

FRANCHISE AGREEMENT

between

COUNTY OF MENDOCINO

and

SOLID WASTES OF WILLITS, INC.

for

**SOLID WASTE REFUSE COLLECTION
AREA NO. ONE (1)**

September 1, 2010

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

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 Settlement Agreement and Release on June

45 24, 1997 that granted a Franchise Agreement to Grantee for County Solid Waste Refuse
46 Collection Area No. One, and amended the Settlement Agreement and Release on April 15,
47 2003; and County and Grantee now wish to make a new, comprehensive amendment the original
48 Agreement to extend the term and make other changes, that shall replace all previous writings
49 that constituted the Franchise Agreement for County Solid Waste Refuse Collection Area No.
50 One;

51

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

53

54 A. The Settlement Agreement and Release as it was previously from time to time
55 amended, is affirmed regarding the rights and obligations it assigned to the parties
56 from its original date of execution on June 24, 1997 until the Effective Date of this
57 amended Agreement herein.

58

59 B. The Settlement Agreement and Release as previously amended, is hereby further
60 amended so that it is changed and replaced in its entirety with the following amended
61 Agreement herein:

62 **SECTION 1 - GRANT AND ACCEPTANCE OF EXCLUSIVE RESIDENTIAL AND**
63 **COMMERCIAL FRANCHISE**
64

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

78
79 B. Grantee agrees to be bound by and comply with all the requirements of this
80 Agreement.

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

- 90
91 (1) The County Code, the California Public Resources Code, other applicable
92 state and federal laws, rules and regulations promulgated there under;
93
94 (2) The County of Mendocino County-wide Integrated Waste Management
95 Plan and the County's Source Reduction and Recycling Element and
96 Household Hazardous Waste Element; and
97
98 (3) Any and all amendments to said laws, plans, and regulations.
99

100 **SECTION 2 – DEFINITIONS**

101
102 A. **“AB939”** means the California Public Resources Code 40000 et. seq. and the
103 regulations promulgated by the California Department of Resources Recycling and Recovery.

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

112
113 C. **“Agreement”** means this Franchise Agreement between the County and Grantee.

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

120
121 E. **“Approved Green Waste Processing Site”** means the Pacific Recycling Solutions
122 Green Waste Processing Facility, 4260 N. State Street, Ukiah, CA.

123
124 F. **“Approved Recyclable Materials Processing Site”** means the Solid Wastes of
125 Willits Material Processing Facility, 351 Franklin Avenue, Willits, CA.

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

132
133 H. **"Bin"** shall mean a container designed for mechanical emptying with a close fitting
134 cover and of a design approved by the Department with capacity of approximately one to six
135 cubic yards.

136
137 I. **"Board"** means the Board of Supervisors of Mendocino County.

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

142
143 K. **“Cart”** means a plastic container with a hinged lid and wheels that is serviced by an

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

146
147 L. **“Collection”** means the act of collecting Solid Waste, Recyclable Materials, and
148 other material at the place of generation in the Franchise Area.

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

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

161
162 O. **“Containers”** mean Carts, Bins, Compactors, and Debris Boxes

163
164 P. **“County”** means the County of Mendocino, State of California.

165
166 Q. **“Customer”** means any Person receiving Solid Waste or Recyclable Material
167 service under the provisions of this Agreement.

168
169 R. **“Debris Box”** means an open-top Container with a capacity of 10 to 50 cubic yards
170 that is serviced by a roll-off Collection vehicle.

171
172 S. **“Designated Collection Location”** shall mean that Location at which only an
173 Authorized Recycling Entity may collect materials.

174
175 T. **“Department”** means Solid Waste Director, County of Mendocino, at the office
176 designated by the County of Mendocino to administer this Franchise Agreement.

177
178 U. **“Demolition and Construction Debris”** means:
179

- 180 (1) Discarded materials generally considered to be not water soluble and
181 nonhazardous in nature, including but not limited to steel, glass, brick,
182 concrete, asphalt material, pipe, gypsum, wallboard, and lumber from the
183 construction or destruction of a structure as part of a construction or
184 demolition project or from the renovation of a structure and/or landscaping,
185 and including rocks, soils, tree remains, trees, and other vegetative
186 matter that normally results from land clearing, landscaping and
187 development operations for a construction project.
188
- 189 (2) Clean cardboard, paper, plastic, wood, and metal scraps from any
190 construction and/or landscape project.
191
- 192 (3) Non-construction and demolition debris wood scraps.
193
- 194 (4) Insignificant amounts of other non-hazardous wastes that are
195 generated at construction or demolition projects provided such amounts
196 are consistent with best management practices of the industry.
197
- 198 (5) Mixing of construction and demolition debris with other types of Solid
199 Waste will cause it to be classified as other than construction and demolition
200 debris.
201

202 V. **“Designated Recyclable Material Buy-Back Site”** means the Grantee’s buy-back
203 Recycling centers located at 90500 Refuse Road, Covelo, CA, 37551 Highway 1, Westport, CA,
204 and 1825 Branscomb Road, Laytonville, CA or replacement locations approved by the County.
205

206 W. **“Designated Disposal Location”** means the Willits Solid Waste Transfer Station
207 located at 350 Franklin Avenue, Willits, California for all Solid Waste Collected within the
208 Franchise Area.
209

210 X. **“Designated Waste”** means non-Hazardous Waste which may pose special
211 Disposal problems because of its potential to contaminate the environment and which may be
212 disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance
213 issued by the California Department of Health Services. Designated Waste consists of those
214 substances classified as Designated Waste by the State of California, in California Code of
215 Regulations Title 23, Section 2522 as may be amended from time to time.
216

217 Y. **“Discarded Recyclable Materials”** means any Recyclable Materials which the
218 Generator disposes of without selling or donating.
219

220 Z. **“Disposal or Dispose (or variation thereof)”** means the ultimate Disposal of Solid
221 Waste at a Disposal Site.
222

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

224 Public Resources Code Section 401.22.

225
226 BB. "**Franchise Area**," means the unincorporated portions of the County within the
227 Solid Waste Refuse Collection Area No. One (1) designated on the map entitled "Mendocino
228 County Solid Waste Refuse Collection Areas" (included as Exhibit E) including all amendments
229 and changes thereto.

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

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

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

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

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

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

264
265 II. "**Independent Government Agencies**" means any Federal, State or local
266 government agencies, including but not limited to special districts, school districts,
267

268 Indian reservations, California Department of Parks and Recreation, California State
269 Department of Corrections, United States Forest Service, Bureau of Land Management,
270 United States Corp of Engineers, which due to provisions of California State Law do not
271 have to comply or recognize the Grantee as the County's exclusively franchised Solid
272 Waste Collector.

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

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

285
286 LL. "**Non-Discarded Recyclable Materials**" means any Recyclable Materials, as
287 defined herein, that the Generator retains, sells, or donates.

288
289 MM. "**Occupant**" means the Person in possession or control of the Premises, including
290 but not limited to Persons such as tenant, lessee, licensee, manager, custodian, or caretaker.

291
292 NN. "**Owner**" means the Person having dominion of or title to Premises.

293
294 OO. "**Person**" means any individual, firm, corporation, partnership, joint venture,
295 association, special district, school districts, limited liability company or partnership, group or
296 combination thereof, includes the plural as well as the singular.

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

303
304 QQ. "**Processing**" means to prepare, treat, or convert through some special method.

305
306 RR. "**Processing Site**" means any plant or site used for the purpose of sorting,
307 cleansing, treating or reconstituting Recyclable Materials for the purpose of making such material
308 available for reuse.

309
310 SS. "**Rate Period**" means a 12-month period, commencing January 1 and
311 concluding December 31 for which rates are calculated, with the exception that Rate Period One

312 shall commence September 1, 2010 and conclude December 31, 2010.
313

314 TT. "**Recyclable Material(s)**" includes materials which are reused or Processed
315 or are in the future reused or Processed into a form suitable for reuse through
316 reprocessing or remanufacture, consistent with the requirements of the Public
317 Resources Code. No materials shall be considered Recyclable Materials unless
318 such material is separated from Solid Waste. Recyclable Materials shall include,
319 but not be limited to: newspaper (including inserts, coupons, and store
320 advertisements); mixed paper (including office paper, computer paper, magazines,
321 junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons,
322 telephone books, grocery bags, colored paper, construction paper, envelopes, legal
323 pad backings, shoe boxes, cereal and other similar food boxes); chipboard;
324 corrugated cardboard; paper milk cartons; glass containers of any color (including
325 brown, clear, and green glass bottles and jars); aluminum (including beverage
326 containers, foil, food containers); steel, tin or bi-metal cans; plastic containers (no. 1
327 to 7); aseptic beverage boxes and non-hazardous scrap metal items weighing 10 lbs
328 or less.
329

330 TT. "**Residential Solid Waste**" means all types of Solid Waste which originate from
331 residents of Single-Family Units and Multi-Family Units.
332

333 UU. "**Responsible Party**" means: 1) Any individual or any corporation, partnership or
334 business association or an officer, director, or management employee of a corporation,
335 partnership, or business association that has the authority to make discretionary decisions with
336 respect to the operations or financial management of the Grantee; or, 2) Any corporation, sole-
337 proprietorship, partnership, or business association, or officer, director, or management
338 employee of such entity, that holds at least five percent (5%) equity or debt interest in the
339 Grantee. If any holder of such debt or equity is not a natural person, the term "responsible party"
340 includes only the debtor, equity holding Person and officers, directors, and management
341 employees of the debt or equity holder who are empowered to make discretionary decisions with
342 respect to the operation or financial management of the Grantee.
343

344 VV. "**Segregated Recyclable Materials**" means those Recyclable Materials which: 1)
345 Have been source separated by the Person from whom they are being collected; or, 2) Are
346 physically separated from other waste material following Collection.
347

348 WW. "**Single-Family Unit**" means a dwelling which receives individual Solid Waste
349 and/or curbside Recyclable Material service.
350

351 XX. "**Solid Waste**" means and includes all putrescible and non-putrescible solid and
352 semisolid wastes (including semi-liquid or wet wastes with insufficient moisture so as not to be
353 free flowing), ashes, Recyclable Materials that have not been separated from Solid Waste,
354 demolition and construction wastes and other discarded materials resulting from domestic,
355 institutional, commercial, industrial, agricultural and community operations and activities. Solid

356 Waste shall be expressly deemed to include Bulky Wastes as defined herein. Solid Waste does
357 not include Hazardous Wastes or Designated Waste.

358
359 YY. **"Solid Waste Collector"** means a Person who collects or Transports Solid Waste
360 under authority granted by the Board or Department including his/her agents and employees.

361
362 ZZ. **"Solid Waste Ordinance"** means Title 9A of the Mendocino County Code, as
363 currently adopted by the Mendocino County Board of Supervisors and future amendments to
364 Title 9A as adopted by the Board of Supervisors.

365
366 AAA. **"Subcontractor"** means a party who has entered into a contract, expressed or
367 implied, with the Grantee for the performance of an act that is necessary for the Grantee's
368 fulfillment of its obligations under this Agreement.

369
370 BBB. **"Transportation"** means the act of transporting or state of being transported.

