COMPACTOR	716.31			
DELIVERY FEE	68.61			
4 YARD DELIVERY FEE	\$53.40 /EACH	OVERLOAD CHARGES \$ \$20.00/yard		

EXHIBIT C

PERFORMANCE BONDING REQUIREMENTS

The City has the right to require the Grantee to post a performance bond not to exceed the sum of \$1,000,000 which shall serve as security for the faithful performance by the Grantee of all the provisions and obligations of this Agreement.

Due to the demonstrated performance of the Grantee in the Collection and Transportation of Solid Waste in City, the City hereby waives the requirement for the Grantee to post a performance bond. However, the City may, at any time during the Term of this Agreement, notify the Grantee in writing that this waiver has been rescinded and require the acquisition of a performance bond in the amount and with terms as specified by the City. City agrees that should this waiver be rescinded, the actual cost to the Grantee of the bond will be considered a new,

City-imposed cost to the Grantee that may be recovered as a pass-through rate adjustment as described in Section 15 of this Agreement.

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 4:54 PM
Deleted: Mendocino County

Mike 4/9/15 5:56 PM
Deleted: County

EXHIBIT D

PUBLIC EDUCATION AND COMMUNITY OUTREACH PROGRAMS

The Grantee shall perform the following services as part of the public education program. Grantee shall print literature or portions of literature in both English and Spanish if directed by City.

Residential Education Program (minimum requirements)

- Prepare and distribute a brochure describing how to prepare Recyclable Material and Mixed Organic Waste for Collection. Grantee shall inform residents as to the acceptable materials that can be included in the Recyclable Materials Containers and any common contaminants to be excluded from Collection.
- An annual newsletter shall be distributed to all residents promoting and explaining the programs. The newsletter shall be reviewed and approved by City staff and distributed to residents at the same time Residential bills are issued.
- A corrective action notice shall be prepared and used in instances where Customers set out inappropriate materials.
- Non-program related information on source reduction, reuse, and Recyclable Materials (e.g. junk mail reduction, household hazardous waste events, grass cycling, composting, etc.) shall be available.
- Specially designed public education materials and programs to reach Multi-Family residents shall be prepared.

Commercial Education Program (minimum requirements)

- Separate “how-to” brochures explaining the Recyclable Materials Collection programs that are tailored to each general business types (i.e., restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).
- Prepare and distribute a Recyclable Materials resource guide to provide vendors’ names, numbers and contacts for purchasing recycled products, re-use donation locations, and other Recyclable Materials companies, to be updated annually.
- Prepare and distribute an annual newsletter to be distributed to all businesses promoting and explaining the programs. The newsletter shall be reviewed and approved by City staff.
- Prepare and distribute a corrective actions notice for use in instances where the resident sets out inappropriate materials.

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

Mike 4/9/15 5:56 PM

Deleted: County

All Customers

Grantee shall develop and implement a public education program designed to educate Generators regarding proper methods of handling and Disposing of Hazardous Waste and a load inspection program for Grantee's personnel to detect and discover Hazardous Waste placed by Generator for Collection by Grantee.

EXHIBIT E
SCHEDULE FOR LIQUIDATED DAMAGES

Grantee may be assessed Liquidated Damages if Grantee fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

COLLECTION RELIABILITY

1.	Maintain Collection Schedule. For each failure over 5 during any Rate Period to Collect from all Customers on a route on the scheduled day (unless non-collection was warranted pursuant to this Agreement)	\$12.50/ Container
2.	Start New Customer. For each failure over 10 during Rate Period to commence service to a new Customer within 7 calendar days after order received and account number established	\$75/ event

COLLECTION QUALITY

3.	Leaks, Litter or Spills. For each occurrence over 10 during the Rate Period of unreasonable leaks, litter, or spills of Solid Waste, <u>Mixed Organic Waste</u> or Recyclable Materials near Containers or on public streets and failure to pick up or clean up such material immediately	\$150/ event
4.	Improper Container Placement. For each occurrence over 20 during the Rate Period of failure to replace Containers in original position, upright, with lids attached to or on Carts or Bins	\$75/ event
5.	Care of Private Property. For each failure over 24 during the Rate Period of not closing a Customer's gate, crossing planted areas, or damaging private property (including private vehicles)	\$150/ event
6.	Unauthorized Collection. For each occurrence over 10 the during Rate Period of Collecting Solid Waste and Recyclable Materials during unauthorized hours	\$300/ event
7.	Excessive Noise. For each occurrence over 12 during the Rate Period of excessive noise	\$150/ event
8.	Non-Collection Tags. For each failure over 12 during the Rate Period of not tagging Containers which have not been Collected explaining the reason for non-Collection	\$75/ event
9.	Cleaning Collection Vehicles. For each occurrence over 12 during the Rate Period of failure to clean Collection vehicles at least one time per week	\$75/ event
10.	Discourteous Behavior. For each occurrence of discourteous behavior by Collection vehicle personnel, Customer service personnel, or other employees of Grantee	\$250/ event

Jim Lance 5/7/15 7:23 AM
Deleted: EXHIBIT E - [38]
Jim Lance 5/7/15 7:23 AM
Deleted: F

