

**FRANCHISE AGREEMENT**

*between*

**COUNTY OF MENDOCINO**

*and*

**SOLID WASTES OF WILLITS, INC**

*for*

**SOLID WASTE REFUSE COLLECTION  
AREA NO. THREE (3)**

**September 1, 2010**

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### **List of Exhibits**

- A Source Reduction and Waste Diversion Programs
- B County-Approved Rates
- C Performance Bonding Requirements
- D Public Education and Community Outreach Programs
- E Map of Solid Waste Refuse Collection Area No. 3
- F Liquidated Damages

1                   **FRANCHISE AGREEMENT BETWEEN COUNTY OF MENDOCINO**  
2   **AND**  
3   **SOLID WASTES OF WILLITS, INC. for**  
4   **REFUSE COLLECTION AREA NO. THREE**

5  
6           This amended Franchise Agreement ("Agreement") is entered into this \_\_\_\_\_ day of  
7 August, 2010, between the County of Mendocino ("County") and Solid Wastes of Willits,  
8 Incorporated, a California corporation ("Grantee"), for the Collection, Transportation, and  
9 Disposal of Solid Waste and the Collection, Transportation, Processing, and marketing of  
10 Recyclable Materials in Solid Waste Refuse Collection Area No. Three (3).

11  
12   **RECITALS**

13  
14           WHEREAS, the Legislature of the State of California, by enactment of the California  
15 Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public  
16 interest to authorize and require local agencies to make adequate provisions for Solid Waste  
17 handling within their jurisdictions; and

18  
19           WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the  
20 Board of Supervisors of the County has determined that the public health, safety and well-being  
21 require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the  
22 Collection and recovery of Solid Waste from certain residential, industrial and commercial areas  
23 in the County; and

24  
25           WHEREAS, County and Grantee are mindful of the provisions of local, state, and federal  
26 laws governing the safe Collection, Transport, Recycling and Disposal of Solid Waste, including,  
27 but not limited to, AB 939, the Resource Conservation and Recovery Act ("RCRA") and the  
28 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

29  
30           WHEREAS, County has not, and, by this Agreement does not, instruct Grantee on its  
31 Collection methods, nor supervise the Collection of waste; and

32  
33           WHEREAS, Grantee has represented and warranted to County that it has the experience,  
34 responsibility, and qualifications to arrange with residents, commercial, industrial, institutional  
35 and other entities in the Franchise Area for the Collection and safe Transport to Disposal  
36 facilities of Solid Waste, the Board of Supervisors of the County determines and finds that the  
37 public interest, health, safety and well-being would be best served if Grantee were to make  
38 arrangements with residents and other entities to perform these services; and

39  
40           WHEREAS, the Board of Supervisors of the County declares its intention of maintaining  
41 reasonable rates for Collection and Transportation of Solid Waste and Discarded Recyclable  
42 Materials within the area covered by this grant of franchise; and

43  
44           WHEREAS, County and Grantee executed a Franchise Agreement on June 24, 2008 that

45 granted a Franchise Agreement to Grantee for County Solid Waste Collection Area No. Three,  
46 and County and Grantee now wish to make a new, comprehensive amendment to the original  
47 Agreement to extend the term and make other changes that shall replace all previous writings  
48 that constituted the Franchise Agreement for County Solid Waste Collection Area No. Three.  
49

50 **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 51
- 52 A. The Franchise Agreement as previously amended including revisions as to rates, is  
53 affirmed regarding the rights and obligations it assigned to the parties from its  
54 original date of execution on June 24, 2008 until the Effective Date of this amended  
55 Agreement herein.  
56
- 57 B. The Franchise Agreement is hereby amended so that it is changed and replaced in its  
58 entirety with the following amended Agreement herein:

59 | **SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND**  
60 **COMMERCIAL FRANCHISE**

61  
62  
63  
64 A. County grants to Grantee, for the term of and in accordance with this Agreement  
65 (including all extensions or renewals), an exclusive privilege, duty and right to make and enter  
66 into independent arrangements with residents of single family units, residents and/or owners of  
67 multifamily units and Persons in charge of commercial, industrial, institutional and other entities  
68 in the Franchise Area for the Collection, Transportation and removal to Solid Waste Disposal  
69 facilities, all Residential, Commercial, and Industrial Solid Waste, including Discarded  
70 Recyclable Materials generated or accumulated within the Franchise Area, with the exception of  
71 sewage sludge and seepage, which has been placed in a Grantee-provided Solid Waste  
72 Container, in the areas covered by this Agreement, as shown on the map entitled "Mendocino  
73 County Solid Waste Refuse Collection Areas," as its boundaries are now constituted or may  
74 hereafter be amended.

75  
76 B. Grantee agrees to be bound by and comply with all the requirements of this  
77 Agreement.

78  
79 C. In the event of and to the extent that any of the following (Items 1-3, below)  
80 require or are amended to require that either party take certain action or desist from taking  
81 certain action that affects the promises, covenants and/or performance of the parties hereunder,  
82 then this Agreement shall be amended to provide for the satisfaction of such requirements.  
83 Furthermore, should such amendments to this Agreement result in the Grantee having to incur  
84 additional expenses in performing its obligations hereunder, or if certain cost cutting measures  
85 are implemented that justify lower rates, then Grantee or County may seek rate adjustments  
86 therefore in accordance with the procedures under Section 15, below.

- 87  
88 (1) The County Code, the California Public Resources Code, other applicable  
89 state and federal laws, rules and regulations promulgated there under;  
90  
91 (2) The County of Mendocino County-wide Integrated Waste Management  
92 Plan and the County's Source Reduction and Recycling Element and  
93 Household Hazardous Waste Element; and  
94  
95 (3) Any and all amendments to said laws, plans, and regulations.  
96

97 **SECTION 2 – DEFINITIONS**

98  
99 A. **“AB939”** means the California Public Resources Code 40000 et. seq. and the  
100 regulations promulgated by the California Department of Resources Recycling and Recovery.

101  
102 B. **“Adjusted Gross Revenues”** means any and all revenue or compensation  
103 (excluding revenues or compensation collected from Independent Government Agencies) in any  
104 form derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents or any other  
105 Person or entity in which Grantee has a financial interest, in Collecting, Transporting, arranging,  
106 handling, and/or Disposing of Solid Waste or Recyclable Material generated in the Franchise  
107 Area pursuant to this Agreement, excluding the redemption value of Recyclable Materials  
108 purchased, occasional sale of capital equipment, and interest earned.

109  
110 C. **“Agreement”** means this Franchise Agreement between the County and Grantee.

111  
112 D. **“Applicable Law”** means all federal, State, and local laws, regulations, rules,  
113 orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency  
114 having jurisdiction over the Collection, Transportation, Processing, and Disposal of Solid Waste  
115 and Recyclable Materials that are in force on the Effective Date and as they may be enacted,  
116 issued or amended during the Term of this Agreement.

117  
118 E. **“Approved Green Waste Processing Site”** means the Pacific Recycling  
119 Solutions Green Waste Processing Facility, 4260 N. State Street, Ukiah, CA.

120  
121 F. **“Approved Recyclable Materials Processing Site”** means the Solid Wastes of  
122 Willits Material Processing Facility, 351 Franklin Avenue, Willits, CA.

123  
124 G. **“Authorized Recycling Entity”** means that person, partnership, joint venture or  
125 corporation authorized by a franchise agreement or permit with the County to collect Discarded  
126 and/or Non-Discarded Recyclables Materials. An Authorized Recycling Entity may be a  
127 municipal collection service, private refuse hauler, private recycling enterprise, or private  
128 nonprofit corporation or association.

129  
130 H. **“Bin”** shall mean a container designed for mechanical emptying with a close  
131 fitting cover and of a design approved by the Department with capacity of approximately one to  
132 six cubic yards.

133  
134 I. **“Board”** means the Board of Supervisors of Mendocino County.

135  
136 J. **“Bulky Waste”** means and includes, but not by way of limitation, discarded white  
137 goods (i.e., major household appliances), furniture, tires, carpets, mattresses, and similar large  
138 items, which cannot be placed in a covered Container.

139  
140 K. **“Cart”** means a plastic container with a hinged lid and wheels that is serviced by

141 an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 65, or 95  
142 gallons (or similar volumes).

143  
144 L. **“Collection”** means the act of collecting Solid Waste, Recyclable Materials, and  
145 other material at the place of generation in the Franchise Area.

146  
147 M. **“Commercial Solid Waste”** includes all types of Solid Wastes generated by  
148 commercial, industrial, governmental, and other sources, which have been placed in an  
149 authorized Grantee-provided Solid Waste Container used for the temporary storage of Solid  
150 Waste awaiting pickup. The term "Commercial Solid Waste" does not include Hazardous  
151 Wastes generated by commercial, industrial, governmental, and other sources and which are  
152 placed in separate Containers and which are covered by Hazardous Waste manifests.

153  
154 N. **“Compactor”** means a mechanical apparatus that compresses materials and/or  
155 the Container that holds the compressed materials. Compactors include two to four cubic yard  
156 Bins serviced by front-end loader Collection vehicles and 6 to 50 cubic yard Debris Boxes  
157 serviced by roll-off Collection vehicles.

158  
159 O. **“Containers”** mean Carts, Bins, Compactors, and Debris Boxes

160  
161 P. **“County”** means the County of Mendocino, State of California.

162  
163 Q. **“Customer”** means any Person receiving Solid Waste or Recyclable Material  
164 service under the provisions of this Agreement.

165  
166 R. **“Debris Box”** means an open-top Container with a capacity of 10 to 50 cubic  
167 yards that is serviced by a roll-off Collection vehicle.

168  
169 S. **“Designated Collection Location”** shall mean that Location at which only an  
170 Authorized Recycling Entity may collect materials.

171  
172 T. **“Department”** means Solid Waste Director, County of Mendocino, at the office  
173 designated by the County of Mendocino to administer this Franchise Agreement.

174  
175 U. **“Demolition and Construction Debris”** means:  
176

- 177 (1) Discarded materials generally considered to be not water soluble and  
178 nonhazardous in nature, including but not limited to steel, glass, brick, concrete,  
179 asphalt material, pipe, gypsum, wallboard, and lumber from the construction or  
180 destruction of a structure as part of a construction or demolition project or  
181 from the renovation of a structure and/or landscaping, and including rocks,  
182 soils, tree remains, trees, and other vegetative matter that normally  
183 results from land clearing, landscaping and development operations for a  
184 construction project.  
185
- 186 (2) Clean cardboard, paper, plastic, wood, and metal scraps from any  
187 construction and/or landscape project.  
188
- 189 (3) Non-construction and demolition debris wood scraps.  
190
- 191 (4) Insignificant amounts of other non-hazardous wastes that are generated  
192 at construction or demolition projects provided such amounts are consistent  
193 with best management practices of the industry.  
194
- 195 (5) Mixing of construction and demolition debris with other types of Solid  
196 Waste will cause it to be classified as other than construction and demolition  
197 debris.  
198

199 V. **“Designated Recyclable Material Buy-Back Site”** means the Grantee’s buy-  
200 back Recycling center to be opened at the Boonville Transfer Station or other locations approved  
201 by County, in accordance with all regulations of the California Department of Resource  
202 Recycling and Recovery.  
203

204 W. **“Designated Disposal Location”** means the Ukiah Transfer Station, 3551 Taylor  
205 Drive, Ukiah CA.  
206

207 X. **“Designated Waste”** means non-Hazardous Waste which may pose special  
208 Disposal problems because of its potential to contaminate the environment and which may be  
209 disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance  
210 issued by the California Department of Health Services. Designated Waste consists of those  
211 substances classified as Designated Waste by the State of California, in California Code of  
212 Regulations Title 23, Section 2522 as may be amended from time to time.  
213

214 Y. **“Discarded Recyclable Materials”** means any Recyclable Materials which the  
215 Generator disposes of without selling or donating.  
216

217 Z. **“Disposal or Dispose (or variation thereof)”** means the ultimate Disposal of  
218 Solid Waste at a Disposal Site.  
219

220 AA. **“Disposal Site”** means a facility for ultimate Disposal of Solid Waste as defined

221 in Public Resources Code Section 401.22.

222  
223 BB. **"Franchise Area,"** means the unincorporated portions of the County within the  
224 Solid Waste Refuse Collection Area No. Three (3) designated on the map entitled "Mendocino  
225 County Solid Waste Refuse Collection Areas" (included as Exhibit E) including all amendments  
226 and changes thereto.

227  
228 CC. **"Franchise Fee"** means the fee or assessment imposed by the County on Grantee  
229 solely because of its status as party to this Agreement, and which, inter alia, is intended to  
230 compensate County for its expenses in administering this Agreement and other Solid Waste-  
231 related activities.

232  
233 DD. **"Generator"** means any Person as defined by the Public Resources Code, whose  
234 act or process produces Solid Waste or Recyclable Materials as defined in the Public Resources  
235 Code, or whose act first causes Solid Waste to become subject to regulation.

236  
237 EE. **"Grantee"** shall mean the Person granted the franchise to arrange for the  
238 Collection of Solid Wastes and Recyclable Materials pursuant to this Agreement.

239  
240 FF. **"Green Waste"** means those discarded materials that will decompose and/or  
241 putrefy, including but not limited to, green trimmings, grass, weeds, leaves, prunings, branches,  
242 dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and  
243 other types of organic waste. Green Waste to be placed in a Container for Collection shall not  
244 exceed six inches in diameter and four feet in length. Tree stumps and logs are not to be  
245 considered "Green Waste" unless they are reduced to a chipped form; they shall be considered  
246 Bulky Waste. Biodegradable plant material, which is mixed with other kinds of Solid Waste,  
247 shall not be considered "Green Waste".

248  
249  
250 GG. **"Hazardous Waste or Materials"** means any waste materials or mixture of  
251 wastes defined as such pursuant to the Resource Conservation and Recovery Act, 42 U.S.C.  
252 Section 6901 et seq., or the Comprehensive Environmental Response, Compensation and  
253 Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., and all future amendments to either  
254 of them, or as defined by the California Environmental Protection Agency or the California  
255 Department of Resources Recycling and Recovery, or either of them. Where there is a conflict  
256 in the definitions employed by two or more agencies having jurisdiction over Hazardous or Solid  
257 Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing  
258 definition.

259  
260 HH. **"Holidays"** are defined as New Year's Day and Christmas Day.

261  
262 II. **"Independent Government Agencies"** means any Federal, State or local  
263 government agencies, including but not limited to special districts, school districts,  
264 Indian reservations, California Department of Parks and Recreation, California State

265 Department of Corrections, United States Forest Service, Bureau of Land Management,  
266 United States Corp of Engineers, which due to provisions of California State Law do not  
267 have to comply or recognize the Grantee as the County's exclusively franchised Solid  
268 Waste Collector.

269  
270 JJ. **"Industrial Solid Waste"** means Solid Waste in an amount exceeding an average  
271 of five hundred pounds (500 lbs.) per operating day produced by any Person principally engaged  
272 in the business of Processing or manufacturing agricultural, animal or other products or materials  
273 whose principal outlet for such products is wholesale rather than retail, and by any Person  
274 engaged in the business of building construction or demolition. Industrial Solid Waste excludes  
275 Non-Discarded Recyclable Materials.