371
372 CCC. **"Waste Stream"** means the total amount of Solid Waste generated in a given area,
373 such as the County or a specific Franchise Area. Waste Stream does not include Recyclable
374 Materials that have been separated from Solid Waste by the Generator so that the Recyclable
375 Materials never become discarded waste.

SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS

376
377
378 Grantee warrants that it will comply with all applicable laws in effect during the term of
379 this Agreement, including implementing regulations, as they may, from time to time, be
380 amended, specifically including, but not limited to the Comprehensive Environmental Response,
381 Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource
382 Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the California Public Resources
383 Code Section 40000 et. seq., and all other applicable laws of the State of California, the County
384 of Mendocino, ordinances of the County, the County's Source Reduction and Recycling Element,
385 the County's Household Hazardous Waste Element, the County of Mendocino's County-wide
386 Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other
387 agencies with jurisdiction relating to the services provided by Grantee under this agreement. In
388 the event of conflict between regulations or statutes, Grantee shall comply with the regulation or
389 statute containing the most stringent applicable standards. Grantee shall comply with all final
390 and binding judgments entered against Grantee regarding its services performed under this
391 agreement.
392
393

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

395
396 **A. Term of Agreement**

- 397
398 (1) **Effective Date and Commencement Date.** The Effective Date of this
399 Agreement shall be the date the latter of the two Parties signs the Agreement.

400
401 The Commencement Date shall be September 1, 2010 and shall be the date on
402 which Grantee initiates provision of Collection, Transportation, and Processing
403 services required by this Agreement.

404
405 Between the Effective Date and Commencement Date, Grantee shall perform all
406 activities necessary to prepare itself to start Collection, Transportation, and
407 Processing, services required by this Agreement on the Commencement Date.

- 408
409 (2) **Term.** The Term of this Agreement shall continue in full force from 12:01 a.m.
410 on September 1, 2010 (Commencement Date), to midnight December 31, 2024
411 unless the Agreement is extended by County pursuant to Section 4A (3) or
412 terminated in accordance with Section 19C.

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

- 422
423 (4) **County’s Rights upon Expiration or Revocation.** At the expiration or
424 revocation of this Agreement, the County may proceed with a competitive bidding
425 or request for proposal process or exercise any other option available under
426 Applicable Law.

427
428 **B. Scope of Agreement**

429
430 The Grantee shall have the exclusive right to service any Occupant or Owner to make all
431 Solid Waste and Recyclable Material Collections within the Franchise Area, except as described
432 in Section 4C or except as otherwise precluded by Applicable Law.

433
434 The Grantee or its Subcontractor shall be responsible for the following services:

- 435
436 (1) Collecting all Solid Waste and Recyclable Materials generated in the Franchise
437 Area and placed by Generator for Collection.

- 438
439 (2) Transporting collected materials to the Designated Disposal Location, Approved
440 Green Waste Processing Site, or Approved Recyclable Materials Processing Site.
441
442 (3) Processing and marketing of Recyclable Materials Collected in the Franchise
443 Area by Grantee.
444
445 (4) Collecting Demolition and Construction Debris generated within the Franchise
446 Area.
447
448 (5) Operating a Recyclable Material buy-back center located at the Designated
449 Recyclable Material Buy-Back Sites.
450
451 (6) Furnishing all labor, supervision, vehicles, Containers, other equipment,
452 materials, supplies, and all other items and services necessary to perform its
453 obligations under this Agreement.
454
455 (7) Paying all expenses related to provision of services required by this Agreement
456 including, but not limited to, taxes, regulatory fees, pass-through costs, utilities,
457 etc.
458
459 (8) Providing all services required by this Agreement in a thorough and professional
460 manner so that residents, businesses, and the County are provided timely, reliable,
461 courteous and high-quality service at all times.
462
463 (9) Complying with Applicable Law.
464
465 (10) Performing or providing all other services necessary to fulfill its obligations under
466 this Agreement.
467
468 (11) Accepting food waste no later than July 1, 2013 at no additional cost to
469 customers. Destination compost facility will be a fully permitted facility in which
470 Grantee holds a proprietary interest, or, if such is unavailable, to Cold Creek
471 Compost.
472
473 (12) **Covelo Solid Waste Transfer Station.** Grantee and County have entered into a
474 valid agreement for the operation, maintenance, and service of the Covelo Solid
475 Waste Transfer Station (BOS Agreement No. 95-040). This Agreement shall amend
476 Section D – Term of BOS Agreement No. 95-040 as follows:
477
478 (a) The term of the BOS Agreement No. 95-040 shall be concurrent with this
479 Franchise Agreement.
480
481 (b) Grantee shall not have to submit annual agreement extensions for BOS

482 Agreement No. 95-040 as set forth in Section D – Term of said Agreement.

483 (c) All provisions of BOS Agreement No. 95-040, which set forth the
484 submittal of the annual agreement extension deadline for action by either party, shall
485 be amended to the anniversary of the operation assumption date, which is annually on
486 September 9th.

487 (d) Change Section B – Grantee Agrees, paragraphs 19 and 20 from monthly
488 to quarterly.

489 (e) Section J – Financial Statements to be deleted entirely and replaced with:
490 “Grantee shall maintain accounting records specific to the Covelo SWTS,
491 separate from other activities.

492 “Grantee shall, at its own expense, be required to annually provide the
493 Department with a copy of a compiled or reviewed financial statement, or an
494 independent financial audit report. The audit report shall be prepared by a certified
495 public accountant. The accountant shall be entirely independent of the Grantee, shall
496 have no financial interest whatsoever in the business of the Grantee, and shall be
497 approved by the County Auditor-Controller.

498 “The annual financial statement or audit report must include an Income
499 Statement for the Covelo SWTS operations. The Income Statement should disclose
500 revenue by line of business and expenses by line of business and detail expense
501 descriptions.

502 “In the event of the failure of the Grantee to provide any such report, the
503 Department may employ a qualified accountant or consultant or the County Auditor-
504 Controller to prepare the report, and the Grantee shall be liable for and pay the
505 associated costs and expenses of the accountant or County Auditor-Controller.”

506 (f) All other terms and conditions of BOS Agreement No. 95-040 remain in
507 effect.

508
509
510 **C. Limitations to Scope**

511
512 The materials listed below in this Section may be Collected and Transported by other
513 Persons. Such Persons shall do so in accordance with the County Code.

514
515 (1) **Industrial Recyclable Materials.** Recyclable Materials from a Generator of
516 Industrial Solid Waste that are not disposed of and are recycled including, but not
517 limited to, wood chips from the forest products industry used as boiler fuel, and
518 agricultural waste used to produce compost. If Solid Waste residue in Recyclable
519 Materials exceeds 5% by volume it shall be considered Solid Waste and not Industrial
520 Recyclable Material and shall be collected by Grantee

521
522 (2) **Non-Discarded Recyclable Materials,** provided the transporter is paid no direct or
523 in-kind fee for the service and compensates the Generator for the Recyclable
524 Materials.
525

- 526 (3) **Materials Hauled by Owner, Occupant, or a Cooperative of Persons, or its**
527 **Contractor.** Solid Waste and/or Recyclable Materials that are removed from any
528 Premises by the Owner, Occupant, or a cooperative of persons and are
529 Transported, without compensation, to a Disposal Site or Processing Site by (i)
530 the Owner, Occupant or cooperative of persons of such Premises, (ii) by full-time
531 employee(s) of Owner, Occupant, or cooperative of persons that uses the
532 Owner's, Occupant's, or cooperative of persons' equipment to Transport
533 materials; or (iii) by a contractor whose removal of the Solid Waste and/or
534 Recyclable Materials, and/or Demolition and Construction Debris incidental to
535 the service being performed and such contractor removes materials at no
536 additional or separate fee using contractor's own equipment and labor;
537
- 538 (4) ~~**Containers Recycled.** Containers delivered for recycling under the California~~ Deleted: 34
539 ~~Beverage Container Recycling Litter Reduction Act, Section 14500, California~~
540 ~~Public Resources Code et. seq. as may be amended from time to time;~~
541
- 542 (5) **Animal, Grease Waste, and Used Cooking Oil.** Animal waste and remains
543 from slaughterhouse or butcher shops, grease waste, or used cooking oil;
544
- 545 (6) **Sewage Treatment By-Product.** By-products of sewage treatment including
546 sludge, sludge ash, grit, and screenings;
547
- 548 (7) **Hazardous Wastes.** Household Hazardous Waste, Hazardous Waste, and
549 Designated Waste regardless of its source.
550
- 551 (8) **State and Federal Wastes.** Materials generated by state and federal agencies,
552 special districts, school districts, State parks, State correction facilities, and Indian
553 reservations.
554
- 555 (8) **Other Materials.** Lead-acid batteries, waste oil, tires, and scrap metal not
556 covered as Discarded Recyclable Materials.
557

558
559 **D. Subcontracting**

560
561 Grantee shall not engage any Sub-grantees for Collection, Transportation, Processing, or
562 Disposal of Solid Waste or Recyclable Materials services without the prior written consent of the
563 County.
564

565 **E. Franchise Area Defined**

566
567 This Agreement allows the Grantee to Collect, Transport, and Process Solid Waste and
568 Recyclable Materials generated within the Franchise Area defined and shown on certain map
569 entitled "Mendocino County Solid Waste Refuse Collection Areas", including all amendments

570 and changes thereto. The Franchise Area may be modified upon renegotiation and mutual
571 consent of both parties should the Board find such modification necessary for the efficient
572 administration of this Agreement and in the public interest. In the event of such a modification,
573 the Grantee shall be given a ninety (90) day written notice thereof before the modification shall
574 become effective.

575

576 **F. Franchise Area Limits**

577

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

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

582

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

584

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

588

589 **B. Collection Service.**

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

599

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

601

602 The Grantee shall collect Solid Waste (except Bulky Wastes) and Recyclable
603 Materials from Single-Family Units, which have been placed, kept, or
604 accumulated in Grantee-provided Containers, at the curbside or other authorized
605 Collection location if the Customer is physically unable to move the Collection
606 Containers to the curb and is eligible for such service at no additional charge or
607 from an Customer who is willing to pay the additional charge set by the County
608 for such service.

609

610 Grantee shall provide each Customer with a 20-, 35-, 65-, or 95-gallon Solid
611 Waste Cart, as requested by the Customer. Grantee shall provide each Customer
612 a maximum of two 65- or 95-gallon Recyclable Material Carts, as requested by
613 the Customer.

614

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

623

624 (2) Multi-Family Premises

625
626 Grantee shall Collect Solid Waste and Recyclable Materials from Multi-Family
627 Premises as frequently as scheduled by Customer, but not less than once per
628 week. Except, Grantee may propose to County service standards and rates for
629 every other week or monthly solid waste and recyclable material collection, which
630 County has the right to approve. Grantee shall allow a Multi-Family Premises to
631 use Carts or Bins for Solid Waste Collection that are shared by the Occupants of
632 the Premises. Grantee shall provide one or more Carts (with a capacity of 35, 65
633 or 95 gallons) or Bins (with a capacity of one to six cubic yards) to such Premises
634 as requested by Customer. Grantee shall Collect Solid Waste and Recyclable
635 Materials from Carts and Bins at a location selected by Customer and approved
636 by the County.