CUSTOMER SERVICE RESPONSIVENESS

11.	Call Returns. Failure to return 95 percent of calls received before noon of the following business day	\$250/ quarter
-----	---	----------------

REPORTING AND NOTICING

12.	Monthly Reports. Failure to submit monthly report (as described in Section 14.H) in the time frame specified in Section 14.L of this Agreement	\$50/ day report is overdue
13.	Annual Reports. Failure to submit annual reports (as described in Sections 14.I through 14.K) in the timeframe specified in Section 14.L of this Agreement.	\$150/ day report is overdue
14.	Report Hazardous Waste. For each failure to notify the appropriate authorities of known reportable quantities of Hazardous Waste within one business day.	\$250/ event

PUBLIC EDUCATION

15.	Failure to prepare and distribute to residents door hanger, flyer or mailer to Customers regarding their specific Collection day and observed Holiday's	\$75/ day for each day until mailer is sent
16.	Failure to prepare and mail annual newsletter to all residents by the end of each Rate Period	\$75/ day for each day until mailer is sent

BILLING

17	Failure to correctly bill a customer at the approved rate for the service	\$25 per occurrence

OTHER

18	Disposal of Recyclables. For each ton of Recyclable Materials <u>or Mixed Organic Waste</u> Disposed of without written approval of the <u>City</u>	\$250/ ton
19	Use of Unauthorized Facilities. For each ton of Solid Waste, <u>Mixed Organic Waste</u> or Recyclable Materials Disposed or Processed at a facility not approved for use under the provisions of this Agreement	\$250/ ton
20	Failure of Other Obligations. Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by <u>City</u> :	\$150/ for each obligation per day until obligation is performed

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/9/15 5:56 PM
Deleted: County

In placing initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had many opportunities to consult with legal counsel and obtain an explanation of liquidated damage provisions of the time that the Agreement was made.

| City Initial Here: _____ Grantee Initial Here: _____

Mike 4/9/15 5:56 PM
Deleted: County

Mike 4/10/15 4:59 PM
Deleted: . .

**AGREEMENT TO EXTEND THE TERM OF AND AMEND THE AGREEMENT FOR
TRANSFER STATION OPERATION AND
SOLID WASTE TRANSPORTATION AND DISPOSAL
BETWEEN THE CITY OF WILLITS
AND SOLID WASTES OF WILLITS, INC.**

This Agreement to amend the Transfer Station Operation and Solid Waste Transportation and Disposal is made this ____ day of _____, 2015 at Willits, California by Solid Wastes of Willits, Inc., (hereinafter "CONTRACTOR") and the City of Willits (hereinafter "CITY").

WHEREAS, in February and March, 2000, CONTRACTOR and CITY and other parties executed the Agreement for Transfer Station Operation and Solid Waste Transportation and Disposal (hereinafter, "Original Transfer Station Agreement") for the Willits Solid Waste Transfer Station and Recycling Center (hereinafter "SWTS"); and

WHEREAS, the Original Transfer Station Agreement will expire on December 3, 2015; and

WHEREAS, CITY has granted CONTRACTOR a new Franchise Agreement for Solid Waste Collection within the CITY; and

WHEREAS, in consideration for, and contingent upon, the aforementioned Franchise Agreement being formally approved and executed by both CITY and CONTRACTOR, CITY AND CONTRACTOR agree to extend and amend the Original Transfer Station Agreement with **an new** expiration date of December 3, 2030, as set forth herein, to constitute a new agreement (hereinafter, "New Transfer Station Agreement").

NOW, THEREFORE, for valuable and mutual consideration, it is agreed as follows:

1. CITY and CONTRACTOR hereby enter into a New Transfer Station Agreement that shall have the same terms and conditions of the Original Transfer Station Agreement except as follows:
 - A. "CITY shall generally replace "Agencies" insofar as the New Transfer Station Agreement shall be between only CONTRACTOR and CITY, and shall not include COUNTY and City of Willits Fort Bragg as parties. Any reference to the County of Mendocino and the City of Fort Bragg shall be inoperable.
 - B. Article 4, "Waste Flow to Transfer Station" shall be amended to include, and defined as "Waste Flow only from the incorporated area city limits of the City of Willits collected by CITY Franchise hauler."
 - C. The Construction Cost Component of the gate fee, currently \$2.55 per ton, shall expire on December 3, 2015, and the gate fee in effect at that date shall be reduced by this amount.

D. The initial term of the New Transfer Station Contract shall be December 3, 2015 to December 3, 2030, and will run concurrently with the CONTRACTOR'S Franchise Agreement, including extensions of that agreement, if any.

2. All other terms and conditions of the New Transfer Station Agreement shall be the same as the Original Transfer Station Agreement. CONTRACTOR and CITY mutually state their intention to produce a correct and updated text for the New Transfer Station Agreement, incorporating all amendments made since its original execution, and consider in good faith future amendments to the Transfer Station Agreement in concert with the County of Mendocino and City of Fort Bragg, which also possess are party to a separate agreement for use of the SWTS.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands on the day and year this Agreement first above written.

CONTRACTOR:

Gerald W. Ward, President
Solid Wastes of Willits, In

Date: _____

CITY OF WILLITS

Mayor

Attest:

City Clerk

Date: _____

Approved as to Form:

City Attorney

Date: _____