276  
277 KK. **"Multi-Family Units"** shall mean any residential building, boardinghouse,  
278 apartment building, condominium complex, stock cooperative complex consisting of two or  
279 more independent dwelling units which receives Solid Waste and/or Recyclable Material  
280 services. Multi-Family Units does not include motels, hotel, or automobile courts.

281  
282 LL. **"Non-Discarded Recyclable Materials"** means any Recyclable Materials, as  
283 defined herein, that the Generator retains, sells, or donates.

284  
285 MM. **"Occupant"** means the Person in possession or control of the Premises, including  
286 but not limited to Persons such as tenant, lessee, licensee, manager, custodian, or caretaker.

287  
288 NN. **"Owner"** means the Person having dominion of or title to Premises.

289  
290 OO. **"Person"** means any individual, firm, corporation, partnership, joint venture,  
291 association, special district, school districts, limited liability company or partnership, group or  
292 combination thereof, includes the plural as well as the singular.

293  
294 PP. **"Premises"** means a parcel of real property to the center of any alley adjacent  
295 thereto, located in Franchise Area, upon which is situated any dwelling house or other place of  
296 human habitation, including each unit of a multiple dwelling building, or of a mobile home park;  
297 or upon which is conducted any business, occupation, or activity which results in the production  
298 or accumulation of Solid Waste.

299  
300 QQ. **"Processing"** means to prepare, treat, or convert through some special method.

301  
302 RR. **"Processing Site"** means any plant or site used for the purpose of sorting,  
303 cleansing, treating or reconstituting Recyclable Materials for the purpose of making such material  
304 available for reuse.

305  
306 SS. **"Rate Period"** means a 12-month period, commencing January 1 and concluding  
307 December 31 for which rates are calculated, with the exception that Rate Period One shall  
308 commence September 1, 2010 and conclude December 31, 2010.

309  
310 TT. **"Recyclable Material(s)"** includes materials which are reused or Processed or are  
311 in the future reused or Processed into a form suitable for reuse through reprocessing or  
312 remanufacture, consistent with the requirements of the Public Resources Code. No materials  
313 shall be considered Recyclable Materials unless such material is separated from Solid Waste.  
314 Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons,  
315 and store advertisements); mixed paper (including office paper, computer paper, magazines, junk  
316 mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books,  
317 grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes,  
318 cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass  
319 containers of any color (including brown, clear, and green glass bottles and jars); aluminum  
320 (including beverage containers, foil, food containers); steel, tin or bi-metal cans; plastic  
321 containers (no. 1 to 7); aseptic beverage boxes and non-hazardous scrap metal items weighing 10  
322 lbs. or less.

323  
324 UU. **"Residential Solid Waste"** means all types of Solid Waste which originate from  
325 residents of Single-Family Units and Multi-Family Units.

326  
327 VV. **"Responsible Party"** means: 1) Any individual or any corporation, partnership or  
328 business association or an officer, director, or management employee of a corporation,  
329 partnership, or business association that has the authority to make discretionary decisions with  
330 respect to the operations or financial management of the Grantee; or, 2) Any corporation, sole-  
331 proprietorship, partnership, or business association, or officer, director, or management  
332 employee of such entity, that holds at least five percent (5%) equity or debt interest in the  
333 Grantee. If any holder of such debt or equity is not a natural person, the term "responsible party"  
334 includes only the debtor, equity holding Person and officers, directors, and management  
335 employees of the debt or equity holder who are empowered to make discretionary decisions with  
336 respect to the operation or financial management of the Grantee.

337  
338 WW. **"Segregated Recyclable Materials"** means those Recyclable Materials which: 1)  
339 Have been source separated by the Person from whom they are being collected; or, 2) Are  
340 physically separated from other waste material following Collection.

341  
342 XX. **"Single-Family Unit"** means a dwelling which receives individual Solid Waste  
343 and/or curbside Recyclable Material service.

344  
345 YY. **"Solid Waste"** means and includes all putrescible and non-putrescible solid and  
346 semisolid wastes (including semi-liquid or wet wastes with insufficient moisture so as not to be  
347 free flowing), ashes, Recyclable Materials that have not been separated from Solid Waste,  
348 demolition and construction wastes and other discarded materials resulting from domestic,  
349 institutional, commercial, industrial, agricultural and community operations and activities. Solid  
350 Waste shall be expressly deemed to include Bulky Wastes as defined herein. Solid Waste does  
351 not include Hazardous Wastes or Designated Waste.

352

353           ZZ.    **"Solid Waste Collector"** means a Person who collects or Transports Solid Waste  
354 under authority granted by the Board or Department including his/her agents and employees.

355  
356           AAA. **"Solid Waste Ordinance"** means Title 9A of the Mendocino County Code, as  
357 currently adopted by the Mendocino County Board of Supervisors and future amendments to  
358 Title 9A as adopted by the Board of Supervisors.

359  
360           BBB. **"Subcontractor"** means a party who has entered into a contract, expressed or  
361 implied, with the Grantee for the performance of an act that is necessary for the Grantee's  
362 fulfillment of its obligations under this Agreement.

363  
364           CCC. **"Transportation"** means the act of transporting or state of being transported.

365  
366           DDD. **"Waste Stream"** means the total amount of Solid Waste generated in a given  
367 area, such as the County or a specific Franchise Area. Waste Stream does not include  
368 Recyclable Materials that have been separated from Solid Waste by the Generator so that the  
369 Recyclable Materials never become discarded waste.

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

370  
371  
372           Grantee warrants that it will comply with all applicable laws in effect during the term of  
373 this Agreement, including implementing regulations, as they may, from time to time, be  
374 amended, specifically including, but not limited to the Comprehensive Environmental Response,  
375 Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource  
376 Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the California Public Resources  
377 Code Section 40000 et. seq., and all other applicable laws of the State of California, the County  
378 of Mendocino, ordinances of the County, the County's Source Reduction and Recycling Element,  
379 the County's Household Hazardous Waste Element, the County of Mendocino's County-wide  
380 Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other  
381 agencies with jurisdiction relating to the services provided by Grantee under this agreement. In  
382 the event of conflict between regulations or statutes, Grantee shall comply with the regulation or  
383 statute containing the most stringent applicable standards. Grantee shall comply with all final  
384 and binding judgments entered against Grantee regarding its services performed under this  
385 agreement.  
386  
387

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

389  
390 **A. Term of Agreement**

- 391  
392 (1) **Effective Date and Commencement Date.** The Effective Date of this  
393 Agreement shall be the date the latter of the two Parties signs the Agreement.

394  
395 The Commencement Date shall be September 1, 2010 and shall be the date on  
396 which Grantee initiates provision of Collection, Transportation, and Processing  
397 services required by this Agreement.

398  
399 Between the Effective Date and Commencement Date, Grantee shall perform all  
400 activities necessary to prepare itself to start Collection, Transportation, and Processing, services  
401 required by this Agreement on the Commencement Date.

- 402  
403 (2) **Term.** The Term of this Agreement shall continue in full force from 12:01 a.m.  
404 on September 1, 2010 (Commencement Date), to midnight December 31, 2024  
405 unless the Agreement is extended by County pursuant to Section 4A(3) or  
406 terminated in accordance with Section 19C.

- 407  
408 (3) **Option to Extend Term.** County shall, at the County’s sole discretion, have the  
409 option to extend this Agreement on one or more occasions provided that the  
410 combined extension period(s) do not extend beyond December 31, 2029. If the  
411 County extends the Agreement, it shall give written notice to Grantee 180  
412 calendar days prior to the extended expiration date of this Agreement. The  
413 County’s written notice shall specify the number of years by which it elects to  
414 extend the Term of this Agreement and the revised expiration date of the  
415 Agreement.

- 416  
417 (4) **County’s Rights upon Expiration or Revocation.** At the expiration or  
418 revocation of this Agreement, the County may proceed with a competitive bidding  
419 or request for proposal process or exercise any other option available under  
420 Applicable Law.

421  
422 **B. Scope of Agreement**

423  
424 The Grantee shall have the exclusive right to service any Occupant or Owner to make all  
425 Solid Waste and Recyclable Material Collections within the Franchise Area, except as described  
426 in Section 4C or except as otherwise precluded by Applicable Law.

427  
428 The Grantee, or its Subcontractor(s) shall be responsible for the following services:

- 429  
430 (1) Collecting all Solid Waste and Recyclable Materials generated in the Franchise  
431 Area and placed by Generator for Collection.

- 432  
433 (2) Transporting collected materials to the Designated Disposal Location, Approved  
434 Green Waste Processing Site, or Approved Recyclable Materials Processing Site.  
435  
436 (3) Processing and marketing of Recyclable Materials Collected in the Franchise  
437 Area by Grantee.  
438  
439 (4) Collecting Demolition and Construction Debris generated within the Franchise  
440 Area.  
441  
442 (5) Operating a Recyclable Material buy-back center located at the Designated  
443 Recyclable Material Buy-Back Site.  
444  
445 (6) Furnishing all labor, supervision, vehicles, Containers, other equipment,  
446 materials, supplies, and all other items and services necessary to perform its  
447 obligations under this Agreement.  
448  
449 (7) Paying all expenses related to provision of services required by this Agreement  
450 including, but not limited to, taxes, regulatory fees, pass-through costs, utilities,  
451 etc.  
452  
453 (8) Providing all services required by this Agreement in a thorough and professional  
454 manner so that residents, businesses, and the County are provided timely, reliable,  
455 courteous and high-quality service at all times.  
456  
457 (9) Complying with Applicable Law.  
458  
459 (10) Performing or providing all other services necessary to fulfill its obligations under  
460 this Agreement.  
461  
462  
463

464 **C. Limitations to Scope**

465  
466 The materials listed below in this Section may be Collected and Transported by other  
467 Persons. Such Persons shall do so in accordance with the County Code.  
468

- 469 (1) **Industrial Recyclable Materials.** Recyclable Materials from a Generator of  
470 Industrial Solid Waste that are not disposed of and are recycled including, but not  
471 limited to, wood chips from the forest products industry used as boiler fuel, and  
472 agricultural waste used to produce compost. If Solid Waste residue in Recyclable  
473 Materials exceeds 5% by volume it shall be considered Solid Waste and not Industrial  
474 Recyclable Material and shall be collected by Grantee  
475

- 476 (2) **Non-Discarded Recyclable Materials**, provided the transporter is paid no direct or  
477 in-kind fee for the service and compensates the Generator for the Recyclable  
478 Materials.  
479
- 480 (2) **Materials Hauled by Owner, Occupant, or a Cooperative of Persons, or its**  
481 **Contractor.** Solid Waste and/or Recyclable Materials that are removed from any  
482 Premises by the Owner, Occupant, or a cooperative of persons and are  
483 Transported, without compensation, to a Disposal Site or Processing Site by (i)  
484 the Owner, Occupant or cooperative of persons of such Premises, (ii) by full-time  
485 employee(s) of Owner, Occupant, or cooperative of persons that uses the  
486 Owner's, Occupant's, or cooperative of persons' equipment to Transport  
487 materials; or (iii) by a contractor whose removal of the Solid Waste and/or  
488 Recyclable Materials, and/or Demolition and Construction Debris incidental to  
489 the service being performed and such contractor removes materials at no  
490 additional or separate fee using contractor's own equipment and labor;  
491
- 492 (3) **Containers Recycled.** Containers delivered for recycling under the California  
493 Beverage Container Recycling Litter Reduction Act, Section 14500, California  
494 Public Resources Code et. seq. as may be amended from time to time;  
495
- 496 (4) **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains  
497 from slaughterhouse or butcher shops, grease waste, or used cooking oil;  
498
- 499 (5) **Sewage Treatment By-Product.** By-products of sewage treatment including  
500 sludge, sludge ash, grit, and screenings;  
501
- 502 (6) **Hazardous Wastes.** Household Hazardous Waste, Hazardous Waste, and  
503 Designated Waste regardless of its source.  
504
- 505 (7) **State and Federal Wastes.** Materials generated by state and federal agencies,  
506 special districts, school districts, State parks, State correction facilities, and Indian  
507 reservations.  
508
- 509
- 510 (8) **Other Materials.** Lead-acid batteries, waste oil, tires, and scrap metal not  
511 covered as Discarded Recyclable Materials.  
512

Deleted: ¶

513 |  
514 **D. Subcontracting**

515  
516 Grantee shall not engage any Sub-grantees for Collection, Transportation, Processing, or  
517 Disposal of Solid Waste or Recyclable Materials services without the prior written consent of the  
518 County.  
519

520 **E. Franchise Area Defined**

521  
522 This Agreement allows the Grantee to Collect, Transport, and Process Solid Waste and  
523 Recyclable Materials generated within the Franchise Area defined and shown on certain map  
524 entitled "Mendocino County Solid Waste Refuse Collection Areas", including all amendments  
525 and changes thereto. The Franchise Area may be modified upon renegotiation and mutual  
526 consent of both parties should the Board find such modification necessary for the efficient  
527 administration of this Agreement and in the public interest. In the event of such a modification,  
528 the Grantee shall be given a ninety (90) -day written notice thereof before the modification shall  
529 become effective.

530  
531 **F. Franchise Area Limits**

532  
533 No Persons shall be granted a right to collect refuse in Grantee's Franchise Area unless  
534 approved by the Board of Supervisors due to an emergency, a lack of service by the Grantee, or  
535 as allowed according to Section 20 herein.

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

537

538 **A. County to Approve All Services**

539

540 The nature of the Solid Waste and Recyclable Materials services Grantee shall offer and  
541 provide to Customers residing or doing business in the Franchise Area has been determined by  
542 the Board of Supervisors.

543

544 **B. Collection Service**

545 In order to protect the public health and safety, Grantee shall collect, in a manner  
546 consistent with public health and safety, Solid Waste and Recyclable Materials from its  
547 Customers in the Franchise Area as frequently as scheduled by Customer, but not less than once  
548 per week. Except, the Grantee may propose to County service standards and rates for every other  
549 week or monthly solid waste and recyclable material collection, which the County has the right  
550 to approve. Solid Waste service shall be provided in the Container Sizes and Collection  
551 frequencies as set forth in the Rate Table, Exhibit B to this Agreement, and the billings  
552 to Customers for Solid Waste service shall incorporate at no extra cost Recyclable  
553 Material Collection, except as set forth herein.

554

555 (1) **Single-Family Units**

556

557 The Grantee shall collect Solid Waste (except Bulky Wastes) and Recyclable  
558 Materials from Single-Family Units, which have been placed, kept, or  
559 accumulated in Grantee-provided Containers, at the curbside or other authorized  
560 Collection location if the Customer is physically unable to move the Collection  
561 Containers to the curb and is eligible for such service at no additional charge or  
562 from a Customer who is willing to pay the additional charge set by the County for  
563 such service.

564

565 Grantee shall provide each Customer with a 20-, 35-, 65-, or 95-gallon Solid  
566 Waste Cart, as requested by the Customer. Grantee shall provide each Customer  
567 a maximum of two 65- or 95-gallon Recyclable Material Carts, as requested by  
568 the Customer.

569

570 To the greatest extent possible, Single-Family Units shall place Containers at the  
571 County-maintained road. With the approval of the Department, Grantee may  
572 service private roads if specific road conditions (roadway width, overhead  
573 clearances, adequate turnaround and pavement conditions), number of customers,  
574 and/or a past practice justify such service. The Grantee may require the  
575 applicable road owner or road association to execute a release of liability. If  
576 Grantee elects to service a private road, then the off-road service rate will not be  
577 charged.