637
638 (3) Commercial and Industrial Premises

639
640 Grantee shall Collect Solid Waste and Recyclable Materials from Commercial
641 and Industrial Premises as frequently as scheduled by Customer, but not less than
642 once per week. Except, Grantee may propose to County service standards and
643 rates for every other week or monthly solid waste and recyclable material
644 collection, which County has the right to approve. Grantee shall provide one or
645 more Carts (with a capacity of 35, 65 or 95 gallons) or Bins (with a capacity of
646 one to fifty cubic yards) to such Premises as requested by Customer. Grantee
647 shall Collect Solid Waste and Recyclable Materials from Carts and Bins at a
648 location selected by Customer. Upon receiving a call for new service from
649 any Commercial or Industrial Customer, Grantee's Customer service
650 representative shall specifically ask the Customer what Recyclable Materials
651 the Customer expects to generate and shall encourage the Customer to
652 accept recycling Containers, emphasizing that recycling Containers are
653 provided without additional charge except as provided herein, and shall
654 make all reasonable efforts to encourage the Customer to divert Solid Waste
655 from disposal.

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

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

663
664

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

666
667 Grantee shall operate and maintain a buy-back Recycling center at the Designated
668 Recyclable Material Buy-Back Sites. At a minimum, Grantee shall purchase California
669 Redemption Value (CRV) containers. In addition, Grantee shall accept for drop-off the
670 following Recyclable Materials: aluminum and tin cans, glass beverage and food containers,
671 plastics 1-7, newspaper, office paper, junk mail, magazines, telephone directories, paper board,
672 and corrugated cardboard. Operating hours shall, at a minimum, be from 9:00 a.m. to 4:30 p.m.,
673 Wednesday through Saturday or days and hours approved by County.

674
675 **D. Hours of Collection**

676
677 No Collections shall be made in residential areas prior to 5:00 a.m. or after 6:00 p.m. No
678 Collections shall be made at schools, churches, hospitals, offices, or commercial establishments
679 within 200 feet of said residential districts prior to 5:00 a.m. or after 9:00 p.m. unless a
680 modification of these hours is allowed in writing by the Department, which modification
681 may be revoked at the sole discretion of the County. Special arrangements may be made
682 pursuant to the Solid Waste Ordinance for all categories of Collections provided by the Grantee.

683
684 **E. Collection on Holidays**

685 If the day of Collection on any given route falls on a Holiday, Grantee shall provide
686 Collection service for such route on the work day either before or following such Holiday and
687 shall not provide Collection service on such Holiday, and all subsequent Collection days during
688 that Holiday week shall be adjusted at the discretion of Grantee. Grantee shall be responsible for
689 Customer notification of Holiday Collection arrangements. If the day of Collection on any given
690 route falls on any remaining Holiday, Grantee may continue to provide Collection service for
691 such route on that workday.

692
693 **SECTION 6 - SPECIAL PROGRAMS AND SERVICES PROVIDED BY GRANTEE**

694
695 **A. Source Reduction and Waste Diversion Programs**

696
697 Grantee shall provide special programs as are required by federal, state, or local
698 regulations, including but not limited to, the County of Mendocino County-wide Integrated
699 Waste Management Plan, the Source Reduction and Recycling Element, and the Household
700 Hazardous Waste Element and as itemized in Exhibit A. If County directs changes in recycling
701 or Green Waste services, Grantee shall be entitled to recovery of any additional costs through the
702 pass-through rate adjustment procedure of Section 15(A). When introducing new or expanded
703 diversion programs, County shall define the objective of the program and cooperate with Grantee
704 to consider Grantee's proposal for the methods to achieve the objective, and County shall
705 consider alternative methods so that objectives are achieved while minimizing any costs or
706 operational problems that the new program may cause to Grantee. In exercising its right to direct
707 changes in recycling or Green Waste services, County will consider the impact upon rates and
708 the likelihood Grantee can recover all costs with the change.

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B. Public Education.

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

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

C. Billing

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

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

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

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

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

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

762
763 (3) **Review of Billings.** Grantee shall review its Billings to Customers to determine
764 (i) if the amount the Grantee is billing each Customer is correct in terms of the
765 level of service (i.e., frequency of Collection, size of Container, backyard service)
766 Grantee is providing such Customer, and (ii) that all parties receiving service are
767 invoiced for service. Grantee shall review all Customer accounts at least every
768 other year, unless County directs Grantee to do otherwise. Grantee shall submit
769 to County every year, a written report of the billing review 30 days after the end
770 of each Rate Period. The scope of the review, the Grantee's work plan, and the
771 format of the report (including supporting exhibits) shall be submitted to the
772 County for approval no later than 60 days prior to commencement of the Billing
773 review process. Should Grantee fail to perform any such review, the County may
774 perform this review itself or through use of an agent, at Grantee's expense.
775

776 **D. Other Special Services**

777
778 Grantee can provide other special services as related to this Agreement at their discretion
779 provided said services and charges for such services are approved by the County.
780

781 All other provisions of this agreement notwithstanding, Grantee shall provide an optional
782 service at customer's choice to have any debris box rented to a construction or demolition project
783 customer hauled to any disposal and/or processing facility identified by County as providing
784 scavenging or processing service at the lowest total cost to the customer. Grantee shall charge
785 customers in such instances the authorized debris box rental rate as set forth in Exhibit B
786 adjusted to reflect any different disposal gate fee or actual increment in truck hauling expense.
787

788 **E. Containers - Refusal to Pick Up.**

789
790 Grantee shall notify the Department whenever the Grantee has refused to pick up a
791 Container because the Container contains dangerous and prohibited material Grantee shall
792 notify the Department when any violation of the County Solid Waste Ordinance is observed.
793

794 **F. Containers - Noticing Violators**

795

796 Whenever Grantee gives or intends to give a Customer violation report to the
797 Department, Grantee shall place a notice on the Container or otherwise give the Owner or
798 Occupant notice of the substance of his/her report to the Department. Whenever an authorized
799 representative of the County observes a violation of the County Solid Waste Ordinance or other
800 applicable laws or regulations, that person shall place a notice on the Container or otherwise give
801 the Owner or Occupant notice of the illegal condition.
802

803 **G. Promotion of Waste Diversion to New Customers**
804

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

- 810 (1) Statement to customer that his/her costs may be reduced by recycling
811
812 (2) Question to customer about what waste materials he/she will generate that may
813 be recycled
814
815 (3) Recommendation of specific services appropriate for the customer, identifying
816 those that are free or reduced rate
817

818 **SECTION 7 – STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT,**
819 **AND PERSONNEL**

820
821 **A. Manner of Collection**

822
823 All Collection equipment shall be designed and operated such that no Solid Waste or
824 Recyclable Material is allowed to blow or drop from vehicles during Transport. Adequacy of
825 load covers or control measures shall be determined by the Department. All Collections shall be
826 made as quietly as possible, and the use of any unnecessarily noisy trucks or equipment is
827 declared unlawful.
828

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

- 830
831 (1) **General.** All Collections shall be made with a vehicle and equipment of design
832 approved by the Department according to industry standards. Grantee shall
833 maintain all of its properties, facilities, and equipment used in providing service
834 under this Agreement in a safe, neat, clean, and operable condition at all time.
835
836 (2) **Cleaning.** Collection vehicles shall be thoroughly washed and thoroughly steam
837 cleaned as necessary, to present a clean appearance of the exterior and interior
838 compartment of the vehicle.
839
840 (3) **Maintenance.** Grantee shall inspect each vehicle daily to ensure that all
841 equipment is operating properly. Vehicles that are not operating properly shall be
842 taken out of service until they are repaired and operate properly. Grantee shall
843 perform all scheduled maintenance functions in accordance with the
844 manufacturer's specifications and schedule or in accordance with California
845 Highway Patrol standards, whichever are more stringent. All vehicles shall be
846 painted in a uniform manner that does not create a resemblance between
847 Grantee's vehicles and County utility vehicles. Grantee shall keep accurate
848 records of all vehicle maintenance, recorded according to vehicle, date, and
849 mileage, and shall make such records available to the County upon request to the
850 extent necessary to perform the inspections described in Section 7D.
851
852 (4) **Repairs.** Grantee shall repair, or arrange for the repair of, all of its vehicles and
853 equipment for which repairs are needed because of accident, breakdown, or any
854 other cause so as to maintain all equipment in a safe and operable condition.
855 Grantee shall maintain accurate records of repair, which shall include the
856 date/mileage, nature of repair and the signature of a maintenance supervisor that
857 the repair has been properly performed.
858

859 **C. Vehicles - Identification**

860
861 The Grantee shall have printed or stenciled in a prominent place on the exterior of each
862 vehicle used in the Collection of Solid Waste and Recyclable Materials the following
863 information in at least four-inch letters: 1) Truck number; 2) Grantee's name; and, 3) Grantee's
864 telephone number.

865
866 **D. Vehicles and Equipment - Inspection**

867
868 All vehicles and equipment of Grantee shall be available for inspection at Grantee's place
869 of business or another location within the Franchise Area as designated by the Department, on an
870 annual basis. Vehicles and equipment shall conform to the requirements of the California
871 Vehicle Code, this Agreement, and rules or regulations of the Board. Department shall give
872 Grantee twenty-four (24) hours verbal notification of inspection.

873
874 **E. Vehicles - Shovel, Broom and Fire Extinguisher Required**

875
876 The Grantee shall equip each Collection vehicle with a shovel, broom, and fire
877 extinguisher of a type approved by the Department.

878
879 **F. Container Requirements**

- 880
881 (1) **General.** Grantee shall provide all Carts, Bins, and Debris Boxes to all
882 Customers as part of its services. Grantee-provided Containers shall be designed
883 and constructed to be watertight and prevent the leakage of liquids. All
884 Containers with a capacity of one cubic yard or more shall meet applicable
885 federal, state, and local regulations for Bin safety and be covered with attached
886 lids. Grantee shall obtain County's written approval of Cart colors before
887 acquisition. All Containers, except Carts, shall be painted the Grantee's standard
888 color.
- 889
890 (2) **Cleaning, Painting, and Maintenance.** All Containers shall be maintained in a
891 safe, serviceable, and functional condition. Grantee shall steam clean and repaint
892 all Containers, except Carts, at least every two years, or more frequently, to
893 present a clean appearance. Customers using Carts shall be responsible for
894 cleaning such Carts. If any Cart is impacted by graffiti, Grantee shall replace the
895 cart within 72 hours. If any Containers, except Carts, are impacted by graffiti,
896 Grantee shall either replace the Container with a Container which is free of
897 graffiti or repaint the entire Container with the Grantee's standard color for such
898 Container within 30 days. Repainting of the Container shall restore the
899 Container's aesthetic values to its condition before it sustained the graffiti
900 damage.
- 901
902 (3) **Repair and Replacement.** Grantee shall repair and, if the repair must be

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

908
909 At no additional cost, Grantee shall replace Customer Carts that have been stolen
910 or damaged once per year. Grantee shall allow Customer to exchange Containers
911 for a Container of a different size at no additional cost once per year. Grantee
912 shall charge Customers for additional Cart replacements at County-approved
913 rates.