578

579 (2) Multi-Family Premises

580  
581 Grantee shall Collect Solid Waste and Recyclable Materials from Multi-Family  
582 Premises as frequently as scheduled by Customer, but not less than once per  
583 week. Except, Grantee may propose to County service standards and rates for  
584 every other week or monthly solid waste and recyclable material collection, which  
585 County has the right to approve. Grantee shall allow a Multi-Family Premises to  
586 use Carts or Bins for Solid Waste Collection that are shared by the Occupants of  
587 the Premises. Grantee shall provide one or more Carts (with a capacity of 35, 65  
588 or 95 gallons) or Bins (with a capacity of one to six cubic yards) to such Premises  
589 as requested by Customer. Grantee shall Collect Solid Waste and Recyclable  
590 Materials from Carts and Bins at a location selected by Customer and approved  
591 by the County.

592  
593 (3) Commercial and Industrial Premises

594  
595 Grantee shall Collect Solid Waste and Recyclable Materials from Commercial  
596 and Industrial Premises as frequently as scheduled by Customer, but not less than  
597 once per week. Except, Grantee may propose to County service standards and  
598 rates for every other week or monthly solid waste and recyclable material  
599 collection, which County has the right to approve. Grantee shall provide one or  
600 more Carts (with a capacity of 35, 65 or 95 gallons) or Bins (with a capacity of  
601 one to fifty cubic yards) to such Premises as requested by Customer. Grantee  
602 shall Collect Solid Waste and Recyclable Materials from Carts and Bins at a  
603 location selected by Customer. Upon receiving a call for new service from  
604 any Commercial or Industrial Customer, Grantee's Customer service  
605 representative shall specifically ask the Customer what Recyclable Materials  
606 the Customer expects to generate and shall encourage the Customer to  
607 accept recycling Containers, emphasizing that recycling Containers are  
608 provided without additional charge except as provided herein, and shall  
609 make all reasonable efforts to encourage the Customer to divert Solid Waste  
610 from disposal.

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

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

618  
619

620 **C. Recyclable Material Buy-Back Facility**

621  
622 Grantee shall operate and maintain a buy-back Recycling center at the Designated  
623 Recyclable Material Buy-Back Site. At a minimum, Grantee shall purchase California  
624 Redemption Value (CRV) containers. In addition, Grantee shall accept for drop-off the  
625 following Recyclable Materials: aluminum and tin cans, glass beverage and food containers,  
626 plastics 1-7, newspaper, office paper, junk mail, magazines, telephone directories, paper board,  
627 and corrugated cardboard. Operating hours shall, at a minimum, be from 9:00 a.m. to 4:30 p.m.,  
628 Wednesday through Saturday or days and hours approved by County.

629  
630  
631

632 **D. Hours of Collection**

633  
634 No Collections shall be made in residential areas prior to 5:00 a.m. or after 6:00 p.m. No  
635 Collections shall be made at schools, churches, hospitals, offices, or commercial establishments  
636 within 200 feet of said residential districts prior to 5:00 a.m. or after 9:00 p.m. unless a  
637 modification of these hours is allowed in writing by the Department, which modification  
638 may be revoked at the sole discretion of the County. Special arrangements may be made  
639 pursuant to the Solid Waste Ordinance for all categories of Collections provided by the Grantee.

640  
641

642 **E. Collection on Holidays**

643 If the day of Collection on any given route falls on a Holiday, Grantee shall provide  
644 Collection service for such route on the work day either before or following such Holiday and  
645 shall not provide Collection service on such Holiday, and all subsequent Collection days during  
646 that Holiday week shall be adjusted at the discretion of Grantee. Grantee shall be responsible for  
647 Customer notification of Holiday Collection arrangements. If the day of Collection on any given  
648 route falls on any remaining Holiday, Grantee may continue to provide Collection service for  
649 such route on that workday.

650  
651

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

652  
653

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

655 Grantee shall provide special programs as are required by federal, state, or local  
656 regulations, including but not limited to, the County of Mendocino County-wide Integrated  
657 Waste Management Plan, the Source Reduction and Recycling Element, and the Household  
658 Hazardous Waste Element and as itemized in Exhibit A. If County directs changes in recycling  
659 or Green Waste services, Grantee shall be entitled to recovery of any additional costs through the  
660 pass-through rate adjustment procedure of Section 15(A). When introducing new or expanded  
661 diversion programs, County shall define the objective of the program and cooperate with Grantee  
662 to consider Grantee's proposal for the methods to achieve the objective, and County shall  
663 consider alternative methods so that objectives are achieved while minimizing any costs or  
operational problems that the new program may cause to Grantee. In exercising its right to direct

664 changes in recycling or Green Waste services, County will consider the impact upon rates and  
665 the likelihood Grantee can recover all costs with the change.

666  
667  
668

669 **B. Public Education.**

670

671 Grantee’s public education program shall focus on providing information to Customers in  
672 accordance with the specific requirements described in Exhibit D. Educational media shall  
673 include, but not be limited to, newsletters, flyers, door hangers, notification tags, and direct  
674 contact. Information shall be provided for initial start of service, to solicit feedback about the  
675 service and suggested improvement/change, and to educate Customers about source reduction,  
676 reuse, and Recycling opportunities. Materials shall be printed on paper containing the highest  
677 levels of recycled content material as is reasonably practical with a minimum requirement of  
678 30% post-consumer content based on Federal standards. Grantee shall allow the County to  
679 review and approve all public education materials and may require bilingual English-Spanish  
680 text.

681

682 If Grantee fails to perform some or all of the requirements of the public education  
683 program described in this Section and in Exhibit D, the Grantee shall pay the County Liquidated  
684 Damages as described in Exhibit F.

685

686 **C. Billing**

687

688 (1) **General.** The County shall establish the rates that Grantee may charge  
689 Customers for Solid Waste and Recyclable Materials services. Grantee shall bill  
690 all Customers and collect Billings in accordance with County-approved rates.

691

692 The Grantee shall prepare, mail, and collect bills (or shall issue written receipts  
693 for cash payments) for Collection services provided by Grantee. The County  
694 shall have the right to review, and approve the Billing format.

695

696 Grantee shall arrange to allow its Customers to pay bills through the following  
697 means: check, cash or credit card.

698

699 Grantee shall maintain copies of all Billings and receipts, each in chronological  
700 order, for five years for inspection and verification by County at any reasonable  
701 time upon request. The Grantee may, at its option, maintain those records in  
702 computer form, on microfiche, or in any other manner, provided that the records  
703 can be preserved and retrieved for inspection and verification in a timely manner.

704

705 Grantee shall be responsible for collection of payment from Customers with past  
706 due accounts (“bad debt”). Grantee shall make reasonable efforts to obtain  
707 payment from delinquent accounts through issuance of late payment notices,

708 telephone requests for payments, and assistance from collection agencies.  
709 Accounts that are delinquent for a period of ninety-days (90) or more  
710 may be terminated by Grantee.

711  
712 (2) **Bill Inserts.** County may direct Grantee to insert mailers (which shall be a single  
713 sheet of paper no larger than 8.5 inches by 11 inches) relating to service with the  
714 Bills. The mailers shall be printed on double-sided, post consumer content paper  
715 and shall fit in standard envelopes. Grantee also agrees to insert with the Billings,  
716 mailers describing activities of the County government. County will provide not  
717 less than 30 calendar days' notice to Grantee before the date of any proposed  
718 mailing, to permit Grantee to make appropriate arrangements for inclusion of the  
719 County's materials. County will provide Grantee the mailers at least 15 calendar  
720 days before the mailing date.

721  
722 (3) **Review of Billings.** Grantee shall review its Billings to Customers to determine  
723 (i) if the amount the Grantee is billing each Customer is correct in terms of the  
724 level of service (i.e., frequency of Collection, size of Container, backyard service)  
725 Grantee is providing such Customer, and (ii) that all parties receiving service are  
726 invoiced for service. Grantee shall review all Customer accounts at least every  
727 other year, unless County directs Grantee to do otherwise. Grantee shall submit  
728 to County every year, a written report of the billing review 30 days after the end  
729 of each Rate Period. The scope of the review, the Grantee's work plan, and the  
730 format of the report (including supporting exhibits) shall be submitted to the  
731 County for approval no later than 60 days prior to commencement of the Billing  
732 review process. Should Grantee fail to perform any such review, the County may  
733 perform this review itself or through use of an agent, at Grantee's expense.

734  
735 **D. Other Special Services**  
736  
737 Grantee can provide other special services as related to this Agreement at their discretion  
738 provided said services and charges for such services are approved by the County.  
739

740 All other provisions of this agreement notwithstanding, Grantee shall provide an optional  
741 service at customer's choice to have any debris box rented to a construction or demolition project  
742 customer hauled to any disposal and/or processing facility identified by County as providing  
743 scavenging or processing service at the lowest total cost to the customer. Grantee shall charge  
744 customers in such instances the authorized debris box rental rate as set forth in Exhibit B  
745 adjusted to reflect any different disposal gate fee or actual increment in truck hauling expense.

746  
747  
748 **E. Containers - Refusal to Pick Up.**  
749

750 Grantee shall notify the Department whenever the Grantee has refused to pick up a

751 Container because the Container contains dangerous and prohibited material. Grantee shall  
752 notify the Department when any violation of the County Solid Waste Ordinance is observed.  
753

754 **F. Containers - Noticing Violators**

755  
756 Whenever a Grantee gives or intends to give a Customer violation report to the  
757 Department, Grantee shall place a notice on the Container or otherwise give the Owner or  
758 Occupant notice of the substance of his/her report to the Department. Whenever an authorized  
759 representative of the County observes a violation of the County Solid Waste Ordinance or other  
760 applicable laws or regulations, that person shall place a notice on the Container or otherwise give  
761 the Owner or Occupant notice of the illegal condition.  
762

763 **G. Promotion of Waste Diversion to New Customers**

764  
765 Upon the initial call for service, Grantee will make all reasonable efforts to promote the  
766 maximum amount of waste diversion by the new customer. Grantee's customer service  
767 representatives will utilize specific scripts, provided to County, for each category of customer  
768 (residential, commercial and debris box) for use during calls for service that will at a minimum  
769 include:  
770

- 771 (1) Statement to customer that his/her costs may be reduced by recycling.  
772  
773 (2) Question to customer about what waste materials he/she will generate that may be recycled.  
774  
775 (3) Recommendation of specific services appropriate for the customer, identifying those that are  
776 free or reduced rate.  
777

778 **SECTION 7 – STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT,**  
779 **AND PERSONNEL**

780  
781 **A. Manner of Collection**

782  
783 All Collection equipment shall be designed and operated such that no Solid Waste or  
784 Recyclable Material is allowed to blow or drop from vehicles during Transport. Adequacy of  
785 load covers or control measures shall be determined by the Department. All Collections shall be  
786 made as quietly as possible, and the use of any unnecessarily noisy trucks or equipment is  
787 declared unlawful.  
788

789 **B. Vehicles and Equipment - Standards**

790  
791 (1) **General.** All Collections shall be made with a vehicle and equipment of design  
792 approved by the Department according to industry standards. Grantee shall  
793 maintain all of its properties, facilities, and equipment used in providing service  
794 under this Agreement in a safe, neat, clean, and operable condition at all time.  
795

796 (2) **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam  
797 cleaned as necessary, to present a clean appearance of the exterior and interior  
798 compartment of the vehicle.  
799

800 (3) **Maintenance.** Grantee shall inspect each vehicle daily to ensure that all  
801 equipment is operating properly. Vehicles that are not operating properly shall be  
802 taken out of service until they are repaired and operate properly. Grantee shall  
803 perform all scheduled maintenance functions in accordance with the  
804 manufacturer's specifications and schedule or in accordance with California  
805 Highway Patrol standards, whichever are more stringent. All vehicles shall be  
806 painted in a uniform manner that does not create a resemblance between  
807 Grantee's vehicles and County utility vehicles. Grantee shall keep accurate  
808 records of all vehicle maintenance, recorded according to vehicle, date, and  
809 mileage, and shall make such records available to the County upon request to the  
810 extent necessary to perform the inspections described in Section 7D.  
811

812 (4) **Repairs.** Grantee shall repair, or arrange for the repair of, all of its vehicles and  
813 equipment for which repairs are needed because of accident, breakdown, or any  
814 other cause so as to maintain all equipment in a safe and operable condition.  
815 Grantee shall maintain accurate records of repair, which shall include the  
816 date/mileage, nature of repair and the signature of a maintenance supervisor that  
817 the repair has been properly performed.  
818

819 **C. Vehicles - Identification**

820  
821 The Grantee shall have printed or stenciled in a prominent place on the exterior of each  
822 vehicle used in the Collection of Solid Waste and Recyclable Materials the following  
823 information in at least four-inch letters: 1) Truck number; 2) Grantee's name; and, 3) Grantee's  
824 telephone number.

825  
826 **D. Vehicles and Equipment - Inspection**

827  
828 All vehicles and equipment of Grantee shall be available for inspection at Grantee's place  
829 of business or another location within the Franchise Area as designated by the Department, on an  
830 annual basis. Vehicles and equipment shall conform to the requirements of the California  
831 Vehicle Code, this Agreement, and rules or regulations of the Board. Department shall give  
832 Grantee twenty-four (24) hours verbal notification of inspection.

833  
834 **E. Vehicles - Shovel, Broom and Fire Extinguisher Required**

835  
836 The Grantee shall equip each Collection vehicle with a shovel, broom, and fire  
837 extinguisher of a type approved by the Department.

838  
839 **F. Container Requirements**

840  
841 (1) **General.** Grantee shall provide all Carts, Bins, and Debris Boxes to all  
842 Customers as part of its services. Grantee-provided Containers shall be designed  
843 and constructed to be watertight and prevent the leakage of liquids. All  
844 Containers with a capacity of one cubic yard or more shall meet applicable  
845 federal, state, and local regulations for Bin safety and be covered with attached  
846 lids. Grantee shall obtain County's written approval of Cart colors before  
847 acquisition. All Containers, except Carts, shall be painted the Grantee's standard  
848 color.

849  
850 (2) **Cleaning, Painting, and Maintenance.** All Containers shall be maintained in a  
851 safe, serviceable, and functional condition. Grantee shall steam clean and repaint  
852 all Containers, except Carts, at least every two years, or more frequently, to  
853 present a clean appearance. Customers using Carts shall be responsible for  
854 cleaning such Carts. If any Cart is impacted by graffiti, Grantee shall replace the  
855 cart within 72 hours. If any Containers, except Carts, are impacted by graffiti,  
856 Grantee shall either replace the Container with a Container which is free of  
857 graffiti or repaint the entire Container with the Grantee's standard color for such  
858 Container within 30 days. Repainting of the Container shall restore the  
859 Container's aesthetic values to its condition before it sustained the graffiti  
860 damage.

861 (3) **Repair and Replacement.** Grantee shall repair and, if the repair must be  
862

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

868  
869 At no additional cost, Grantee shall replace Customer Carts that have been stolen  
870 or damaged once per year. Grantee shall allow Customer to exchange Containers  
871 for a Container of a different size at no additional cost once per year. Grantee  
872 shall charge Customers for additional Cart replacements at County-approved  
873 rates.

874

875 **G. Personnel**

876

877 (1) **General.** Grantee shall furnish such qualified drivers, mechanical, supervisory,  
878 Customer service, clerical and other personnel as may be necessary to provide the  
879 services required by this Agreement in a safe and efficient manner.

880

881 (2) **Provision of Field Supervision.** Grantee shall designate at least one qualified  
882 employee as supervisor of field operations. The field supervisor will devote time  
883 in the field checking on Collection operations, including responding to  
884 complaints.

885

886 (3) **Driver Qualifications.** All drivers shall be trained and qualified in the operation  
887 of Collection vehicles, and must have in effect a valid license, of the appropriate  
888 class, issued by the California Department of Motor Vehicles. Grantee shall use  
889 the Class II California Department of Motor Vehicles employer “Pull Notice  
890 Program” to monitor its drivers for safety.

891

892 (4) **Customer Service Representative Training.** Customer service representatives  
893 shall be trained on specific County service requirements upon hire and annually  
894 thereafter. A County information sheet shall be provided to each Customer service  
895 representative for easy reference of County requirements and general Customer  
896 needs. The information sheet, training agenda, and associated documentation  
897 shall be forwarded to the County-

898

899 (5) **Safety Training.** Grantee shall provide suitable operational and safety training  
900 for all of its employees who operate Collection vehicles or equipment or who are  
901 otherwise directly involved in such Collection, Disposal, or Processing. Grantee  
902 shall train its employees involved in Collection to identify, and not to collect,  
903 Hazardous Waste or infectious waste. Upon the County’s request, Grantee shall  
904 provide a copy of its safety policy and safety training program, the name of its  
905 safety officer, and the frequency of its trainings.

906

- 907 (6) **No Gratuities.** Grantee shall not permit its employees to accept, demand, or  
908 solicit, directly or indirectly, any additional compensation, or gratuity from  
909 members of the public for Collection services.  
910
- 911 (7) **Employee Conduct and Courtesy.** Grantee shall use its best efforts to assure  
912 that all employees present a neat appearance and conduct themselves in a  
913 courteous manner. Grantee shall regularly train its employees in Customer  
914 courtesy, shall prohibit the use of loud or profane language, and shall instruct  
915 Collection employees to perform the work as quietly as possible. If any employee  
916 is found not to be courteous or not to be performing services in the manner  
917 required by this Agreement, Grantee shall take all appropriate corrective  
918 measures.  
919
- 920 (8) **Uniforms.** While performing services under this Agreement, all of the Grantee's  
921 employees performing field service shall be dressed in clean uniforms and shall  
922 wear badges that include the employee's name and/or employee number, and  
923 Grantee's name. No portion of this uniform may be removed while working.  
924

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

926  
927 **A. Name and Office Hours**

928  
929 Grantee shall not use a firm name containing the words "County" or "Mendocino" or  
930 other words implying County ownership. The Grantee shall establish and maintain a Customer  
931 service office where service may be applied for and complaints made. Grantee's Customer  
932 service office shall be open to the public from 8:30 a.m. to 4:00 p.m. Monday through Friday.  
933 The office may be closed on Saturdays, Sundays, and Holidays. Such office shall be equipped  
934 with a listed toll-free telephone number to which calls from Grantee's Customers may be placed  
935 and shall have a responsible Person in charge or an answering machine in service during normal  
936 business hours.

937  
938 **B. Service Complaints**

939  
940 Customer service complaints may be made directly to the Grantee by telephone or in  
941 writing. Grantee is responsible for rectifying the complaints and for maintaining a log of  
942 complaints received, date received, actions taken, and date of actions, as specified in Section 13.

943  
944 **C. Overcharge**

945  
946 All charges or fees for service by a Grantee shall be approved by the Board, except a  
947 lower charge than approved by the Board may be negotiated (to provide for consideration of the  
948 weight of the material collected and/or the distance from the operations yard or transfer station)  
949 for Industrial Solid Waste Service as provided in Section 14(B)6. Any Customer contending  
950 they have been required to pay a charge not approved by the Board, or has in any manner been  
951 subject to an overcharge, may file a written complaint with the Department setting forth the facts  
952 of such alleged miss-charge, and the Department shall notify the Grantee of the complaint, shall  
953 investigate the matter of the complaint, and shall determine the appropriate charge.

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

955  
956 **A. Responsibility to Identify Hazardous Waste**

957  
958 Grantee shall keep current with the regulations regarding Hazardous Waste substances  
959 and identification of such substances and to comply with all federal, state, and local regulations  
960 concerning such substances. Grantee shall make every reasonable effort to prohibit the  
961 Collection and the Disposal of Hazardous Waste in any manner inconsistent with Applicable  
962 Law.

963  
964 Grantee shall conduct a visual inspection of all Solid Waste and Recyclable Materials  
965 that it Collects, Transports, Disposes, or Processes pursuant to this Agreement for the purpose of  
966 discovering, identifying, and refusing to Collect, Transport, Dispose, and/or Process Hazardous  
967 Wastes or materials.

968  
969 **B. Response to Hazardous Waste Identified at Disposal Site or Processing Site**

970  
971 If materials Collected by Grantee are delivered to a facility owned or operated by Grantee  
972 or an affiliate of Grantee, for purposes of transfer, Processing, or Disposal, load checkers and  
973 equipment operators at such facility shall conduct inspections in areas where Collection vehicles  
974 unload Solid Waste and Recyclable Materials to identify Hazardous Wastes. Facility personnel  
975 shall remove these materials for storage in approved, on-site, hazardous materials storage  
976 Container(s). Grantee shall make reasonable efforts to identify and notify the Generator.  
977 Grantee shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance  
978 with Applicable Laws and regulatory requirements.

979  
980 If unacceptable material is delivered to the Designated Disposal Location or Processing  
981 Sites by Grantee before its presence is detected, and the Generator cannot be identified or fails to  
982 remove the material after being requested to do so, the Grantee shall arrange for its proper  
983 Disposal. The Grantee shall make a good faith effort to recover the cost of Disposal from the  
984 Generator, and the cost of this effort, as well as the cost of Disposal shall be charged to the  
985 Generator.

986  
987 **C. Notification for Hazardous Waste**

988  
989 Grantee shall, if required based on reportable levels, notify all agencies with jurisdiction,  
990 including the California Department of Toxic Substances Control, and, if appropriate, the  
991 National Response Center, of reportable quantities of Hazardous Waste, found or observed by  
992 Grantee in Solid Waste and/or Recyclable Materials anywhere within the County, including on,  
993 in, under or about County property, including streets, easements, rights of way and County waste  
994 containers. In addition to other required notifications, if Grantee observes any substances which  
995 it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully  
996 disposed of or released on County property, including streets, storm drains, or public rights of  
997 way, Grantee also will notify the County Director of Environmental Health or his/her designated  
998 County employee.

- 999
- 1000 **D. Rights Reserved as to Hazardous Wastes.**
- 1001
- 1002       The County reserves the right to contract with other parties to have household Hazardous
- 1003 Wastes Collected, Transported, Disposed of, Processed and/or diverted.
- 1004
- 1005

1006 **SECTION 10 - DISPOSAL AND PROCESSING**

1007

1008 **A. Solid Waste Disposal**

1009

1010 Grantee shall Transport and Dispose of all Solid Waste Collected in the Franchise Area at  
1011 the Designated Disposal Location. Grantee shall pay all costs associated with the Transporting  
1012 and Disposing of Solid Waste.

1013

1014 **B. Recyclable Materials Processing and Marketing**

1015

1016 (1) **Processing.** Grantee shall Transport and deliver all Recyclable Materials  
1017 collected in the Franchise Area to the Approved Recyclable Materials Processing  
1018 Site. Grantee shall pay all costs associated with the Transporting and Processing  
1019 of all Recyclable Materials.

1020

1021 Grantee shall maintain accurate records of the quantities of Recyclable Materials  
1022 Collected, Transported, and Processed at the Approved Recyclable Materials  
1023 Processing Site and shall cooperate with the County in any audits or investigation  
1024 of such quantities.

1025

1026 Grantee shall keep all existing permits and approvals necessary for use of the  
1027 Recyclable Materials Processing Site in full regulatory compliance. Upon  
1028 request, Grantee shall provide copies of notices of violation or permits to the  
1029 County.

1030

1031 (2) **Marketing.** Providing the Approved Processing Center is owned and/or operated  
1032 by Grantee or by an Affiliate of Grantee, Grantee shall be responsible for  
1033 marketing Recyclable Materials collected in the Franchise Area and shall be  
1034 compensated for such Recyclable Materials at not less than fair market value.

1035

1036 Providing the Approved Processing Center is owned and/or operated by Grantee  
1037 or by an Affiliate of Grantee, Grantee shall prepare and maintain a County-  
1038 approved marketing plan for all Recyclable Materials collected in the Franchise  
1039 Area. The plan shall be in place on or before the Commencement Date of this  
1040 Agreement. The marketing plan shall fully describe the Grantee’s marketing  
1041 methods and approach, targeted primary and contingent markets, pricing policy  
1042 and assumed salvage value for each collected type of Recyclable Material  
1043 products, and contingency plans if market conditions are severe.

1044

1045 Providing the Approved Processing Center is owned and/or operated by Grantee  
1046 or by an Affiliate of Grantee, Grantee shall provide proof to the County that all  
1047 Recyclable Materials collected are marketed for Recycling or reuse in such a  
1048 manner that materials shall be considered as diverted in accordance with the State  
1049 regulations established by the California Integrated Waste Management Act of

1050 1989 (Division 30 of the California Public Resources Code), as amended,  
1051 supplemented, superseded, and replaced from time to time. No Recyclable  
1052 Material shall be transported to a domestic or foreign location if Solid Waste  
1053 Disposal of such material is its intended use.

1054  
1055 Providing the Approved Processing Center is owned and/or operated by Grantee  
1056 or by an Affiliate of Grantee, Grantee shall provide County with a list of  
1057 broker/buyers it uses each month as required in Section 13. County may audit  
1058 one broker or buyer per month to confirm that materials are being recycled. If  
1059 Grantee becomes aware that a broker or buyer has illegally handled or disposed of  
1060 material generated within the Franchise Area or elsewhere, Grantee shall  
1061 immediately inform the County and terminate its contract or working relationship  
1062 with such party. If Grantee has provided County with a list of broker/buyers for  
1063 the month, Grantee shall provide a monthly list only to the extent that the list  
1064 differs from the list provided in the prior(s) months.

1065  
1066  
1067 (3) **Disposal of Recyclable Materials Prohibited.** In accordance with Section  
1068 9A.08.080 of the Mendocino County Code, Recyclable Materials may not be  
1069 disposed of in lieu of Recycling the material.

1070  
1071 **C. Change in Designated Disposal Location or Recyclable Materials Processing Site**

1072  
1073 The Grantee shall Transport all Solid Waste, Green Waste, and Recyclable Materials  
1074 Collected from the Franchise Area to the Designated Disposal Location, Approved Green Waste  
1075 Processing Site and the Approved Recyclable Materials Processing Site, respectively.

1076  
1077 The County has the right, at its option, to control the Collection, Disposal, and diversion  
1078 of all Solid Waste and Recyclable Materials generated within the Franchise Area. As part of the  
1079 rights agreed to herein, the parties hereto agree that:

1080  
1081 (1) The County has the right to direct Solid Waste to be Disposed of at any Solid  
1082 Waste facility or in any manner, respectively, the County may designate; and

1083  
1084 (2) The County has the right to direct Solid Waste to be diverted at any transfer or  
1085 Processing station the County may designate; and

1086  
1087 (3) The County has the right to direct Discarded Recyclable Materials collected by  
1088 Grantee to be Processed at or marketed to a specific facility when in the best  
1089 interest of the County and provided the collector would receive a reasonable,  
1090 competitive market value for the Recyclable Materials.

1091  
1092 (4)The County has the right to direct Green Waste collected by Grantee to be Processed at or  
1093 marketed to a specific facility when in the best interest of the County and provided the Grantee

1094 would receive or pay a reasonable, competitive market price for the Green Waste. In exercising  
1095 its rights to direct Green Waste, County will consider the impact upon rates, and the likelihood  
1096 Grantee can recover all costs with the specific facility.

1097  
1098 (5) If County directs a change in the Designated Disposal Location, Approved  
1099 Green Waste Processing Site or Approved Recyclable Materials Processing Site  
1100 which impacts Grantee's operational costs, then either party to this Agreement  
1101 may apply for a rate increase or decrease through the provisions of Section 15A  
1102 Pass-through Rate Adjustment.

1103  
1104 (6) Any change in the Designated Disposal Location, Approved Green Waste  
1105 Processing Site or Approved Recyclable Materials Processing Site made by  
1106 County under this section must comply with all federal, state, and local laws and  
1107 regulations.

1108  
1109 **D. Grantee's Responsibility in Lieu of Direction by County.**

1110  
1111 Throughout the term of this Agreement, unless the County gives notice as provided for  
1112 herein and subject to the terms of this Agreement, it shall be the Grantee's sole responsibility and  
1113 duty to Dispose of the Solid Waste Collected and Process the Recyclable Materials Collected in  
1114 a safe manner and in compliance with all federal, state, and local laws and regulations. Grantee  
1115 agrees that it shall Dispose of all Solid Waste Collected and Process all Recyclable Materials  
1116 Collected in the Franchise Area at a Solid Waste facility or Processing facility that is fully  
1117 licensed and appropriately permitted and, to Grantee's knowledge, is not in material violation of  
1118 any health, safety or Hazardous Materials laws, rules, regulations or orders as long as the cost of  
1119 disposal and recycling is at no greater cost to ratepayer.

1120  
1121  
1122 **E. Invalidation of County Flow Control Voids Franchise.**

1123  
1124 Should a court of competent jurisdiction rule any provision in this Franchise Agreement  
1125 unlawful or unconstitutional, then the entire Franchise Agreement shall become null and void  
1126 upon the election of the County. However, this Agreement shall not become null and void, and  
1127 shall remain in full force and effect, as long as the Grantee continues to direct Solid Waste,  
1128 Green Waste and Recyclable Materials as instructed by the County and abides by all other terms  
1129 of this section. County deems control of the waste stream a vital component of its waste  
1130 Disposal program which ensures to the general benefit and welfare of the public. This provision  
1131 will preserve the County's ability to pursue any legal methods whereby flow control of waste  
1132 stream can be achieved.

1133  
1134

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

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1147

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

1148 **SECTION 12 - PRIVACY**

1149

1150 **A. Customers Rights of Privacy**

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1161

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 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 County under the Agreement or required or requested by any governmental agency.

1162 **B. Use of Customer Lists**

1163

1164

1165

1166

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

1167 **SECTION 13 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS**

1168  
1169  
1170  
1171  
1172  
1173  
1174

**A. Customer List and Routes**

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

1175 **B. Record-keeping and Inspection**

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1177  
1178  
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1180  
1181  
1182  
1183  
1184

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

1185 **C. Financial and Operational Records**

1186  
1187  
1188  
1189  
1190  
1191

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

1192 **D. Collection Service Records**

1193  
1194

Records shall be maintained by Grantee for County relating to:

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1197  
1198  
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1200  
1201  
1202  
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1210

- (1) Customer services and billing;
- (2) Weight and volume of material Collected by type (e.g., Solid Waste and Recyclable Materials);
- (3) Routes;
- (4) Facilities, equipment and personnel used;
- (5) Facilities and equipment operations, maintenance and repair;
- (6) Tonnage of Solid Waste and Recyclable Materials listed by Processing Site or Disposal Site where such materials were delivered;
- (7) Recyclable Materials Collection participation and setout rates;

- 1211
- 1212 (8) Recyclable Materials sales revenue;
- 1213
- 1214 (9) End use and markets for Recyclable Materials.
- 1215

1216 **E. Transfer, Processing, and Disposal Records**

1217

1218 Grantee shall maintain records of transfer, Disposal, and Processing of all Solid Waste

1219 and Recyclable Materials Collected by Grantee.