914

915 **G. Personnel**

916
917 (1) **General.** Grantee shall furnish such qualified drivers, mechanical, supervisory,
918 Customer service, clerical and other personnel as may be necessary to provide the
919 services required by this Agreement in a safe and efficient manner.

920
921 (2) **Provision of Field Supervision.** Grantee shall designate at least one qualified
922 employee as supervisor of field operations. The field supervisor will devote time
923 in the field checking on Collection operations, including responding to
924 complaints.

925
926 (3) **Driver Qualifications.** All drivers shall be trained and qualified in the operation
927 of Collection vehicles, and must have in effect a valid license, of the appropriate
928 class, issued by the California Department of Motor Vehicles. Grantee shall use
929 the Class II California Department of Motor Vehicles employer “Pull Notice
930 Program” to monitor its drivers for safety.

931
932 (4) **Customer Service Representative Training.** Customer service representatives
933 shall be trained on specific County service requirements upon hire and annually
934 thereafter. A County information sheet shall be provided to each Customer service
935 representative for easy reference of County requirements and general Customer
936 needs. The information sheet, training agenda, and associated documentation
937 shall be forwarded to the County-

938
939 (5) **Safety Training.** Grantee shall provide suitable operational and safety training
940 for all of its employees who operate Collection vehicles or equipment or who are
941 otherwise directly involved in such Collection, Disposal, or Processing. Grantee
942 shall train its employees involved in Collection to identify, and not to collect,
943 Hazardous Waste or infectious waste. Upon the County’s request, Grantee shall
944 provide a copy of its safety policy and safety training program, the name of its
945 safety officer, and the frequency of its trainings.

946

- 947 (6) **No Gratuities.** Grantee shall not permit its employees to accept, demand, or
948 solicit, directly or indirectly, any additional compensation, or gratuity from
949 members of the public for Collection services.
950
- 951 (7) **Employee Conduct and Courtesy.** Grantee shall use its best efforts to assure
952 that all employees present a neat appearance and conduct themselves in a
953 courteous manner. Grantee shall regularly train its employees in Customer
954 courtesy, shall prohibit the use of loud or profane language, and shall instruct
955 Collection employees to perform the work as quietly as possible. If any employee
956 is found not to be courteous or not to be performing services in the manner
957 required by this Agreement, Grantee shall take all appropriate corrective
958 measures.
959
- 960 (8) **Uniforms.** While performing services under this Agreement, all of the Grantee's
961 employees performing field service shall be dressed in clean uniforms and shall
962 wear badges that include the employee's name and/or employee number, and
963 Grantee's name. No portion of this uniform may be removed while working.

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

965

966 **A. Name and Office Hours**

967

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

976

977 **B. Service Complaints**

978

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

982

983 **C. Overcharge**

984

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

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

994
995 **A. Responsibility to Identify Hazardous Waste**

996
997 Grantee shall keep current with the regulations regarding Hazardous Waste substances
998 and identification of such substances and to comply with all federal, state, and local regulations
999 concerning such substances. Grantee shall make every reasonable effort to prohibit the
1000 Collection and the Disposal of Hazardous Waste in any manner inconsistent with Applicable
1001 Law.

1002
1003 Grantee shall conduct a visual inspection of all Solid Waste and Recyclable Materials
1004 that it Collects, Transports, Disposes, or Processes pursuant to this Agreement for the purpose of
1005 discovering, identifying, and refusing to Collect, Transport, Dispose, and/or Process Hazardous
1006 Wastes or materials.

1007
1008 **B. Response to Hazardous Waste Identified at Disposal Site or Processing Site**

1009
1010 If materials Collected by Grantee are delivered to a facility owned or operated by Grantee
1011 or an affiliate of Grantee, for purposes of transfer, Processing, or Disposal, load checkers and
1012 equipment operators at such facility shall conduct inspections in areas where Collection vehicles
1013 unload Solid Waste and Recyclable Materials to identify Hazardous Wastes. Facility personnel
1014 shall remove these materials for storage in approved, on-site, hazardous materials storage
1015 Container(s). Grantee shall make reasonable efforts to identify and notify the Generator.
1016 Grantee shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance
1017 with Applicable Laws and regulatory requirements.

1018
1019 If unacceptable material is delivered to the Designated Disposal Location or Processing
1020 Sites by Grantee before its presence is detected, and the Generator cannot be identified or fails to
1021 remove the material after being requested to do so, the Grantee shall arrange for its proper
1022 Disposal. The Grantee shall make a good faith effort to recover the cost of Disposal from the
1023 Generator, and the cost of this effort, as well as the cost of Disposal shall be charged to the
1024 Generator.

1025
1026 **C. Notification for Hazardous Waste**

1027
1028 Grantee shall, if required based on reportable levels, notify all agencies with jurisdiction,
1029 including the California Department of Toxic Substances Control, and, if appropriate, the
1030 National Response Center, of reportable quantities of Hazardous Waste, found or observed by
1031 Grantee in Solid Waste and/or Recyclable Materials anywhere within the County, including on,
1032 in, under or about County property, including streets, easements, rights of way and County waste
1033 containers. In addition to other required notifications, if Grantee observes any substances which
1034 it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully
1035 disposed of or released on County property, including streets, storm drains, or public rights of
1036 way, Grantee also will notify the County Director of Environmental Health or his/her designated

1037 County employee.

1038

1039 **D. Rights Reserved as to Hazardous Wastes.**

1040

1041 The County reserves the right to contract with other parties to have household Hazardous
1042 Wastes Collected, Transported, Disposed of, Processed and/or diverted.

1043

1044

1045 **SECTION 10 - DISPOSAL AND PROCESSING**

1046

1047 **A. Solid Waste Disposal**

1048

1049 Grantee shall Transport and Dispose of all Solid Waste Collected in the Franchise Area at
1050 the Designated Disposal Location. Grantee shall pay all costs associated with the Transporting
1051 and Disposing of Solid Waste.

1052

1053 **B. Recyclable Materials Processing and Marketing**

1054

1055 (1) **Processing.** Grantee shall Transport and deliver all Recyclable Materials
1056 collected in the Franchise Area to the Approved Recyclable Materials Processing
1057 Site. Grantee shall pay all costs associated with the Transporting and Processing
1058 of all Recyclable Materials.

1059

1060 Grantee shall maintain accurate records of the quantities of Recyclable Materials
1061 Collected, Transported, and Processed at the Approved Recyclable Materials
1062 Processing Site and shall cooperate with the County in any audits or investigation
1063 of such quantities.

1064

1065 Grantee shall keep all existing permits and approvals necessary for use of the
1066 Recyclable Materials Processing Site in full regulatory compliance. Upon
1067 request, Grantee shall provide copies of notices of violation or permits to the
1068 County.

1069

1070 (2) **Marketing.** Providing the Approved Processing Center is owned and/or operated
1071 by Grantee or by an Affiliate of Grantee, Grantee shall be responsible for
1072 marketing Recyclable Materials collected in the Franchise Area and shall be
1073 compensated for such Recyclable Materials at not less than fair market value.

1074

1075 Providing the Approved Processing Center is owned and/or operated by Grantee
1076 or by an Affiliate of Grantee, Grantee shall prepare and maintain a County-
1077 approved marketing plan for all Recyclable Materials collected in the Franchise
1078 Area. The plan shall be in place on or before the Commencement Date of this
1079 Agreement. The marketing plan shall fully describe the Grantee’s marketing
1080 methods and approach, targeted primary and contingent markets, pricing policy
1081 and assumed salvage value for each collected type of Recyclable Material
1082 products, and contingency plans if market conditions are severe.

1083

1084 Providing the Approved Processing Center is owned and/or operated by Grantee
1085 or by an Affiliate of Grantee, Grantee shall provide proof to the County that all
1086 Recyclable Materials collected are marketed for Recycling or reuse in such a
1087 manner that materials shall be considered as diverted in accordance with the State
1088 regulations established by the California Integrated Waste Management Act of

1089 1989 (Division 30 of the California Public Resources Code), as amended,
1090 supplemented, superseded, and replaced from time to time. No Recyclable
1091 Material shall be transported to a domestic or foreign location if Solid Waste
1092 Disposal of such material is its intended use.

1093
1094 Providing the Approved Processing Center is owned and/or operated by Grantee
1095 or by an Affiliate of Grantee, Grantee shall provide County with a list of
1096 broker/buyers it uses each month as required in Section 13H(2). County may audit
1097 one broker or buyer per month to confirm that materials are being recycled. If
1098 Grantee becomes aware that a broker or buyer has illegally handled or disposed of
1099 material generated within the Franchise Area or elsewhere, Grantee shall
1100 immediately inform the County and terminate its contract or working relationship
1101 with such party. If Grantee has provided County with a list of broker/buyers for
1102 the month, Grantee shall provide a monthly list only to the extent that the list
1103 differs from the list provided in the prior(s) months.

1104
1105
1106 (3) **Disposal of Recyclable Materials Prohibited.** In accordance with Section
1107 9A.08.080 of the Mendocino County Code, Recyclable Materials may not be
1108 disposed of in lieu of Recycling the material.

1109
1110 **C. Change in Designated Disposal Location or Recyclable Materials Processing Site**

1111
1112 The Grantee shall Transport all Solid Waste, Green Waste, and Recyclable Materials
1113 Collected from the Franchise Area to the Designated Disposal Location, Approved Green Waste
1114 Processing Site and the Approved Recyclable Materials Processing Site, respectively.

1115
1116 The County has the right, at its option, to control the Collection, Disposal, and diversion
1117 of all Solid Waste and Recyclable Materials generated within the Franchise Area. As part of the
1118 rights agreed to herein, the parties hereto agree that:

- 1119
1120 (1) The County has the right to direct Solid Waste to be Disposed of at any Solid
1121 Waste facility or in any manner, respectively, the County may designate; and
1122
1123 (2) The County has the right to direct Solid Waste to be diverted at any transfer or
1124 Processing station the County may designate; and
1125
1126 (3) The County has the right to direct Discarded Recyclable Materials collected by
1127 Grantee to be Processed at or marketed to a specific facility when in the best
1128 interest of the County and provided the collector would receive a reasonable,
1129 competitive market value for the Recyclable Materials.
1130
1131 (4) The County has the right to direct Green Waste collected by Grantee to be
1132 Processed at or marketed to a specific facility when in the best interest of the

1133 County and provided the Grantee would receive or pay a reasonable,
1134 competitive market price for the Green Waste. In exercising its right to direct
1135 Green Waste, County will consider the impact upon rates, and the likelihood
1136 Grantee can recover all costs with the specific facility.
1137
1138

1139 (5) If County directs a change in the Designated Disposal Location, Approved Green
1140 Waste Processing Site or Approved Recyclable Materials Processing Site which
1141 impacts Grantee's operational costs, then either party to this Agreement may apply
1142 for a rate increase or decrease through the provisions of Section 15A Pass-through
1143 Rate Adjustment.
1144

1145 (6) Any change in the Designated Disposal Location, Approved Green Waste
1146 Processing Site or Approved Recyclable Materials Processing Site made by
1147 County under this section must comply with all federal, state, and local laws and
1148 regulations.
1149

1150 **D. Grantee's Responsibility in Lieu of Direction by County.**
1151

1152 Throughout the term of this Agreement, unless the County gives notice as provided for
1153 herein and subject to the terms of this Agreement, it shall be the Grantee's sole responsibility and
1154 duty to Dispose of the Solid Waste Collected and Process the Recyclable Materials Collected in
1155 a safe manner and in compliance with all federal, state, and local laws and regulations. Grantee
1156 agrees that it shall Dispose of all Solid Waste Collected and Process all Recyclable Materials
1157 Collected in the Franchise Area at a Solid Waste facility or Processing facility that is fully
1158 licensed and appropriately permitted and, to Grantee's knowledge, is not in material violation of
1159 any health, safety or Hazardous Materials laws, rules, regulations or orders as long as the cost of
1160 disposal and recycling is at no greater cost to ratepayer.
1161 .
1162

1163 **E. Invalidation of County Flow Control Voids Franchise.**
1164

1165 Should a court of competent jurisdiction rule any provision in this Franchise Agreement
1166 unlawful or unconstitutional, then the entire Franchise Agreement shall become null and void
1167 upon the election of the County. However, this Agreement shall not become null and void, and
1168 shall remain in full force and effect, as long as the Grantee continues to direct Solid Waste,
1169 Green Waste and Recyclable Materials as instructed by the County and abides by all other terms
1170 of this section. County deems control of the waste stream a vital component of its waste
1171 Disposal program which ensures to the general benefit and welfare of the public. This provision
1172 will preserve the County's ability to pursue any legal methods whereby flow control of waste
1173 stream can be achieved.
1174
1175

SECTION 11 - OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS

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1177
1178 All Solid Waste, prior to being placed in a Grantee-provided Container and placed at a
1179 designated Collection point, shall be the property of the Generator or producer, if known. In the
1180 event said Generator or producer of the Solid Waste is unknown, the Solid Waste shall become
1181 the property of the Owner of the parcel upon which said Solid Waste has been deposited. All
1182 Solid Waste, upon being placed in a Grantee-provided Container and all Recyclable Materials,
1183 upon being placed in a Grantee-provided Container, and placed at a designated Collection point,
1184 shall become the property of the Grantee. Upon being legally deposited in a Disposal site
1185 approved by the Department, or transferred to a Processing facility or transfer station not owned
1186 by the Grantee, all Solid Waste and Recyclable Materials shall forthwith become the property of
1187 the permitted operator of the approved transfer station, Disposal site, or Processing facility.
1188

1189 **SECTION 12 - PRIVACY**

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1191 **A. Customers Rights of Privacy**

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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.

B. Use of Customer Lists

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

1208 **SECTION 13 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS**

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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.

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B. Record-keeping and Inspection

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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.

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C. Financial and Operational Records

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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.

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D. Collection Service Records

Records shall be maintained by Grantee for County relating to:

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- (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;

- 1252
- 1253 (8) Recyclable Materials sales revenue;
- 1254
- 1255 (9) End use and markets for Recyclable Materials.
- 1256

1257 **E. Transfer, Processing, and Disposal Records**

1258
1259 Grantee shall maintain records of transfer, Disposal, and Processing of all Solid Waste
1260 and Recyclable Materials Collected by Grantee.

1261
1262 **F. Customer Service Records**

1263
1264 Records shall be maintained by Grantee for County related to:

- 1265
- 1266
- 1267 (1) Categories (compliments, missed pickups, complaints, damage, etc.) of calls;
- 1268
- 1269 (2) Complaint log noting the name and address of complainant, date and time of
- 1270 complaint, nature of complaint, and nature and date of resolution;
- 1271
- 1272 (3) New Customer accounts.
- 1273

1274 **G. CERCLA Defense Records**

1275
1276 County views its ability to defend itself against Comprehensive Environmental Response,
1277 Compensation and Liability Act (CERCLA), and related litigation as a matter of great
1278 importance. For this reason, the County regards its ability to prove where Solid Waste Collected
1279 are taken for transfer or Disposal, as well as where they are not taken, to be matters of concern.
1280 Grantee shall maintain, retain and preserve records which can establish where Solid Waste
1281 Collected was Disposed (and therefore establish where it was not). This provision shall survive
1282 the expiration or earlier termination of this Agreement. Grantee shall maintain these records for
1283 a minimum of 3 years beyond expiration or earlier termination of the Agreement and Grantee
1284 shall then provide these records to County in an organized and indexed manner rather than
1285 destroying or Disposing of them.

1286
1287 **H. Quarterly Reports**

1288
1289 Quarterly reports, itemized by month, shall present the following information:

- 1290
- 1291 (1) Solid Waste Services. Total tonnage Collected and Disposed.
- 1292
- 1293 (2) Recyclable Materials & Green Waste
- 1294
1295 Tonnage Collected and Recycled and tonnage of residue Disposed. If the

1296 Approved Recyclable Materials Processing Site handles Recyclable Materials
1297 Collected in the Franchise Area and from other parties, provide a description of
1298 how the quantities of Recyclable Materials are tracked and allocated to the
1299 Franchise Area.

- 1300
1301 (3) Customer Service.
1302
1303 (a) Number of Customer calls that pertain to compliments, missed pickups,
1304 scheduled clean-ups, Billing concerns, damage claims, etc.).
1305
1306 (b) Number of complaints received, whether delivered in person, telephone,
1307 mail, or others means. The report shall show the date the complaint was
1308 received, actions taken to rectify the complaint, and the date the actions
1309 were taken.
1310
1311 (4) Account Information. In table format, the number of Customers and service
1312 levels.
1313

1314 **I. Annual Financial Report**

1315
1316 Grantee shall maintain accounting records specific to the Franchise Area, separate from
1317 other activities.
1318

1319 Grantee shall, at its own expense, be required to annually provide the Department with a
1320 copy of a compiled or reviewed financial statement, or an independent financial audit report.
1321 The audit report shall be prepared by a certified public accountant. The accountant shall be
1322 entirely independent of the Grantee, shall have no financial interest whatsoever in the business of
1323 the Grantee, and shall be approved by the County Auditor-Controller.
1324

1325 The annual financial statement or audit report must include an Income Statement for the
1326 Franchised Area operations. The Income Statement should disclose revenue by line of business
1327 and expenses by line of business and detail expense descriptions.
1328

1329 In addition, the Grantee shall make available to the County, or its designee, upon request:

- 1330
1331 (1) Supporting documentation to determine the reasonableness of revenues
1332 (e.g., average number of monthly residential, industrial, and commercial
1333 Customers and average monthly rates for each type of Customer service).
1334
1335 (2) Supporting documentation (invoices and descriptive schedules) for major
1336 expense line items including but not limited to depreciation, salaries,
1337 repair and maintenance, equipment rental, and Disposal expense.
1338
1339 (3) Supporting documentation for all transactions with affiliated companies.

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

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

J. Annual Operations Report.

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

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

K. Annual Disclosure Statement.

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

- (1) A listing of all Subcontractors to this Agreement (including the name, address, and social security or tax identification number of the Subcontractor);
- (2) A listing of all felony convictions or pleas of nolo contendere of the Grantee or Subcontractor by final judgment in any state or federal court within the preceding

- 1384 three years;
1385
1386 (3) A listing of any instances in which a permit or contract held by the Grantee or
1387 Subcontractor was terminated by a final judgment in any state or federal court
1388 within the preceding three years;
1389
1390 (4) A listing of all final adjudications finding the Grantee or Subcontractor in
1391 contempt of any state or federal court order enforcing any state and federal law
1392 within the preceding three years;
1393
1394 (5) A listing of all final convictions or pleas of nolo contendere of the Grantee or
1395 Subcontractor, under state or local laws governing safety of operations,
1396 compliance with environmental and other franchise requirements in the County,
1397 whether misdemeanors or infractions.
1398

1399 If the Grantee or Subcontractor is a chartered lending institution or a publicly held
1400 company or a wholly-owned subsidiary of such a company required to file annual or quarterly
1401 reports under the Securities and Exchange Act of 1934, the Grantee or Subcontractor may
1402 provide the above required information by submitting quarterly or annual reports for the
1403 preceding three years. If these reports are incomplete or if they fail to contain the information
1404 requested in subsection D items 1, 2, 3, 4, and 5 herein, the Grantee or Subcontractor shall make
1405 such information available to County. The County may also require, at applicant/grantees'
1406 expense, preparation and submittal of a Dunn and Bradstreet, or comparable, report.
1407

1408 If Grantee or Subcontractor has filed a disclosure statement, it shall file a supplemental
1409 disclosure statement only to the extent that its status or events differ from those covered by the
1410 original disclosure statement.
1411

1412 **L. Reporting Requirements**

1413
1414 Grantee may propose report formats that are responsive to the objectives and audiences
1415 for each report. The format of each report shall be approved by the County. Grantee agrees to
1416 mail a copy of all reports and submit all reports on computer discs, by e-mail or by modem in a
1417 format compatible with County’s software and computers at no additional charge. Grantee will
1418 provide a certification statement, under penalty of perjury, by the responsible Grantee official,
1419 that the report being submitted is true and correct to the best knowledge of such official after
1420 their reasonable inquiry.

1421 Grantee shall submit quarterly reports within 30 calendar days after the end of the
1422 reporting month. Grantee shall submit annual reports no later than 60 calendar days after the end
1423 of the reporting year.
1424

1425 Grantee shall submit (via mail and e-mail) all reports to:

1426
1427 Solid Waste Director, County of Mendocino, at the office designated by County for

1428 administration of this Agreement.

1429

1430 **M. Failure to Report**

1431

1432 The refusal, failure, or neglect of the Grantee to file any of the reports required, or the
1433 inclusion of any materially false or misleading statement or representation made knowingly by
1434 the Grantee in such report shall be deemed a material breach of the Agreement, and shall subject
1435 the Grantee to all remedies, legal or equitable, which are available to the County under the
1436 Agreement or otherwise.

1437

1438 **SECTION 14 - GRANTEE'S RATES**

1439
1440 **A. County's Powers**

1441
1442 The County shall set and regulate all rates and charges assessed by Grantee for any and
1443 all services and activities it performs or engages in the Franchise Area, and which are covered
1444 under this Agreement.