1220

1221 **F. Customer Service Records**

1222

1223 Records shall be maintained by Grantee for County related to:

1224

- 1225
- 1226 (1) Categories (compliments, missed pickups, complaints, damage, etc.) of calls;
- 1227
- 1228 (2) Complaint log noting the name and address of complainant, date and time of
- 1229 complaint, nature of complaint, and nature and date of resolution;
- 1230
- 1231 (3) New Customer accounts.
- 1232

1233 **G. CERCLA Defense Records**

1234

1235 County views its ability to defend itself against Comprehensive Environmental Response,

1236 Compensation and Liability Act (CERCLA), and related litigation as a matter of great

1237 importance. For this reason, the County regards its ability to prove where Solid Waste Collected

1238 are taken for transfer or Disposal, as well as where they are not taken, to be matters of concern.

1239 Grantee shall maintain, retain and preserve records which can establish where Solid Waste

1240 Collected was Disposed (and therefore establish where it was not). This provision shall survive

1241 the expiration or earlier termination of this Agreement. Grantee shall maintain these records for

1242 a minimum of 3 years beyond expiration or earlier termination of the Agreement and Grantee

1243 shall then provide these records to County in an organized and indexed manner rather than

1244 destroying or Disposing of them.

1245

1246 **H. Quarterly Reports**

1247

1248 Quarterly reports, itemized by month, shall present the following information:

1249

- 1250 (1) Solid Waste Services. Total tonnage Collected and Disposed.
- 1251
- 1252 (2) Recyclable Materials & Green Waste
- 1253
- 1254 Tonnage Collected and Recycled and tonnage of residue Disposed. If the

1255 Approved Recyclable Materials Processing Site handles Recyclable Materials  
1256 Collected in the Franchise Area and from other parties, provide a description of  
1257 how the quantities of Recyclable Materials are tracked and allocated to the  
1258 Franchise Area.

- 1259  
1260  
1261 (3) Customer Service.
- 1262 (a) Number of Customer calls that pertain to compliments, missed pickups,  
1263 scheduled clean-ups, Billing concerns, damage claims, etc.
  - 1264 (b) Number of complaints received, whether delivered in person, telephone,  
1265 mail, or others means. The report shall show the date the complaint was  
1266 received, actions taken to rectify the complaint, and the date the actions  
1267 were taken.
- 1268  
1269  
1270 (4) Account Information. In table format, the number of Customers and service  
1271 levels.  
1272  
1273

1274 **I. Annual Financial Report**

1275  
1276 Grantee shall maintain accounting records specific to the Franchise Area, separate from  
1277 other activities.  
1278

1279 Grantee shall, at its own expense, be required to annually provide the Department with a  
1280 copy of a compiled or reviewed financial statement, or an independent financial audit report.  
1281 The audit report shall be prepared by a certified public accountant. The accountant shall be  
1282 entirely independent of the Grantee, shall have no financial interest whatsoever in the business of  
1283 the Grantee, and shall be approved by the County Auditor-Controller.  
1284

1285 The annual financial statement or audit report must include an Income Statement for the  
1286 Franchised Area operations. The Income Statement should disclose revenue by line of business  
1287 and expenses by line of business and detail expense descriptions.  
1288

1289 In addition, the Grantee shall make available to the County, or its designee, upon request:

- 1290  
1291 (1) Supporting documentation to determine the reasonableness of revenues  
1292 (e.g., average number of monthly residential, industrial, and commercial  
1293 Customers and average monthly rates for each type of Customer service).  
1294  
1295 (2) Supporting documentation (invoices and descriptive schedules) for major  
1296 expense line items including but not limited to depreciation, salaries,  
1297 repair and maintenance, equipment rental, and Disposal expense.  
1298

1299 (3) Supporting documentation for all transactions with affiliated companies.  
1300

1301 (4) Any other information specifically related to the Agreement, which is  
1302 reasonably required by Mendocino County staff for review of rate  
1303 adjustment requests.  
1304

1305 In the event of the failure of the Grantee to provide any such report, the Department may  
1306 employ a qualified accountant or consultant or the County Auditor-Controller to prepare the  
1307 report, and the Grantee shall be liable for and pay the associated costs and expenses of the  
1308 accountant or County Auditor-Controller.  
1309

1310 **J. Annual Operations Report.**  
1311

1312 The Grantee shall submit a written annual report, in a form approved by the Department,  
1313 including but not limited to:  
1314

1315 (1) Information as required pursuant to Section 13H of this Agreement, summarized  
1316 for the preceding four quarters.  
1317

1318 (2) Identification of severe market depressions for Recyclable Materials and  
1319 contingency plans for such events in the future.  
1320

1321 (3) Summary assessment of the overall Solid Waste and Recyclable Materials  
1322 programs from Grantee’s perspective, including but not limited to, (i) highlights  
1323 of significant accomplishments, (ii) problems, and (iii) recommendations and  
1324 plans to improve the programs.  
1325

1326 (4) A revenue statement, showing quarterly Franchise Fee payments and a summary  
1327 of corresponding quarterly revenue.  
1328

1329 (5) Grantee shall report any events of non-compliance with any provisions of the  
1330 Mendocino County Code, state and federal law, regulatory orders, and regulations  
1331 imposed by other regulatory agencies, and the conditions contained in the  
1332 Agreement during the prior 12-month period.  
1333

1334 **K. Annual Disclosure Statement.**  
1335

1336 In conjunction with the annual operations report, as described in Section 13J, Grantee  
1337 shall file a disclosure statement which contains the following information:  
1338

1339 (1) A listing of all Subcontractors to this Agreement (including the name, address,  
1340 and social security or tax identification number of the Subcontractor);  
1341

1342 (2) A listing of all felony convictions or pleas of nolo contendere of the Grantee or

- 1343 Subcontractor by final judgment in any state or federal court within the preceding  
1344 three years;  
1345  
1346 (3) A listing of any instances in which a permit or contract held by the Grantee or  
1347 Subcontractor was terminated by a final judgment in any state or federal court  
1348 within the preceding three years;  
1349  
1350 (4) A listing of all final adjudications finding the Grantee or Subcontractor in  
1351 contempt of any state or federal court order enforcing any state and federal law  
1352 within the preceding three years;  
1353  
1354 (5) A listing of all final convictions or pleas of nolo contendere of the Grantee or  
1355 Subcontractor, under state or local laws governing safety of operations,  
1356 compliance with environmental and other franchise requirements in the County,  
1357 whether misdemeanors or infractions.  
1358

1359 If the Grantee or Subcontractor is a chartered lending institution or a publicly held  
1360 company or a wholly-owned subsidiary of such a company required to file annual or quarterly  
1361 reports under the Securities and Exchange Act of 1934, the Grantee or Subcontractor may  
1362 provide the above required information by submitting quarterly or annual reports for the  
1363 preceding three years. If these reports are incomplete or if they fail to contain the information  
1364 requested in subsection D items 1, 2, 3, 4, and 5 herein, the Grantee or Subcontractor shall make  
1365 such information available to County. The County may also require, at applicant/grantees'  
1366 expense, preparation and submittal of a Dunn and Bradstreet, or comparable, report.  
1367

1368 If Grantee or Subcontractor has filed a disclosure statement, it shall file a supplemental  
1369 disclosure statement only to the extent that its status or events differ from those covered by the  
1370 original disclosure statement.  
1371

1372 **L. Reporting Requirements**  
1373

1374 Grantee may propose report formats that are responsive to the objectives and audiences  
1375 for each report. The format of each report shall be approved by the County. Grantee agrees to  
1376 mail a copy of all reports and submit all reports on computer discs, by e-mail or by modem in a  
1377 format compatible with County’s software and computers at no additional charge. Grantee will  
1378 provide a certification statement, under penalty of perjury, by the responsible Grantee official,  
1379 that the report being submitted is true and correct to the best knowledge of such official after  
1380 their reasonable inquiry.

1381 Grantee shall submit quarterly reports within 30 calendar days after the end of the  
1382 reporting month. Grantee shall submit annual reports no later than 60 calendar days after the end  
1383 of the reporting year.  
1384

1385 Grantee shall submit (via mail and e-mail) all reports to:  
1386

1387 Solid Waste Director, County of Mendocino, at the office designated by County for  
1388 administration of this Agreement.

1389  
1390 **M. Failure to Report**

1391  
1392 The refusal, failure, or neglect of the Grantee to file any of the reports required, or the  
1393 inclusion of any materially false or misleading statement or representation made knowingly by  
1394 the Grantee in such report shall be deemed a material breach of the Agreement, and shall subject  
1395 the Grantee to all remedies, legal or equitable, which are available to the County under the  
1396 Agreement or otherwise.

1397

1398 **SECTION 14 - GRANTEE'S RATES**

1399  
1400 **A. County's Powers**

1401  
1402 The County shall set and regulate all rates and charges assessed by Grantee for any and  
1403 all services and activities it performs or engages in the Franchise Area, and which are covered  
1404 under this Agreement.

1405  
1406 **B. Rate Requirements**

- 1407  
1408 (1) Grantee shall provide the services described in this Agreement and be  
1409 compensated by its Customers at the rates specified in Exhibit B.  
1410  
1411 (2) The rates specified in Exhibit B shall be effective as of September 1, 2010.  
1412  
1413 (3) The rates specified in Exhibit B may be modified in accordance with the Rate  
1414 Adjustments as described in Section 15 of this Agreement.  
1415  
1416 (4) All charges or fees for service by a Grantee shall be fixed and approved by the  
1417 County.  
1418  
1419 (5) Charges for Industrial Solid Waste removal service may be negotiated between  
1420 the Grantee and the Customer. If the negotiated charges are less than the rates  
1421 specified in Exhibit B, Grantee shall notify the Department in writing of each  
1422 Customer that is offered and charged a lower rate. In no event shall the Grantee  
1423 charge a rate in excess of those specified in Exhibit B without prior written  
1424 approval by the County, except for weight overages as provided for in this  
1425 section.  
1426  
1427 (6) Grantee may not charge residential and commercial Customers at rates other than  
1428 those specified in Exhibit B except that the County may authorize a Customer  
1429 to receive reduced service for a reduced charge and may approve an  
1430 agreement between the Customer and the Grantee to provide additional  
1431 service for an additional charge. These authorized reduced or additional  
1432 charges may be revised by the Board from time to time after a public hearing  
1433 thereon and a determination by the Board that a change is in the public interest  
1434 and is mutually agreed upon by both parties.  
1435  
1436 (7) Grantee may charge an extra commercial Container overload charge. This extra  
1437 charge may be levied by Grantee for each occurrence of a Container overload.  
1438 Overload shall be defined as an excess of solid waste mounded such that  
1439 Container covers cannot completely close. The Container overload charge  
1440 shall be based on the amount of excess solid waste causing the overload  
1441 condition. The Container overload charge shall be calculated by the number of

1442                    35 gallon Containers that the excess solid waste fills multiplied by the 35  
1443                    gallon Container once per month rate as set forth in Exhibit B.  
1444  
1445                    (8) All compensation paid to the Grantee shall be paid by its Customers and the  
1446                    County is in no way obligated to provide the Grantee any compensation for  
1447                    services described in this Agreement.  
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1449 **SECTION 15 - RATE ADJUSTMENT PROCEDURES**

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**A. Pass-through Rate Adjustment**

(1) At any time that the Board establishes a County surcharge, increases an existing County surcharge, increases the Franchise Fee rate, increases the Disposal charge at County-owned facilities, Grantee may apply to the County 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 Department;
- (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 Department 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 County Executive Officer or his/her designated County employee.

(2) If a jurisdiction other than the County 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 Board either eliminates a County surcharge on Grantee's Customers, decreases an existing County surcharge on Grantee's Customers, decreases the Franchise Fee rate, decreases the Disposal charge at the County owned facilities, County 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 County must:

- a) Submit a request for the decrease, in writing to the Grantee;

- 1493                    b)     Specify the amount of the requested decrease for each rate given in  
1494                    Exhibit B; and,  
1495  
1496                    c)     Provide documentation that the specified rate decrease is reasonable and  
1497                    appropriate and does not include rate decrease for any other reason than to  
1498                    recover the direct cost of the decreased or eliminated pass-through  
1499                    expense.

1500  
1501                    Provided that the Grantee has received and considered the request and  
1502                    documentation described above, and the requested rate adjustment is reasonable  
1503                    and appropriate and is solely to recover the direct cost of the decreased or  
1504                    eliminated pass-through expense, the rates given in Exhibit B shall be amended  
1505                    by the County Executive Officer or his/her designated County employee.

- 1506  
1507                    (5)    If a jurisdiction other than the County eliminates or decreases surcharges or fees  
1508                    that affect Grantee's expense, the same procedures as described in (4), above,  
1509                    apply.  
1510  
1511                    (6)    In the case of a jurisdiction other than the County eliminating or decreasing  
1512                    surcharge or fees that affect Grantee's expenses, Grantee shall be responsible for  
1513                    notifying the County in writing. If Grantee fails to notify County of eliminated or  
1514                    decreased surcharges or fees per this section, then the County may apply for and  
1515                    request a retroactive pass through rate adjustment decrease.

1516  
1517     **B.     Cost-of-Living & Fuel Rate Adjustments**  
1518  
1519

1520                    (1) Four to six months prior to the end of a Rate Period, or by October 1, 2010 for  
1521                    the first Rate Period, Grantee may apply for cost-of-living (COLA) and a fuel rate  
1522                    adjustment to become effective on January 1, 2011, and annually thereafter. The rate  
1523                    adjustments shall be based on: 1) 90% of the change in the value of the most recently  
1524                    published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San  
1525                    Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and  
1526                    published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor  
1527                    and its value twelve months before, and 2) 100% of the change in the value of the  
1528                    most recently published Series ID:wpu057303; Commodity Code 0573-03 #2 Diesel Fuel  
1529                    compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its  
1530                    successor and its value twelve months before. Grantee shall notify the County of the  
1531                    adjustments to take place and shall provide the County with its computations and documentation  
1532                    therefore.

1533                    For calculation of adjustments, the rates would be divided into three components –  
1534                    Fuel, Pass-through and All Other. The Fuel Component would equal 8.4% of the first

1535 year rate. The Pass-through Component would equal 10.9%. The All Other Component  
1536 would equal 80.7% of the rate. When the first adjustment to rates occurs, it will be done in  
1537 the following manner:

1538 Fuel Component: Existing Billed Rate x 8.4% x Diesel Fuel Index

1539 Pass-through Component: None, since pass-through increases, if any, will be  
1540 made pursuant to Section 15(A) above.

1541 All Other Component: Existing Billed Rate x 80.7% x CPI Index

1542 The sum of the above equals the New Rate. Following completion of each annual  
1543 financial statement by Grantee, the adjustment factors will be reviewed to correspond to the  
1544 percentage of fuel, disposal cost and other expenses out of total operating expenses.