1445
1446 **B. Rate Requirements**

- 1447
1448 (1) Grantee shall provide the services described in this Agreement and be
1449 compensated by its Customers at the rates specified in Exhibit B.
1450
1451 (2) The rates specified in Exhibit B shall be effective as of September 1, 2010.
1452
1453 (3) The rates specified in Exhibit B may be modified in accordance with the Rate
1454 Adjustments as described in Section 15 of this Agreement.
1455
1456 (4) All charges or fees for service by a Grantee shall be fixed and approved by the
1457 County.
1458
1459 (5) Charges for Industrial Solid Waste removal service may be negotiated between
1460 the Grantee and the Customer. If the negotiated charges are less than the rates
1461 specified in Exhibit B, Grantee shall notify the Department in writing of each
1462 Customer that is offered and charged a lower rate. In no event shall the Grantee
1463 charge a rate in excess of those specified in Exhibit B without prior written
1464 approval by the County, except for weight overages as provided for in this
1465 section.
1466
1467 (6) Grantee may not charge residential and commercial Customers at rates other than
1468 those specified in Exhibit B except that the County may authorize a Customer to
1469 receive reduced service for a reduced charge and may approve an agreement
1470 between the Customer and the Grantee to provide additional service for an
1471 additional charge. These authorized reduced or additional charges may be revised
1472 by the Board from time to time after a public hearing thereon and a determination
1473 by the Board that a change is in the public interest and is mutually agreed upon by
1474 both parties.
1475
1476 (7) Grantee may charge an extra commercial Container overload charge. This extra
1477 charge may be levied by Grantee for each occurrence of a Container overload.
1478 Overload shall be defined as an excess of solid waste mounded such that
1479 Container covers cannot completely close. The Container overload charge
1480 shall be based on the amount of excess solid waste causing the overload
1481 condition. The Container overload charge shall be calculated by the number of

1482 35 gallon Containers that the excess solid waste fills multiplied by the 35
1483 gallon Container once per month rate as set forth in Exhibit B.

1484
1485 (8) All compensation paid to the Grantee shall be paid by its Customers and the
1486 County is in no way obligated to provide the Grantee any compensation for
1487 services described in this Agreement.

1488
1489 Residential Collection Zones: There are two residential collection zones (Collection Zone
1490 A and Collection Zone B). Collection Zone A is approximately described as an area
1491 within four (4) miles of the Willits City limits (including Golden Rule Trailer Park, the
1492 Highway 101 corridor including the unincorporated communities of Laytonville,
1493 Branscomb, Piercy, the State Route 162 corridor including the unincorporated
1494 communities of Dos Rios and Covelo, and the unincorporated community of Westport.
1495 Collection Zone B is all area within Refuse Collection Area No. One (1) not in Collection
1496 Zone A. The exact limits of Collection Zone A and Collection Zone B are set forth in the
1497 Geographic Information System (GIS) at the Mendocino County Department of Planning
1498 and Building Services. Maps of Collection Zone A are included in Exhibit E.

1499 **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;

- 1543 b) Specify the amount of the requested decrease for each rate given in
1544 Exhibit B; and,
1545
1546 c) Provide documentation that the specified rate decrease is reasonable and
1547 appropriate and does not include rate decrease for any other reason than to
1548 recover the direct cost of the decreased or eliminated pass-through
1549 expense.

1550
1551 Provided that the Grantee has received and considered the request and
1552 documentation described above, and the requested rate adjustment is reasonable
1553 and appropriate and is solely to recover the direct cost of the decreased or
1554 eliminated pass-through expense, the rates given in Exhibit B shall be amended
1555 by the County Executive Officer or his/her designated County employee.

- 1556 (5) If a jurisdiction other than the County eliminates or decreases surcharges or fees
1557 that affect Grantee's expense, the same procedures as described in (4), above,
1558 apply.
1559
1560 (6) In the case of a jurisdiction other than the County eliminating or decreasing
1561 surcharge or fees that affect Grantee's expenses, Grantee shall be responsible for
1562 notifying the County in writing. If Grantee fails to notify County of eliminated or
1563 decreased surcharges or fees per this section, then the County may apply for and
1564 request a retroactive pass through rate adjustment decrease.
1565
1566

1567 **B. Cost-of-Living & Fuel Rate Adjustments**

1568
1569
1570 (1) Four to six months prior to the end of a Rate Period, or by October 1, 2010 for
1571 the first Rate Period, Grantee may apply for cost-of-living (COLA) and a fuel rate
1572 adjustment to become effective on January 1, 2011, and annually thereafter. The rate
1573 adjustments shall be based on: 1) 90% of the change in the value of the most recently
1574 published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San
1575 Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and
1576 published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor
1577 and its value twelve months before, and 2) 100% of the change in the value of the
1578 most recently published Series ID:wpu057303; Commodity Code 0573-03 #2 Diesel Fuel
1579 compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its
1580 successor and its value twelve months before. Grantee shall notify the County of the
1581 adjustments to take place and shall provide the County with its computations and documentation
1582 therefore.

1583 For calculation of adjustments, the rates would be divided into three components –
1584 Fuel, Pass-through and All Other. The Fuel Component would equal 8.1% of the first

1585 year rate. The Pass-through Component would equal 17.2%. The All Other Component
1586 would equal 74.6% of the rate. When the first adjustment to rates occurs, it will be done in
1587 the following manner:

1588 Fuel Component: Existing Billed Rate x 8.1% x Diesel Fuel Index

1589 Pass-through Component: None, since pass-through increases, if any, will be
1590 made pursuant to Section 15(A) above.

1591 All Other Component: Existing Billed Rate x 74.6% x CPI Index

1592 The sum of the above equals the New Rate. Following completion of each annual
1593 financial statement by Grantee, the adjustment factors will be reviewed to correspond to the
1594 percentage of fuel, disposal cost and other expenses out of total operating expenses.

1595 (2) No rate adjustments will be applied on July 1, 2010.

1596

1597 **C. Larger Rate Increases**

1598

1599 No sooner than one year after this Agreement becomes effective, and no more frequently
1600 than annually thereafter, Grantee may apply for a rate adjustment in excess of the Cost-of-Living
1601 Rate Adjustment described in (B), above. Grantee may apply for either the Cost-of-Living Rate
1602 Adjustment or the larger rate increase as described in this section, but may not apply for both for
1603 the same Rate Period. In applying for such a rate increase the Grantee must:

1604

1605 (1) Notify the Department, in writing, of Grantee's intent to seek a rate increase in
1606 excess of the Cost-of-Living Rate Adjustment limitation;

1607

1608 (2) Obtain and submit to the Department an independent financial audit report of
1609 Grantee's operations. The County shall select or approve the auditor to perform
1610 the audit. The cost of the audit shall be paid by the Grantee. The audit must, at a
1611 minimum, determine the profitability of Grantee's operations specific to services
1612 provided under this Agreement.

1613

1614 (3) Submit a reviewed financial statement for the most-recently completed Rate
1615 Period.

1616

1617 Using information provided in the financial audit, as well as records required to be
1618 maintained by Guarantee under Section 13 of this Agreement, the County shall perform a rate
1619 setting study to determine appropriate rates based on projected profitability of the Grantee. The
1620 appropriate profit margin, and the means of determining profitability, shall be included as part of
1621 the rate setting study. The rate setting study shall be conducted by the County, or by a qualified
1622 contractor selected by the County. The cost of the rate study shall be paid by the Grantee.

1623

1624 County shall then hold at least one public meeting, at a convenient time and place within

1625 the Grantee's Franchise Area, to solicit public comment on the proposed rate increases, as
1626 determined by the rate setting study. This public meeting shall be duly noticed and shall be held
1627 no less than 14 days before the Board considers adoption of the rate increases.
1628

1629 Provided that the County has received the required information, as described in (1) and
1630 (2), above, has completed the rate setting study, and has held at least one public meeting and
1631 considered public input, the Board may adopt the new rates by amending Exhibit B.
1632

1633 **D. Rate Decreases**

1634
1635 The County may, at any time, request a rate decrease provided that some change in
1636 conditions has occurred to warrant a rate decrease. Such a rate decrease will require a full
1637 disclosure audit and formal rate structuring. In requesting such a rate decrease, the County must:
1638

- 1639 (1) Notify the Grantee, in writing, of County's intent to seek a rate decrease;
1640
1641 (2) Obtain a financial audit of Grantee's operations. The Grantee shall comply with a
1642 full disclosure audit. The County shall select the auditor to perform the audit.
1643 The cost of the audit shall be paid by the County. The audit must, at a minimum,
1644 determine the profitability of Grantee's operations specific to services provided
1645 under this Agreement.
1646

1647 Using information provided in the financial audit, as well as records required to be
1648 maintained by Guarantee under section 13 of this Agreement, the County shall perform a rate
1649 setting study to determine appropriate rates based on projected profitability of the Grantee. The
1650 appropriate profit margin, and the means of determining profitability, shall be included as part of
1651 the rate setting study. The rate setting study shall be conducted by the County, or by a qualified
1652 contractor selected by the County. The cost of the rate study shall be paid by the County.
1653

1654 County shall then hold at least one public meeting, at a convenient time and place within
1655 the Grantee's Franchise Area, to solicit public comment on the proposed rate decrease, as
1656 determined by the rate setting study. This public meeting shall be duly noticed and shall be held
1657 no less than 14 days before the Board considers adoption of the rate decrease.
1658

1659 Provided that the County has received the required information, as described in (1) and
1660 (2), above, has completed the rate setting study, and has held at least one public meeting and
1661 considered public input, the Board may adopt the new rates by amending Exhibit B.
1662

1663 **E. Recycling Commodity Value Adjustment**

1664
1665 The gross market commodity value of Discarded Recyclable Materials collected by
1666 Grantee pursuant to this Agreement shall be estimated from the tons collected and the average
1667 composite market value as calculated by the following weighted profile, with each category
1668 multiplied by the market price including any California Redemption Value, FOB at the

1669 Designated Recycling Processing Facility. The values below shall constitute the baseline for
1670 comparison to the Rate Period ending December 31, 2010.
1671

		COMPOSITE MARKET VALUE EFFECTIVE 1-1-10		
		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

1672
1673 Four to six months before the end of the Rate Period, beginning with the Rate Period
1674 ending December 31, 2010, Grantee shall calculate the average composite market value per ton
1675 over the previous 12 months, and use it to determine the change in the gross commodity value of
1676 Discarded Recyclable Material collected by Grantee compared to the previous Rate Period. Rates
1677 will be adjusted to that 50% of the change in gross commodity value will be applied
1678 proportionately to reduce rates in case of a gain and increase rates in case of a decline.
1679

1680 Example. If the average composite market value per ton during the Rate Period ending
1681 December 31, 2010 was 100.34/ton and Grantee collected 1,200 tons of Discarded Recyclable
1682 Material pursuant to the Agreement, rates would be adjusted to equal the following change in
1683 gross recyclable commodity value.
1684

1685 $\$125.34 - \$100.34 = \$25.00/\text{ton} \times 1,200 \times 50\% = \$15,000$ added to rates.
1686

Deleted: (

1687
1688
1689

F. County Rate Setting Authority

1690 If the County is unable to set rates as provided for herein, the County agrees that
1691 Grantee shall be allowed to set said rates in conformance with the rules and amounts
1692 provided in this Agreement, and all other provisions of this Agreement shall remain in
1693 full force and effect. Should a court of competent jurisdiction determine that the County
1694 lacks authority to set and/or increase rates for charges related to Franchise and
1695 governmental fees and charges then Grantee shall reduce the rates it charges Customers a
1696 corresponding amount, providing said fees, rates and/or charges disallowed by the court
1697 are not related to the cost of providing service hereunder and had already been incorporated
1698 in the rates charged by Grantee to its Customers.

1699 Nothing herein is intended to imply that California Constitution, Articles XIIC or
1700 XIID, apply to the setting of rates for the services provided under this Agreement; rather
1701 this section is provided merely to allocate risk of loss as between the parties.

1702 **SECTION 16 - FEES**

1703

1704 **A. Franchise Fee - Amount**

1705

1706 In consideration of the exclusive rights provided herein, Grantee shall pay a Franchise
1707 Fee to the County calculated as 12% of the Adjusted Gross Revenues collected for service. The
1708 Franchise Fee may be revised by the Board from time to time after a public hearing thereon and a
1709 determination by the Board that a change is in the public interest, such increases or decreases
1710 determined by the Board shall be subject to pass-through rate adjustment.

1711

1712

1713 **B. Franchise Fee - Quarterly Payments and Revenue Statements**

1714

1715 Grantee shall pay the Franchise Fee in quarterly payments due within 30 days after the
1716 close of each calendar quarter. Along with the quarterly payment, Grantee shall include a
1717 quarterly revenue statement, certified by an officer of the Grantee that shows the basis for the
1718 calculation thereof.

1719

1720 **C. Franchise Fee - Deposit.**

1721

1722 Franchise fees shall be paid to the Department which shall deposit them to the County
1723 General Fund.

1724

1725 **D. Franchise Fee - Delinquency Penalty**

1726

1727 Payments are delinquent if not received by the County within 30 days as provided above.
1728 All fees are subject to a delinquency penalty of ten percent (10%), which attaches on the first day
1729 of delinquency, plus an additional ten percent (10%) for each additional month the payment
1730 remains delinquent. These penalties are in addition to the franchise termination provisions of
1731 Section 19.

1732

1733 **E. Refund of Franchise Fees**

1734

1735 Once Franchise Fee payments are made to the County, Grantee may not ask for refund of
1736 all or part of Franchise Fees unless such request is based on a mathematical error in its
1737 calculation or a double payment of such payment.

1738 **SECTION 17 - BONDS, INSURANCE, AND INDEMNIFICATION**

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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

1782 TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION
1783 DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property
1784 damage, with any self-insured retention not exceeding TWO HUNDRED
1785 THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect Grantee
1786 and County from any claim for damages for bodily injury, including accidental
1787 death, as well as from any claim for property damage which may arise from
1788 operations performed pursuant to this Agreement, whether such operations are by
1789 Grantee itself, or by its agents, employees and/or Subcontractors. Copies of the
1790 policies or endorsements evidencing the above-required insurance coverage shall
1791 be filed with the Department. Endorsements are required to be made a part of all
1792 of the following insurance policies required by this Section:

- 1793
- 1794 (a) "The County, its employees, agents, and officers, are hereby added as
1795 insured's as respects liability arising out of activities performed by or on
1796 behalf of Grantee."
 - 1797
 - 1798 (b) "This policy shall be considered primary insurance as respects any other
1799 valid collectible insurance the County may possess including any self-
1800 insured retention the County may have, and any other insurance the
1801 County does possess shall be considered excess insurance and shall not
1802 contribute with it."
 - 1803
 - 1804 (c) "This policy shall act for each insured, as though a separate policy had
1805 been written for each. This, however, will not act to increase the limit of
1806 liability of the insuring company."
 - 1807
 - 1808 (d) "Thirty (30) days prior written notice by certified mail, return receipt
1809 requested, shall be given to the County in the event of suspension,
1810 cancellation, reduction in coverage or in limits or non-renewal of this
1811 policy for whatever reason. Such notice shall be sent to the Department."
 - 1812

- 1813 (3) Vehicle Liability. Grantee shall obtain and maintain in full force and effect
1814 throughout the entire term of this Agreement a vehicle liability policy with a
1815 minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence
1816 for bodily injury and TWO HUNDRED THOUSAND DOLLARS (\$200,000.00)
1817 per occurrence for property damage. Said insurance shall protect Grantee and
1818 County from any claim for damages for bodily injury, including accidental death,
1819 as well as from any claim for property damage which may arise from operation of
1820 owned and non-owned vehicles. Copies of the policies or endorsements
1821 evidencing the above-required insurance coverage shall be filed with the
1822 Department.

1823 The limits of such insurance coverage, and companies, shall be subject to review and
1824 approval by the County every year and may be increased at that time and match the coverage
1825

1826 provided by the County's own liability insurance policy. The County shall be included as a
1827 named insured on each of the policies, or policy endorsements.
1828

1829 **C. Indemnification**

1830 (1) Indemnification of County
1831
1832

1833 (a) Grantee shall defend the County with counsel reasonably acceptable to the
1834 County and indemnify the County from and against any and all liabilities,
1835 costs, claims and damages which are caused by Grantee's negligence or
1836 failure to comply with applicable laws and regulations, including but not
1837 limited to liabilities, costs, claims and damages described in Section 17B,
1838 above.
1839

1840 (b) Grantee agrees that it shall protect and defend the County with counsel
1841 reasonably acceptable to County, indemnify and hold harmless County, its
1842 officers, employees and agents from and against any and all losses,
1843 liabilities, fines, penalties, claims, damages, liabilities or judgments
1844 (including attorney's fees), arising out of or resulting in any way from
1845 Grantee's exercise of this Agreement, unless such claim is due to the sole
1846 negligence or willful acts of the County, its officers, employees, agents or
1847 contractors, or from County's grant of this Agreement to Grantee.
1848

1849 (c) In addition, Grantee shall defend the County with counsel reasonably
1850 acceptable to the County, indemnify and hold the County harmless from
1851 any and all litigation and claims, damages and liabilities arising there
1852 from, brought to enforce or to challenge this Agreement and/or Grantee's
1853 exclusive rights granted there under; provided, however, that Grantee's
1854 obligations hereunder extend only to actions brought against or by Persons
1855 not parties to this Agreement.

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

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. The decision of County
312 shall be final and Grantee shall not be subject to, or required to exhaust, any
313 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 annually on
321 the first day of the Rate Period. The adjustment shall be rounded to the nearest
322 cent. Liquidated Damage amounts shall be adjusted to reflect 75% of the changes
323 in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-
324 Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted,
325 compiled and published by the U. S. Department of Labor, Bureau of Labor
326 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
334 Most recently published index (May 2004) = 193.5

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

338
339
340 Adjusted Liquidated Damage Amount = \$150.00 x (193.5/191.0) =
341 \$151.96

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

- 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.
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

466 Solid Waste Director

467 County of Mendocino

468 Mendocino Solid Waste Management Authority

469 P.O. Box 123

470 Ukiah, CA 95482

471

472 B. If to Grantee:

473

474 Solid Wastes of Willits, Inc.

475 Gerald W. Ward, President

476 PO Box 1425

477 Willits, CA 95490

478

479

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

482

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

486

487 **D. Independent Contractor**

488

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

495

496 **E. Roadway Damage**

497

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

503

504 **F. Property Damage**

505

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

509

510 **G. Compliance with County Code**

511

512 Grantee shall comply with those provisions of the County Code which are applicable, and
513 with any and all amendments to such applicable provisions during the term of this Agreement,

514 subject to Section 1C.

515
516

517 **H. Severability**

518

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

523

524 **I. Waiver or Modification**

525

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

529

530 **J. Forum Selection**

531

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

535

536 **K. Court Costs and Attorney Fees**

537

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

541

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

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

546 _____
547
548

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

554
555 **Date:** _____
556

557
558 **COUNTY OF MENDOCINO**

559
560
561 _____
562 Carre Brown, Chair, Board of Supervisors

563
564 **Date:** _____
565

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

570
571 **By:**

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

576
577 **By:** _____
578

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

581
582 **By:** _____
583

584

EXHIBIT A

SOURCE REDUCTION and WASTE DIVERSION PROGRAMS

1) **SINGLE STREAM RECYCLING:** Within Rate Zone A, 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. Customers within Rate Zone A and within four (4) miles of the Willits City limits will be provided 95 gallon green plastic wheeled cart(s) for use in Green Waste collections at no additional charge, and will have a pickup schedule of every other week.

2) **COMMERCIAL RECYCLING:** Within Rate Zone A, 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

		EXHIBIT B	(page 1 of 2)		
		SOLID WASTES OF WILLITS, INC.			
		REFUSE COLLECTION AREA NO. ONE			
		NORTH COUNTY			
		<u>RESIDENTIAL RATES (\$/MONTH)</u>			
		EFFECTIVE September 1, 2010			
<u>SERVICE</u>				<u>RATES</u>	
			<u>ROADSIDE</u>		<u>DRIVEWAY</u>
Residential Special Pickup			\$ 19.93		19.93
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			27.19		35.19
35 gallon cart 1 X month			20.44		20.44
65 gallon cart 1 X week			50.95		59.11
65 gallon cart every other week			42.49		51.10
65 gallon cart 1 X month			29.05		35.02
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			42.03		48.10
Call back charge			10.00		10.00
Extra 35 gallon trash			20.44		20.44
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 North County area. Included with refuse service is recyclable material collection services, as set forth in Exhibit A at no additional charge.</p>					

		EXHIBIT B		(page 2 of 2)		
		SOLID WASTES OF WILLITS, INC.				
		REFUSE COLLECTION AREA NO. ONE				
		NORTH COUNTY				
		<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>	ON CALL PICKUP
35 gallon cart	\$ 45.96	\$ 66.53	\$ -	\$ 35.19	\$ 20.44	\$ -
65 gallon cart	59.11	104.26	-	51.10	35.02	-
95 gallon cart	64.81	113.85	-	57.33	48.10	-
1 yard container	227.57	440.21	-	178.19	122.79	122.79
1.5 yard container	268.03	522.58	-	203.65	137.78	-
2 yard container	317.45	608.94	861.91	245.58	161.70	161.70
3 yard container	406.44	-	-	289.68	170.19	-
4 yard container	523.34	-	-	326.10	177.07	-
6 yard container	742.12	-	-	367.31	183.41	-
		Container locking fee		8.00 per month		
		Locks each		20.00 each		
		Container delivery fee		54.97		
		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 North County 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		<u>Willits</u>	<u>Covelo</u>	<u>Laytonville</u>	
20% Discount on drop box prices below for clean woodwaste, yardwaste, scrap metal, concrete, asphalt and gypsum board					
4 yard container		\$ 152.74	n/a	n/a	
20 yard drop box		588.49	690.20	658.83	
37 yard drop box		923.89	991.06	962.81	
50 yard drop box		1187.45	1265.32	1235.32	
Delivery fee - drop box		81.34	178.67	130.79	
Delivery fee - 4 yard		55.28	n/a	n/a	
Overload charge		21.54/yard	21.54/yard	21.54	
Note: Spyrock, Westport and Leggett fees are the same as Covelo					

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.