1545  
1546 **C. Larger Rate Increases**  
1547

1548 No sooner than one year after this Agreement becomes effective, and no more frequently  
1549 than annually thereafter, Grantee may apply for a rate adjustment in excess of the Cost-of-Living  
1550 Rate Adjustment described in (B), above. Grantee may apply for either the Cost-of-Living Rate  
1551 Adjustment or the larger rate increase as described in this section, but may not apply for both for  
1552 the same Rate Period. In applying for such a rate increase the Grantee must:

- 1553
- 1554 (1) Notify the Department, in writing, of Grantee's intent to seek a rate increase in  
1555 excess of the Cost-of-Living Rate Adjustment limitation;  
1556
  - 1557 (2) Obtain and submit to the Department an independent financial audit report of  
1558 Grantee's operations. The County shall select or approve the auditor to perform  
1559 the audit. The cost of the audit shall be paid by the Grantee. The audit must, at a  
1560 minimum, determine the profitability of Grantee's operations specific to services  
1561 provided under this Agreement.  
1562
  - 1563 (3) Submit a reviewed financial statement for the most-recently completed Rate  
1564 Period.  
1565

1566 Using information provided in the financial audit, as well as records required to be  
1567 maintained by Guarantee under Section 13 of this Agreement, the County shall perform a rate  
1568 setting study to determine appropriate rates based on projected profitability of the Grantee. The  
1569 appropriate profit margin, and the means of determining profitability, shall be included as part of  
1570 the rate setting study. The rate setting study shall be conducted by the County, or by a qualified  
1571 contractor selected by the County. The cost of the rate study shall be paid by the Grantee.  
1572

1573 County shall then hold at least one public meeting, at a convenient time and place within  
1574 the Grantee's Franchise Area, to solicit public comment on the proposed rate increases, as

1575 determined by the rate setting study. This public meeting shall be duly noticed and shall be held  
1576 no less than 14 days before the Board considers adoption of the rate increases.

1577  
1578         Provided that the County has received the required information, as described in (1) and  
1579 (2), above, has completed the rate setting study, and has held at least one public meeting and  
1580 considered public input, the Board may adopt the new rates by amending Exhibit B.

1581  
1582 **D.     Rate Decreases**

1583  
1584         The County may, at any time, request a rate decrease provided that some change in  
1585 conditions has occurred to warrant a rate decrease. Such a rate decrease will require a full  
1586 disclosure audit and formal rate structuring. In requesting such a rate decrease, the County must:

- 1587         (1)     Notify the Grantee, in writing, of County's intent to seek a rate decrease;
- 1588  
1589         (2)     Obtain a financial audit of Grantee's operations. The Grantee shall comply with a  
1590 full disclosure audit. The County shall select the auditor to perform the audit.  
1591 The cost of the audit shall be paid by the County. The audit must, at a minimum,  
1592 determine the profitability of Grantee's operations specific to services provided  
1593 under this Agreement.  
1594

1595  
1596         Using information provided in the financial audit, as well as records required to be  
1597 maintained by Guarantee under section 13 of this Agreement, the County shall perform a rate  
1598 setting study to determine appropriate rates based on projected profitability of the Grantee. The  
1599 appropriate profit margin, and the means of determining profitability, shall be included as part of  
1600 the rate setting study. The rate setting study shall be conducted by the County, or by a qualified  
1601 contractor selected by the County. The cost of the rate study shall be paid by the County.  
1602

1603         County shall then hold at least one public meeting, at a convenient time and place within  
1604 the Grantee's Franchise Area, to solicit public comment on the proposed rate decrease, as  
1605 determined by the rate setting study. This public meeting shall be duly noticed and shall be held  
1606 no less than 14 days before the Board considers adoption of the rate decrease.  
1607

1608         Provided that the County has received the required information, as described in (1) and  
1609 (2), above, has completed the rate setting study, and has held at least one public meeting and  
1610 considered public input, the Board may adopt the new rates by amending Exhibit B.

1611  
1612 **E.     Recycling Commodity Value Adjustment**

1613  
1614         The gross market commodity value of Discarded Recyclable Materials collected by  
1615 Grantee pursuant to this Agreement shall be estimated from the tons collected and the average  
1616 composite market value as calculated by the following weighted profile, with each category  
1617 multiplied by the market price including any California Redemption Value, FOB at the  
1618 Designated Recycling Processing Facility. The values below shall constitute the baseline for

1619 comparison to the Rate Period ending December 31, 2010.  
1620

		<b>COMPOSITE MARKET VALUE EFFECTIVE 1-1-10</b>		
		Scrap		Weighted
Composition	Commodity	Value/Ton	CRV/Ton	Value/Ton
14.75%	OCC	100.00		14.75
44.08%	Mixed Paper	89.77		39.57
0.53%	HDPE Color	285.00	140.00	2.25
0.51%	HDPE Natural	503.00	140.00	3.28
1.94%	PET	332.00	1,300.00	31.66
1.25%	Rigid Plastics	62.00		0.78
1.82%	Tin	5.00		0.09
24.41%	Glass 3 Mix	(40.00)	86.00	11.23
0.71%	Alum. Cans	1,055.00	2,960.00	28.51
10.00%	Refuse	(67.83)		(6.78)
Total Composite Market Value Per Ton				\$ 125.34

1621  
1622 Four to six months before the end of the Rate Period, beginning with the Rate Period  
1623 ending December 31, 2010, Grantee shall calculate the average composite market value per ton  
1624 over the previous 12 months, and use it to determine the change in the gross commodity value of  
1625 Discarded Recyclable Material collected by Grantee compared to the previous Rate Period. Rates  
1626 will be adjusted to that 50% of the change in gross commodity value will be applied  
1627 proportionately to reduce rates in case of a gain and increase rates in case of a decline.  
1628

1629 Example. If the average composite market value per ton during the Rate Period ending  
1630 December 31, 2010 was 100.34/ton and Grantee collected 1,200 tons of Discarded Recyclable  
1631 Material pursuant to the Agreement, rates would be adjusted to equal the following change in  
1632 gross recyclable commodity value.

1633  
1634  $\$125.34 - \$100.34 = \$25.00/\text{ton} \times 1,200 \times 50\% = \$15,000$  added to rates

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**F. County Rate Setting Authority**

1640           If the County is unable to set rates as provided for herein, the County agrees that  
1641           Grantee shall be allowed to set said rates in conformance with the rules and amounts  
1642           provided in this Agreement, and all other provisions of this Agreement shall remain in  
1643           full force and effect. Should a court of competent jurisdiction determine that the County  
1644           lacks authority to set and/or increase rates for charges related to Franchise and  
1645           governmental fees and charges then Grantee shall reduce the rates it charges Customers a  
1646           corresponding amount, providing said fees, rates and/or charges disallowed by the court  
1647           are not related to the cost of providing service hereunder and had already been incorporated  
1648           in the rates charged by Grantee to its Customers.

1649           Nothing herein is intended to imply that California Constitution, Articles XIIC or  
1650           XIIID, apply to the setting of rates for the services provided under this Agreement; rather  
1651           this section is provided merely to allocate risk of loss as between the parties.

1652 **SECTION 16 - FEES**

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1654 **A. Franchise Fee - Amount**

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1663 **B. Franchise Fee - Quarterly Payments and Revenue Statements**

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1670 **C. Franchise Fee - Deposit.**

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1683 **E. Refund of Franchise Fees**

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In consideration of the exclusive rights provided herein, Grantee shall pay a Franchise Fee to the County calculated as 12% of the Adjusted Gross Revenues. collected for service. The Franchise Fee may be revised by the Board from time to time after a public hearing thereon and a determination by the Board that a change is in the public interest, such increases or decreases determined by the Board shall be subject to pass-through rate adjustment.

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

Franchise fees shall be paid to the Department which shall deposit them to the County General Fund.

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

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

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

**A. Bonds**

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

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

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

**B. Insurance**

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

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

- (1) Workers' Compensation Insurance. Grantee shall obtain and maintain in full force and effect throughout the entire term of this Agreement full Workers' Compensation Insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the Department throughout the term of this Agreement.
- (2) Comprehensive General Liability. Grantee shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of

1732 TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION  
1733 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property  
1734 damage, with any self-insured retention not exceeding TWO HUNDRED  
1735 THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect Grantee  
1736 and County from any claim for damages for bodily injury, including accidental  
1737 death, as well as from any claim for property damage which may arise from  
1738 operations performed pursuant to this Agreement, whether such operations are by  
1739 Grantee itself, or by its agents, employees and/or Subcontractors. Copies of the  
1740 policies or endorsements evidencing the above-required insurance coverage shall  
1741 be filed with the Department. Endorsements are required to be made a part of all  
1742 of the following insurance policies required by this Section:

- 1743
- 1744 (a) "The County, its employees, agents, and officers, are hereby added as  
1745 insured's as respects liability arising out of activities performed by or on  
1746 behalf of Grantee."
- 1747
- 1748 (b) "This policy shall be considered primary insurance as respects any other  
1749 valid collectible insurance the County may possess including any self-  
1750 insured retention the County may have, and any other insurance the  
1751 County does possess shall be considered excess insurance and shall not  
1752 contribute with it."
- 1753
- 1754 (c) "This policy shall act for each insured, as though a separate policy had  
1755 been written for each. This, however, will not act to increase the limit of  
1756 liability of the insuring company."
- 1757
- 1758 (d) "Thirty (30) days prior written notice by certified mail, return receipt  
1759 requested, shall be given to the County in the event of suspension,  
1760 cancellation, reduction in coverage or in limits or non-renewal of this  
1761 policy for whatever reason. Such notice shall be sent to the Department."

- 1762
- 1763 (3) Vehicle Liability. Grantee shall obtain and maintain in full force and effect  
1764 throughout the entire term of this Agreement a vehicle liability policy with a  
1765 minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence  
1766 for bodily injury and TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)  
1767 per occurrence for property damage. Said insurance shall protect Grantee and  
1768 County from any claim for damages for bodily injury, including accidental death,  
1769 as well as from any claim for property damage which may arise from operation of  
1770 owned and non-owned vehicles. Copies of the policies or endorsements  
1771 evidencing the above-required insurance coverage shall be filed with the  
1772 Department.

1773 The limits of such insurance coverage, and companies, shall be subject to review and  
1774 approval by the County every year and may be increased at that time and match the coverage  
1775

1776 provided by the County's own liability insurance policy. The County shall be included as a  
1777 named insured on each of the policies, or policy endorsements.  
1778

1779 **C. Indemnification**

1780 (1) Indemnification of County

- 1781
- 1782 (a) Grantee shall defend the County with counsel reasonably acceptable to the  
1783 County and indemnify the County from and against any and all liabilities,  
1784 costs, claims and damages which are caused by Grantee's negligence or  
1785 failure to comply with applicable laws and regulations, including but not  
1786 limited to liabilities, costs, claims and damages described in Section 17B,  
1787 above.  
1788
- 1789 (b) Grantee agrees that it shall protect and defend the County with counsel  
1790 reasonably acceptable to County, indemnify and hold harmless County, its  
1791 officers, employees and agents from and against any and all losses,  
1792 liabilities, fines, penalties, claims, damages, liabilities or judgments  
1793 (including attorney's fees), arising out of or resulting in any way from  
1794 Grantee's exercise of this Agreement, unless such claim is due to the sole  
1795 negligence or willful acts of the County, its officers, employees, agents or  
1796 contractors, or from County's grant of this Agreement to Grantee.  
1797
- 1798 (c) In addition, Grantee shall defend the County with counsel reasonably  
1799 acceptable to the County, indemnify and hold the County harmless from  
1800 any and all litigation and claims, damages and liabilities arising there  
1801 from, brought to enforce or to challenge this Agreement and/or Grantee's  
1802 exclusive rights granted there under; provided, however, that Grantee's  
1803 obligations hereunder extend only to actions brought against or by Persons  
1804 not parties to this Agreement.  
1805



- 1
- 2           (2)    Indemnification of Grantee.
- 3           (a)    Except as provided by subparagraph (3) AB939 Indemnification, the  
4                   County shall defend, with counsel reasonably acceptable to Grantee,  
5                   indemnify and hold Grantee harmless from any and all fines,  
6                   penalties and assessments levied against or threatened to be  
7                   levied against the County and/or Grantee for the County's failure to  
8                   meet the requirements of AB939, its amendments or any successor  
9                   legislation and/or all rules and regulations promulgated  
10                  hereunder if said failure is due solely to the negligence or  
11                  misconduct of the County, including but not limited to the County's  
12                  failure to adopt Source Reduction and Recycling Elements  
13                  mandated under AB939.
- 14           (b)    In the event that the County directs the Grantee to Dispose of or  
15                   Transport Solid Waste, and/or Recyclable Materials to a specific  
16                   facility, the Grantee shall not be held liable for damages at or to  
17                   that facility, or to the County as a result of the acts or omissions of  
18                   that facility, unless the damages are caused by the willful or  
19                   negligent acts of the Grantee.
- 20           (3)    AB939 Indemnification. Grantee shall defend with counsel reasonably  
21                   acceptable to the County, indemnify and hold the County harmless from any  
22                   and all fines, penalties and assessments levied against or threatened to be  
23                   levied against the County for the County's failure to meet the requirements  
24                   of AB939, with respect to the Waste Stream under Grantee's control, its  
25                   amendments or any successor legislation and/or all rules and regulations  
26                   promulgated hereunder if said failure results from Grantee's failure to comply  
27                   with this Agreement and/or Grantee's failure to comply with said laws,  
28                   rules or regulations, including but not limited to failing to timely supply to the  
29                   County the reports and information required by the County in order to comply  
30                   with AB939.

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

32  
33 **A. Franchise Transfer**

34  
35 In the event that ownership interest of a Grantee is sold, transferred, leased, assigned,  
36 mortgaged, pledged, hypothecated, or otherwise encumbered or Disposed of in whole or in part,  
37 directly or indirectly, whether voluntarily or by operation of law or through any stock transfer,  
38 transfer in trust, change in control, consolidation or merger, this Agreement will be considered  
39 non-transferable unless all of the following conditions are met:

- 40  
41 (1) The Grantee notifies the County, in writing, at least sixty (60) days in advance of  
42 the transfer in ownership interest, as defined above, and submits a Disclosure  
43 Statement in accordance with Section 13K; and  
44  
45 (2) The Grantee and the party to which ownership interest is being transferred  
46 demonstrate that the party to which ownership interest is being transferred has the  
47 financial means, experience and capabilities to fulfill the requirements of this  
48 Agreement; and  
49  
50 (3) The party to which ownership interest is being transferred demonstrates that the  
51 best interest of the public will be served, and that service levels will not decline or  
52 rates increase as a result of the transfer of ownership.

53  
54 If the Grantee and the party to which ownership interest is being transferred have  
55 satisfactorily complied with all of the conditions described above, the Board shall not  
56 unreasonably deny the transfer of this Agreement. In the event that ownership interest in  
57 Grantee changes as described in this section, and the Board has approved the transfer of this  
58 Agreement, the Board has the right to require competitive bid or request for proposal of said  
59 Agreement at any time during the remainder of this Agreement term. A two-year notification of  
60 such intent shall be given to the Grantee provided that two or more years remain in Agreement  
61 term.

62  
63 Any transfer of ownership interest made without having met the conditions described  
64 above, and without Board approval to transfer this Agreement, shall constitute good cause for  
65 revocation of the Agreement.

66  
67 Notwithstanding the above, the present stockholders in the Grantee shall have the right to  
68 transfer stock to their spouses and/or relatives within the first degree.

69  
70 The Grantee shall compensate the County for all costs incurred by the County to examine  
71 the transfer of the Agreement, whether or not the County agrees to the transfer.

72  
73 **B. General Standards of Responsibility**

75 The Board may refuse to approve the transfer of this Agreement, if the Board finds by a  
76 preponderance of evidence that the buyer has:

- 77  
78 (1) Intentionally misrepresented or concealed any material fact in the disclosure  
79 statement;  
80  
81 (2) Obtained a license, permit, contract, or franchise from the County by intentional  
82 misrepresentation or concealment of a material fact;  
83  
84 (3) Been convicted of a felony or pleaded guilty or nolo contendere to a felony  
85 involving the laws of any state or the federal government within the three years  
86 preceding the issuance of the license or permit, or execution of the contract or  
87 Agreement;  
88  
89 (4) Been adjudicated in contempt of an order of any court enforcing laws of this state  
90 or the federal government within three years preceding the issuance of the license  
91 or permit, or execution of the contract or Agreement; or  
92  
93 (5) Disregarded the public safety, as evidenced by convictions or pleas of nolo  
94 contendere to the violation of state and local law governing safety of operations,  
95 compliance with environmental and other franchise requirements within the  
96 County.  
97

98 In deciding whether to renew or allow transfer of this Agreement, the Board shall  
99 consider the facts and mitigating factors surrounding the foregoing including:

- 100  
101 (1) The relevance of the offense to the business for which the license, permit, contract  
102 or franchise is issued;  
103  
104 (2) The nature and seriousness of the offense;  
105  
106 (3) The circumstances under which the offense occurred;  
107  
108 (4) The date of the offense; and  
109  
110 (5) The ownership and management structure in place at the time of the offense.  
111

Deleted:

112 The Department shall recommend to the Board whether the buyer is fit to retain the rights  
113 granted under this Agreement. The County shall notify the Grantee of its determination within  
114 sixty (60) days following the Grantee's submittal of the disclosure form. Failure by the  
115 Department to make a recommendation regarding the Grantee's fitness for transfer, within the  
116 time frame indicated above, shall in no case result in the revocation of the Grantee's rights under  
117 the Agreement, an order to cease operations, or a termination of this Agreement.  
118

119 **C. Opportunity to Demonstrate Rehabilitation**

120  
121 In determining whether to recommend approval to the Board of a transfer of this  
122 Agreement, the Department shall first allow the buyer to submit evidence of rehabilitation and  
123 shall consider the buyer’s efforts to prevent recurrence of unlawful activity. Items to be  
124 considered by the Department shall include:

- 125  
126 (1) The record and history of implementing successful corrective actions undertaken  
127 to prevent or minimize the likelihood of recurrence of the offense;  
128  
129 (2) Whether the offense was an isolated incident or a series of related incidents;  
130  
131 (3) Whether the buyer cooperated with government bodies during investigations;  
132  
133 (4) The number and types of permits, contracts or franchises held by the buyer;  
134  
135 (5) Implementation by the buyer of formal policies, training programs, and  
136 management controls to substantially minimize or prevent the occurrence of  
137 future violations or unlawful activities;  
138  
139 (6) Implementation by the buyer of an environmental compliance auditing program  
140 to assess and monitor the adequacy of the internal systems to ensure compliance  
141 with environmental laws, regulations and conditions set forth in this Agreement;  
142  
143 (7) The buyer’s discharge of individuals, or severance of the interest of or affiliation  
144 with responsible parties, which would otherwise cause the County to deny the  
145 renewal, transfer or refuse to enter into this Agreement; and  
146  
147 (8) Consideration of the need for this Agreement in advancing the County's welfare,  
148 health, and prosperity.

149  
150 Where the Department determines that pursuant to the above, mitigating factors exist, or,  
151 pursuant to this Section 18C, that the buyer has demonstrated rehabilitation, the Department shall  
152 recommend to the Board the transfer of this Agreement.

153 **SECTION 19 - TERMINATION**

154  
155 **A. Events of Default**

156  
157 Each of the following shall constitute an event of default (“Event of Default”) hereunder:

- 158  
159 (1) Grantee has demonstrated an inability to properly perform the franchised activity,  
160 failed to comply with one or more of the terms or conditions of this Agreement, or  
161 future amendment(s) to this Agreement, failed to comply with any material  
162 federal, state or local laws, ordinances, rules or regulations pertaining to the  
163 franchised activity, or when the franchised activity has become a nuisance or is  
164 detrimental to the public health, safety or welfare. If Grantee does not perform  
165 franchise services for a period in excess of 15 days, this Agreement may be  
166 terminated by the County. Grantee shall not be in default of this Agreement if  
167 Grantee commences such action required to cure the particular breach within 7  
168 calendar days after such notice, and it continues such performance diligently until  
169 completed.
- 170  
171 (2) Any representation, warranty, or disclosure made to County by Grantee in  
172 connection with or as an inducement to entering into this Agreement or any future  
173 amendment to this Agreement, which proves to be false or misleading in any  
174 material respect as of the time such representation or disclosure is made, whether  
175 or not any such representation, warranty, or disclosure appears as part of this  
176 Agreement;
- 177  
178 (3) There is a seizure or attachment (other than a pre-judgment attachment) of, or  
179 levy affecting possession on, the operating equipment of Grantee, including  
180 without limit its vehicles, maintenance or office facilities, or any part thereof of  
181 such proportion as to substantially impair Grantee's ability to perform under this  
182 Agreement and which cannot be released, bonded, or otherwise lifted within 48  
183 hours excluding weekends and Holidays;
- 184  
185 (4) Grantee files a voluntary petition for debt relief under any applicable bankruptcy,  
186 insolvency, debtor relief, or other similar law now or hereafter in effect, or shall  
187 consent to the appointment of or taking of possession by a receiver, liquidator,  
188 assignee (other than as a part of a transfer of equipment no longer useful to  
189 Grantee or necessary for this Agreement), trustee (other than as security for an  
190 obligation under a deed of trust), custodian, sequestrator (or similar official) of the  
191 Grantee for any part of Grantee's operating assets or any substantial part of  
192 Grantee's property, or shall make any general assignment for the benefit of  
193 Grantee's creditors, or shall fail generally to pay Grantee's debts as they become  
194 due or shall take any action in furtherance of any of the foregoing;
- 195

196 (5) A court having jurisdiction shall enter a decree or order for relief in respect of the  
197 Grantee, in any involuntary case brought under any bankruptcy, insolvency,  
198 debtor relief, or similar law now or hereafter in effect, or Grantee shall consent to  
199 or shall fail to oppose any such proceeding, or any such court shall enter a decree  
200 or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator  
201 (or similar official) of the Grantee or for any part of the Grantee's operating  
202 equipment or assets, or orders the winding up or liquidation of the affairs of  
203 Grantee;

204  
205 (6) If Grantee (i) is the subject of any labor unrest including work stoppage or  
206 slowdown, sick-out, picketing or other concerted job action; (ii) appears in the  
207 reasonable judgment of County to be unable to regularly pay its bills as they  
208 become due; or (iii) is the subject of a civil or criminal judgment or order entered  
209 by a federal, state, regional or local agency for violation of an Applicable Law,  
210 and the County believes in good faith that Grantee's ability to perform under the  
211 Agreement has thereby been placed in substantial jeopardy, the County may, at its  
212 option and in addition to all other remedies it may have, demand from Grantee  
213 reasonable assurances of timely and proper performance of this Agreement, in  
214 such form and substance as the County believes in good faith is reasonably  
215 necessary in the circumstances to evidence continued ability to perform under the  
216 Agreement. If Grantee fails or refuses to provide satisfactory assurances of  
217 timely and proper performance in the form and by the date required by County,  
218 such failure or refusal shall be an event of default.

219  
220 **B. Right to Suspend, Amend, or Terminate**

221  
222 Upon an “Event of Default” by Grantee, the County may suspend, amend, or terminate  
223 this Agreement.

224  
225 **C. Procedures**

226  
227 Prior to suspending, amending, or terminating this Agreement granted by the Board, the  
228 County may provide the Grantee with written notice of the proposed action and the reasons for it.  
229 The notice shall state that prior to the suspension, amendment or revocation, the Grantee is  
230 entitled to a hearing before the County if the Grantee requests such a hearing in writing and the  
231 request is received by the County not more than ten (10) days after notice of the proposed action  
232 has been mailed to the Grantee.

233  
234 If the County does not receive a written request for a hearing within the time period  
235 prescribed above, the Grantee is deemed to have waived the right to a hearing and the County  
236 may immediately suspend, amend, or terminate this Agreement on the terms specified in the  
237 notice.

238  
239 In the event of a serious violation, as determined by the Department, or in the event of

repeated violations of this Agreement, the Agreement shall be terminated by the Board.

**D. Agreement - Revocation - Equipment Use by County**

In the event of suspension or revocation of this Agreement, the County 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 County 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 County for such purpose. The County shall pay the Grantee a reasonable rental for the use of such trucks and equipment.

**E. Liquidated Damages**

(1) **General.** The County 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 County 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 County and that County has considered and relied on Grantee's representations as to its quality of service commitment in awarding an Agreement to it. The County and Grantee recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The County and Grantee further recognize that if Grantee fails to achieve the performance standards, or fails to submit required documents in a timely manner, County 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 County will suffer. Therefore, without prejudice to

284 County’s right to treat such non-performance as an event of default under this  
285 Section, the County and Grantee agree that the Liquidated Damages amounts  
286 established in Exhibit F of this Agreement and the following Liquidated Damage  
287 amounts represent a reasonable estimate of the amount of such damages  
288 considering all of the circumstances existing on the Effective Date of this  
289 Agreement, including the relationship of the sums to the range of harm to County  
290 that reasonably could be anticipated and the anticipation that proof of actual  
291 damages would be costly or impractical.

292  
293 Grantee agrees to pay (as Liquidated Damages and not as a penalty) the amounts  
294 set forth in the Schedule of Liquidated Damages, Exhibit F.

295  
296 County may determine the occurrence of events giving rise to Liquidated  
297 Damages through the observation of its own employees or representative or  
298 investigation of complaints by Customers, Owners, and Generators.

299  
300 Liquidated Damages will only be assessed after Grantee has been given the  
301 opportunity but failed to rectify the damages as described in this Agreement.  
302 County shall give Grantee notice of its intention to assess Liquidated Damages.  
303 The notice will include a brief description of the incident(s) and non-performance.  
304 The County may review (and make copies at its own expense) all information in  
305 the possession of Grantee relating to incident(s) and non-performance. County  
306 may, within 10 calendar days after issuing the notice, request a meeting with  
307 Grantee. County may present evidence of non-performance in writing and  
308 through testimony of its employees and others relevant to the incident(s) and non-  
309 performance. County will provide Grantee with a written explanation of his or  
310 her determination on each incident(s) and non-performance prior to authorizing  
311 the assessment of Liquidated Damages under this Section 18E(2). The decision  
312 of County shall be final and Grantee shall not be subject to, or required to  
313 exhaust, any further administrative remedies.

314  
315 (3) **Amount.** County may assess Liquidated Damages for each calendar day or event,  
316 as appropriate, that Grantee is determined to be liable in accordance with this  
317 Agreement in the amounts specified in Exhibit F subject to annual adjustment  
318 described below.

319  
320            The amount of Liquidated Damages specified in Exhibit F shall be adjusted  
321 annually on the first day of the Rate Period. The adjustment shall be rounded to  
322 the nearest cent. Liquidated Damage amounts shall be adjusted to reflect 75% of  
323 the changes in the All Urban Consumers Index (CPI-U), all items, for the San  
324 Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally  
325 adjusted, compiled and published by the U. S. Department of Labor, Bureau of  
326 Labor Statistics or its successor agency, using the method following:

327

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

330  
331 For example:

332 Current Liquidated Damage Amount = \$150.00

333 Most recently published index (May 2004) = 193.5

334  
335 Index published twelve months prior to most recently published index  
336 (May 2003) = 191.0

337  
338 Adjusted Liquidated Damage Amount = \$150.00 x (193.5/191.0) =  
339 \$151.96

340  
341  
342  
343 If the CPI-U is discontinued or revised during the Term by the United States  
344 Department of Labor, such other government index or computation with which it  
345 is replaced shall be used in order to obtain substantially the same result as would  
346 be obtained if the CPI had not been discontinued or revised.

- 347  
348  
349 (4) **Timing of Payment.** Grantee shall pay any Liquidated Damages assessed by  
350 County within 10 calendar days of the date the Liquidated Damages are assessed.  
351 If they are not paid within the 10-day period, and providing Grantee has  
352 exhausted its right to administrative review in accordance with this Section,  
353 County may proceed against the performance bond required by the Agreement,  
354 request replacement of Grantee's general manager, order the termination of the  
355 exclusive Collection rights granted by this Agreement, or all of the above.

357 **SECTION 20 - RIGHTS OF COUNTY TO PERFORM DURING EMERGENCY**

358  
359 **A. Provision of Emergency Services**

360  
361 Grantee shall provide emergency services at the County’s request in the event of major  
362 accidents, disruptions, or natural calamities. Emergency services may include, but are not  
363 limited to, assistance handling salvaged materials, Processing, Disposing of Solid Waste or  
364 Recyclable Materials following a major accident, disruption, or natural calamity. Grantee shall  
365 be capable of providing emergency services within 24 hours of notification by the County or as  
366 soon thereafter as is reasonably practical in light of the circumstances. Emergency services,  
367 which exceed the Grantee’s obligations, shall be compensated in accordance with Section 15C.  
368 If Grantee cannot provide the requested emergency services, the County shall have the right to  
369 take possession of the Grantee’s equipment for the purposes of providing emergency services.  
370

371 **B. Franchise Revocation - Emergency Actions**

372  
373 Notwithstanding provisions of this Agreement to the contrary, the Department may  
374 temporarily suspend this Agreement, without prior notice and a hearing, whenever an emergency  
375 exists which poses an immediate threat to the public health, safety, or welfare. In such a case,  
376 the Department shall attempt to notify the Grantee at least twenty four (24) hours prior to the  
377 proposed action. A hearing shall be held within seventy two (72) hours of the action taken to  
378 suspend the franchise. Appeals to the Board are governed by Section 21.  
379

380 **C. Labor Dispute - County Assumption of Duties - Authorized**

381  
382 In the event the refuse Collection of a Grantee is interrupted by a labor dispute and  
383 scheduled Collections are discontinued for more than seventy-two (72) hours, the County shall  
384 have the right to forthwith take temporary possession of all facilities and equipment of the  
385 Grantee for the purpose of continuing the service which the Grantee has agreed to provide in  
386 order to preserve and protect the public health and safety. The County shall have the right to  
387 retain possession of such facilities and equipment and to render the required service, until the  
388 Grantee can demonstrate to the satisfaction of the County that required services can be resumed  
389 by the Grantee; provided, however, that such temporary assumption of the Grantee's obligations  
390 under this Agreement shall not be continued by the County for more than one hundred twenty  
391 (120) days from the date such operations were undertaken. Should the Grantee fail to  
392 demonstrate to the satisfaction of the County that required services can be resumed by the  
393 Grantee prior to the expiration of the aforementioned one hundred twenty (120) days, the rights  
394 and privileges granted to the Grantee may be forfeited and the franchise granted herein may be  
395 terminated.  
396

397 Should the County exercise its right to take temporary possession of Grantee’s facilities  
398 used in providing service under this Agreement, County shall recognize Grantee’s obligations to  
399 provide service in accordance with other agreements and shall cooperate with Grantee in its  
400 efforts to provide such other service using the Grantees facilities in the County’s temporary

401 possession.

402

403 **D. Labor Dispute - County Assumption of Duties - Use of Revenue**

404

405 During any period in which the County has temporarily assumed the obligations of the  
406 Grantee under this Agreement, the County shall be entitled to the Adjusted Gross Revenues  
407 attributable to operations during such period and shall pay there from only those costs and  
408 expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable  
409 to the period. The excess, if any, of revenue over applicable or allocable costs and expenses  
410 during such period shall be deposited in the treasury to the County to the credit of the General  
411 Fund. Final adjustment and allocation of Adjusted Gross Revenues, costs and expenses to the  
412 period during which the County temporarily assumed the obligations of the Grantee shall be  
413 determined by an audit, by a certified public accountant or licensed public accountant, and  
414 prepared in report form with that person's unqualified opinion annexed thereto.

415

416 **E. Labor Dispute - County Assumption of Duties – Employees**

417

418 Employees of the Grantee may be employed (providing employee consents) by the  
419 County during any period in which the County temporarily assumes the obligations of the  
420 Grantee under this Agreement; provided, however, that the rate of compensation to be paid the  
421 employees, or any other employees, shall be the rate or rates in effect at the time the Grantee's  
422 service was interrupted by the labor dispute, and the terms and conditions of employment shall  
423 be the same as provided by the Grantee.

424

425

426 **SECTION 21 - GENERAL PROVISIONS**

427

428 **A. Entire Agreement**

429

430 This Agreement, including the exhibits, represents the full and entire Agreement between  
431 the County and Grantee with respect to the matters covered herein.

432

433 **B. Force Majeure**

434

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

446

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

452

453 In the event a labor disturbance interrupts Collection, Transportation Disposal, and/or  
454 Processing of Solid Waste or Recyclable Materials by Grantee as required under this Agreement,  
455 County may elect to exercise its rights under Section 20 of this Agreement.

456

457 **C. Notice Procedures**

458

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

463

464 A. If to County:

465

Solid Waste Director

466

County of Mendocino

467

Mendocino Solid Waste Management Authority

468

P.O. Box 123

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Ukiah, CA 95482

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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.

All 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 County. 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 County and Grantee. Neither Grantee nor its officers, employees, agents or Subcontractors shall obtain any rights to retirement or other benefits which accrue to County employees.

**E. Roadway Damage**

Grantee shall be responsible for any extraordinary damage (not including normal wear) caused by Grantee's negligence to County'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 County Code**

Grantee shall comply with those provisions of the County Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement, subject to Section 1C.

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**H. Severability**

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

**I. Waiver or Modification**

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

**J. Forum Selection**

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

**K. Court Costs and Attorney Fees**

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

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

543  
544 **GRANTEE: Solid Wastes of Willits, Inc**

545  
546  
547 \_\_\_\_\_

548  
549 Gerald W. Ward, President  
550 Solid Wastes of Willits, Inc.  
551 P.O. Box 1425  
552 Willits, CA 95490

553  
554 **Date:** \_\_\_\_\_

555  
556  
557 **COUNTY OF MENDOCINO**

558  
559  
560 \_\_\_\_\_  
561 Carre Brown, Chair, BOARD OF SUPERVISORS

562  
563  
564 **Date:** \_\_\_\_\_

565  
566 **ATTEST:**  
567  
568 Clerk of the Board

569  
570 **By:** \_\_\_\_\_

571  
572  
573 **APPROVED AS TO FORM:**  
574 Jeanine B. Nadel, County Counsel

575  
576 **By:** \_\_\_\_\_

577  
578 **APPROVED AS TO INSURANCE REQUIREMENTS:**  
579 Kristin McMenomey, Risk Manager

580  
581 **By:** \_\_\_\_\_

582  
583

## 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. The Cart will be of a style and color approved by the Department, 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, 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.

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 Department, 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, 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.

3) **CONSTRUCTION AND DEMOLITION WASTE:** Grantee shall offer recycling service for 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.

**EXHIBIT B**

**COUNTY-APPROVED RATES**

EXHIBIT B				(page 1 of 2)	
SOLID WASTES OF WILLITS, INC.					
REFUSE COLLECTION AREA NO. THREE					
ANDERSON VALLEY					
<b>RESIDENTIAL RATES (\$/MONTH)</b>					
EFFECTIVE September 1, 2010					
SERVICE			RATES		
			ROADSIDE	DRIVEWAY	
Residential Special Pickup (35 gallon)			\$ 19.00		20.47
Residential Special Pickup (95 gallon)			23.29		-
20 gallon cart 1 X week			30.61		37.22
35 gallon cart 1 X week			37.40		45.96
35 gallon cart every other week			29.24		29.24
35 gallon cart 1 X month			15.79		19.00
65 gallon cart 1 X week			50.95		59.11
65 gallon cart every other week			42.49		44.73
65 gallon cart 1 X month			19.09		22.29
95 gallon cart 1 X week			61.35		68.70
95 gallon cart every other week			50.58		57.33
95 gallon cart 1 X month			24.75		27.96
Call back charge			10.00		10.00
Extra 35 gallon trash			15.79		15.79
Restart fee			5.00		5.00
<p>Note: Service rates above include 20, 35, 65 and 95 gallon refuse carts provided to all customers in the Anderson Valley area. Included with refuse service is recyclable material collection services as set forth in Exhibit A at no additional charge.</p>					

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		EXHIBIT B		(page 2 of 2)	
		SOLID WASTES OF WILLITS, INC.			
		REFUSE COLLECTION AREA NO. THREE			
		ANDERSON VALLEY			
		<u>COMMERCIAL RATES (\$/MONTH)</u>			
		EFFECTIVE September 1, 2010			
				EVERY	
				OTHER	MONTHLY
<u>SERVICE</u>	<u>1 x WEEK</u>	<u>2 x WEEK</u>	<u>3 x WEEK</u>	<u>WEEK</u>	<u>PICKUP</u>
35 gallon cart	\$ 45.96	66.53	\$ -	29.24	20.44
65 gallon cart	59.11	104.26	-	44.73	22.29
95 gallon cart	64.81	113.85	-	57.33	27.96
1 yard container	179.64	359.86	539.71	89.99	41.52
1.5 yard container	238.73	477.48	716.23	119.35	86.62
2 yard container	303.59	608.94	913.45	183.55	110.20
3 yard container	406.44	731.61	1170.56	238.76	170.19
4 yard container	523.34	942.01	1507.23	303.57	177.07
6 yard container	742.12	1335.82	2137.30	367.31	183.41
		Container locking fee		8.00 per month	
		Locks each		20.00 each	
		Container delivery fee		46.86	
		Restart fee		15.00	
		Recycle Bin Rental		10.00 per month	
		Recycle Sled Service		225.00 each	
Note: Service rates above include refuse carts and refuse containers provided to all customers in the Anderson Valley area. Included with refuse service is recyclable material collection services as set forth in Exhibit A at no additional charge, except as set forth above.					

			INDUSTRIAL RATES (\$/PICKUP)			
			EFFECTIVE September 1, 2010			
SERVICE						
20% Discount on drop box prices below for clean woodwaste, yardwaste, scrap metal, concrete, asphalt and gypsum board						
4 yard container			\$ 129.58			
20 yard drop box			545.53			
37 yard drop box			799.21			
50 yard drop box			1022.87			
Delivery fee - drop box			111.94			
Delivery fee - 4 yard			47.76			
Overload charges				20.00/yard		

## **EXHIBIT C**

### **PERFORMANCE BONDING REQUIREMENTS**

The County 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 Mendocino County, the County hereby waives the requirement for the Grantee to post a performance bond. However, the County 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 County. County agrees that should this waiver be rescinded, the actual cost to the Grantee of the bond will be considered a new, County-imposed cost to the Grantee that may be recovered as a pass-through rate adjustment as described in Section 15 of this Agreement.

## 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 County.

#### **Residential Education Program (minimum requirements)**

- Prepare and distribute a brochure describing how to prepare Recyclable Material 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 County 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.

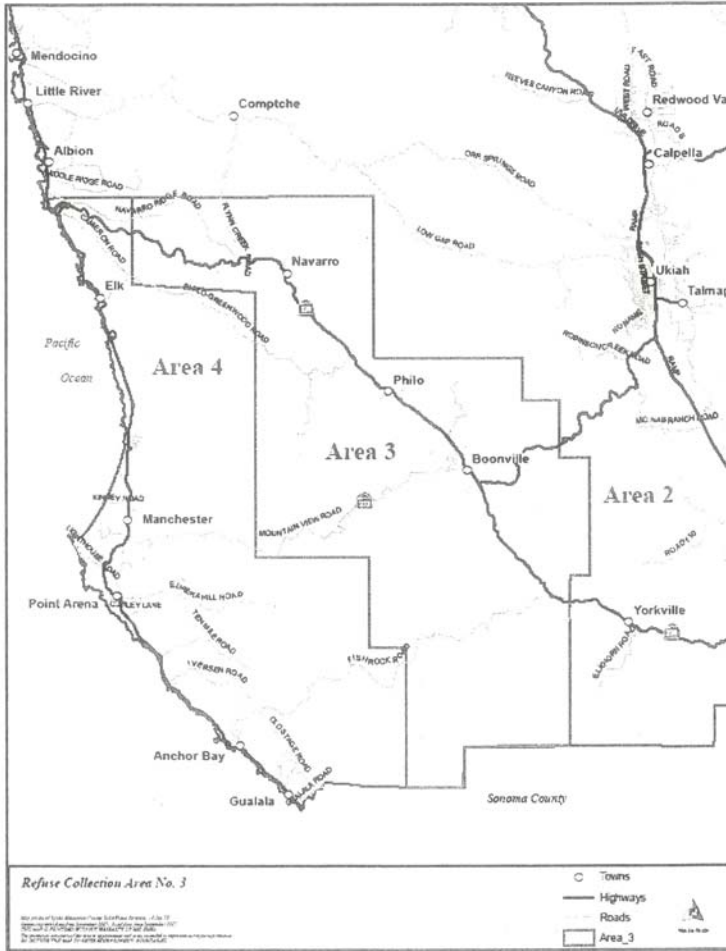
#### **Commercial Education Program (minimum requirements)**

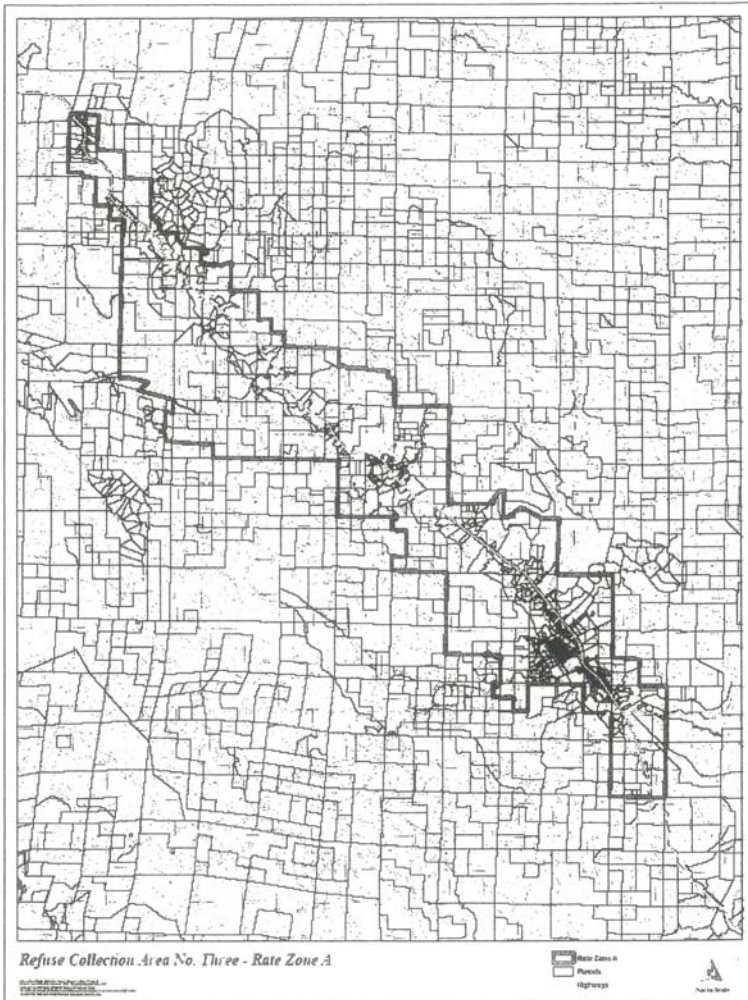
- Separate “how-to” brochures explaining the Recyclable Materials Collection programs that are tailored to each general business types (i.e., restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).
- Prepare and distribute a Recyclable Materials resource guide to provide 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 County staff.
- Prepare and distribute a corrective actions notice for use in instances where the resident sets out inappropriate materials.

**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  
MAP OF SOLID WASTE REFUSE COLLECTION  
AREA**





**EXHIBIT F  
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.	<b>Maintain Collection Schedule.</b> 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.	<b>Start New Customer.</b> 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.	<b>Leaks, Litter or Spills.</b> For each occurrence over 10 during the Rate Period of unreasonable leaks, litter, or spills of Solid Waste or Recyclable Materials near Containers or on public streets and failure to pick up or clean up such material immediately	\$150/ event
4.	<b>Improper Container Placement.</b> 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.	<b>Care of Private Property.</b> 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.	<b>Unauthorized Collection.</b> For each occurrence over 10 the during Rate Period of Collecting Solid Waste and Recyclable Materials during unauthorized hours	\$300/ event
7.	<b>Excessive Noise.</b> For each occurrence over 12 during the Rate Period of excessive noise	\$150/ event
8.	<b>Non-Collection Tags.</b> 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.	<b>Cleaning Collection Vehicles.</b> For each occurrence over 12 during the Rate Period of failure to clean Collection vehicles at least one time per week	\$75/ event
10.	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by Collection vehicle personnel, Customer service personnel, or other employees of Grantee	\$250/ event

CUSTOMER SERVICE RESPONSIVENESS

11.	<b>Call Returns.</b> Failure to return 95 percent of calls received before noon of the following business day	\$250/ quarter
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REPORTING AND NOTICING

12.	<b>Monthly Reports.</b> 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.	<b>Annual Reports.</b> 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.	<b>Report Hazardous Waste.</b> 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	<b>Disposal of Recyclables.</b> For each ton of Recyclable Materials Disposed of without written approval of the County	\$250/ ton
19	<b>Use of Unauthorized Facilities.</b> For each ton of Solid Waste or Recyclable Materials Disposed or Processed at a facility not approved for use under the provisions of this Agreement	\$250/ ton
20	<b>Failure of Other Obligations.</b> 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 County:	\$150/ for each obligation per day until obligation is performed

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.

County Initial Here: \_\_\_\_\_

Grantee Initial Here: \_\_\_\_\_

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