Deleted: ¶
¶
¶
¶
¶
¶
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¶
¶
¶

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)

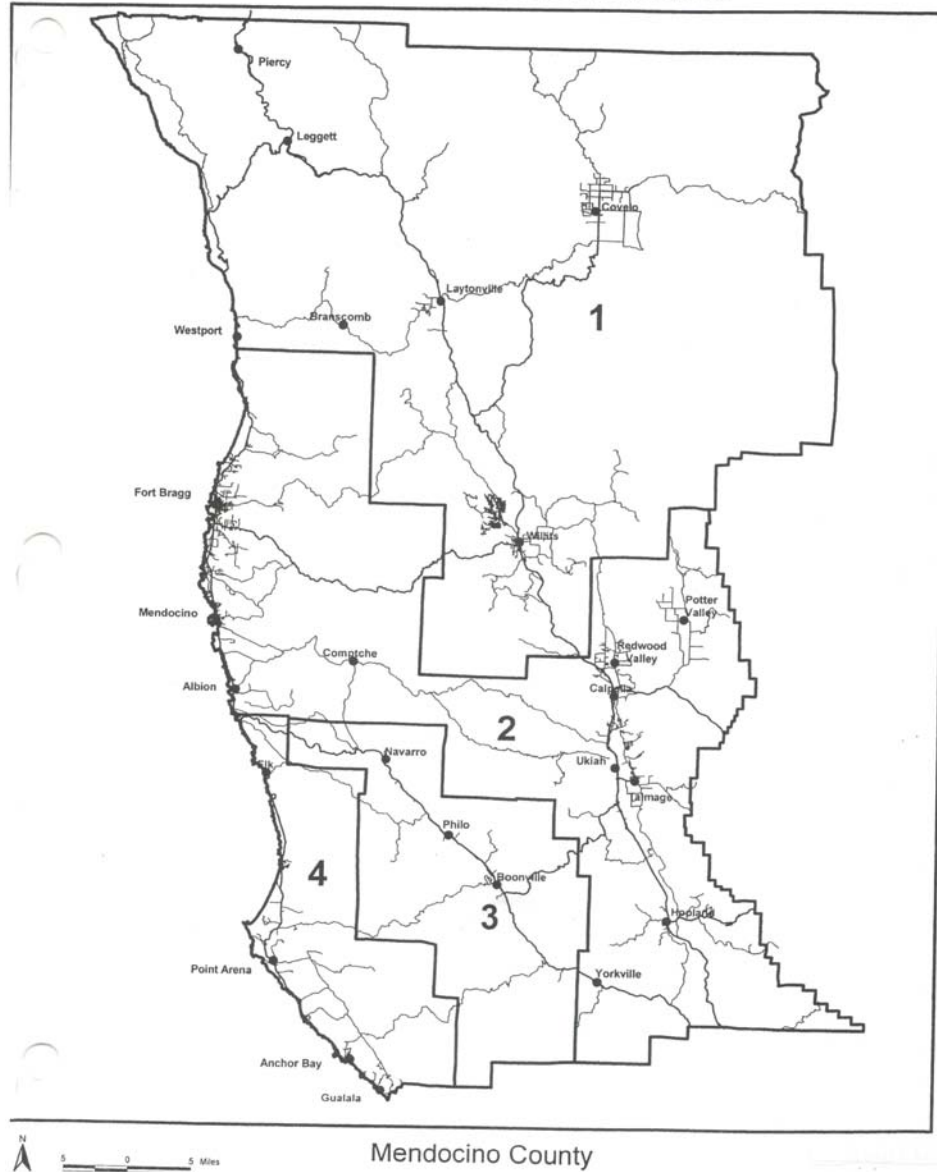
- Separate “how-to” brochures explaining the Recyclable Materials Collection programs that are tailored to each general business types (i.e., restaurants, office/Commercial buildings, strip malls, and large Commercial businesses).
- Prepare and distribute a Recyclable Materials resource guide to provide 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

SOLID WASTE REFUSE COLLECTION AREAS



SOLID WASTE REFUSE COLLECTION AREA NUMBER ONE - RATE ZONE A

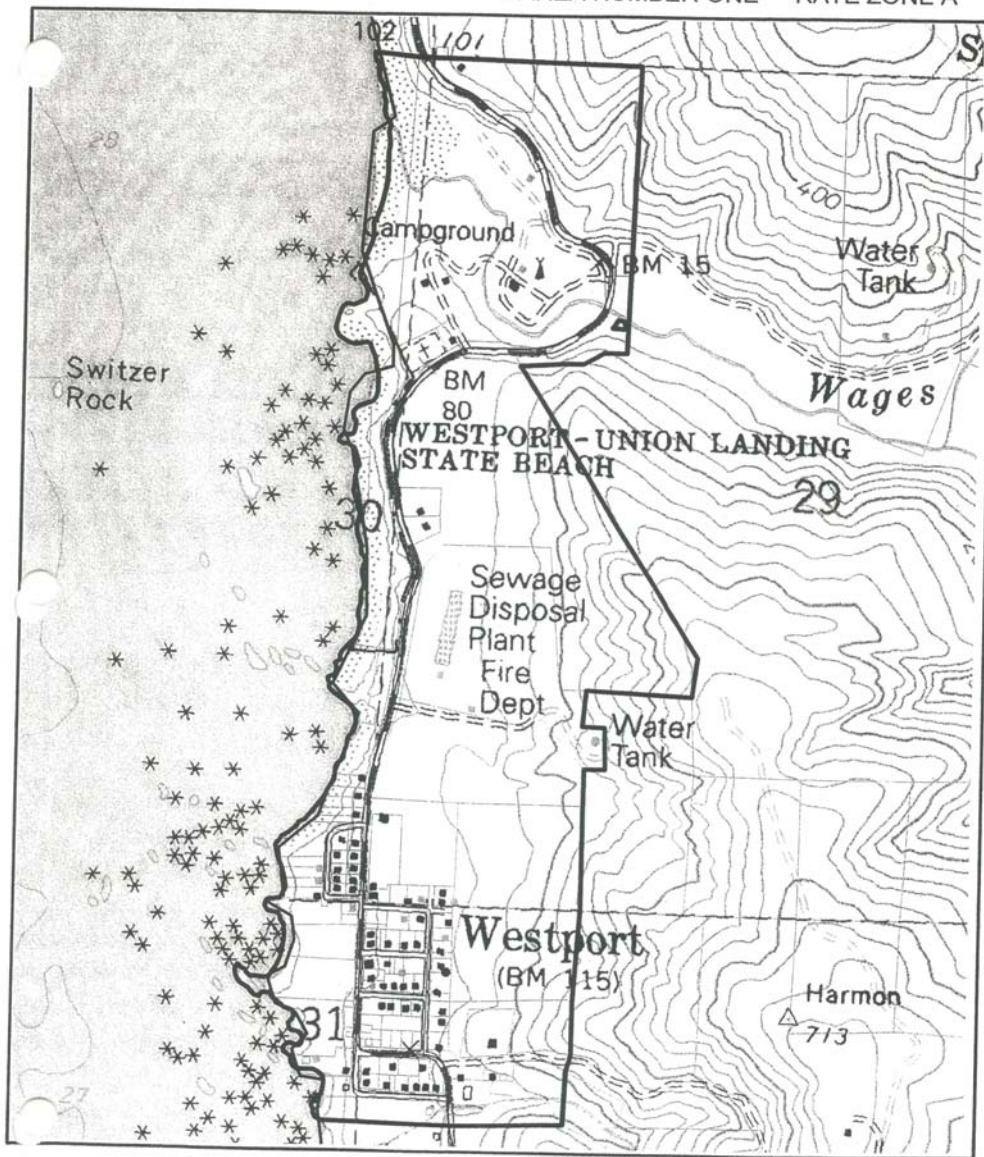
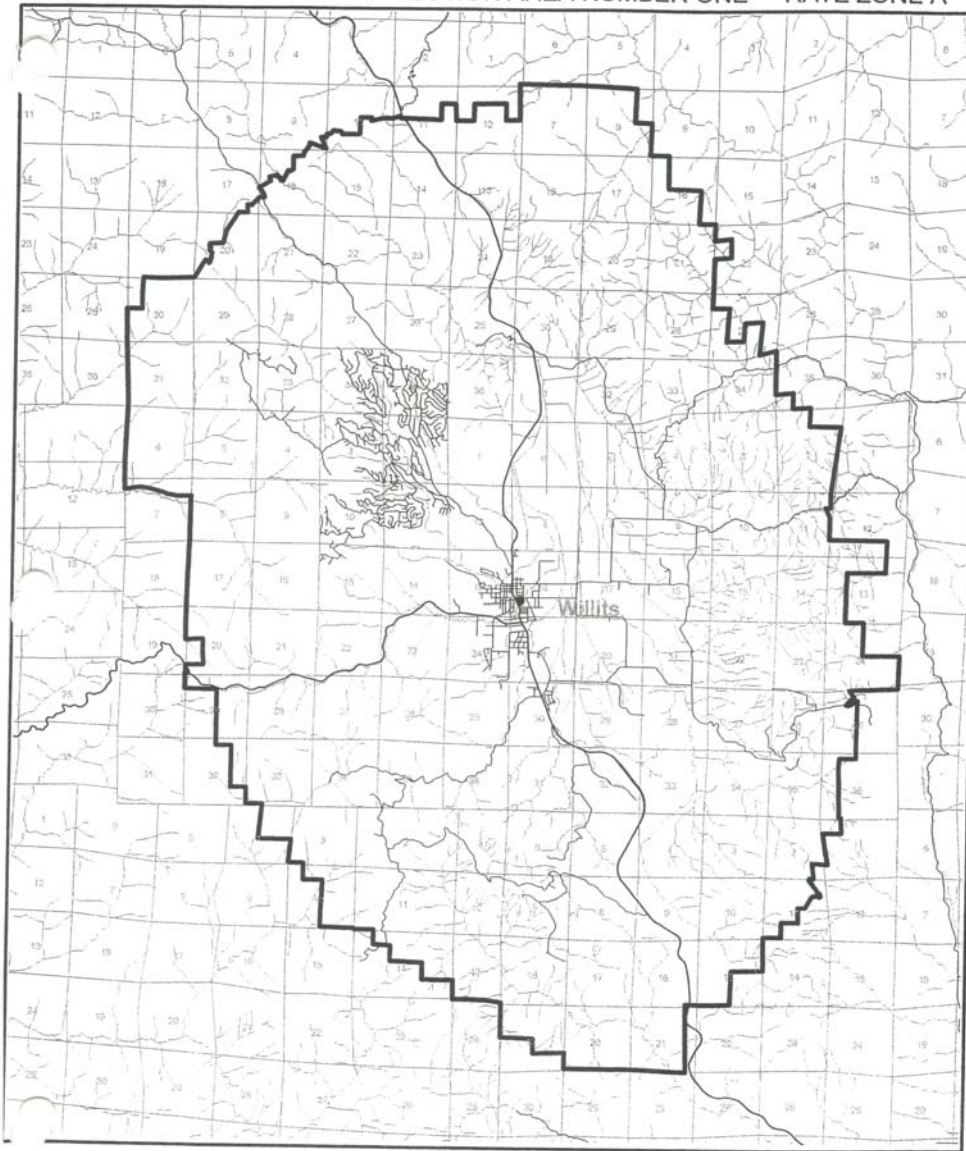


EXHIBIT D
1 of 4

SOLID WASTE REFUSE COLLECTION AREA NUMBER ONE - RATE ZONE A

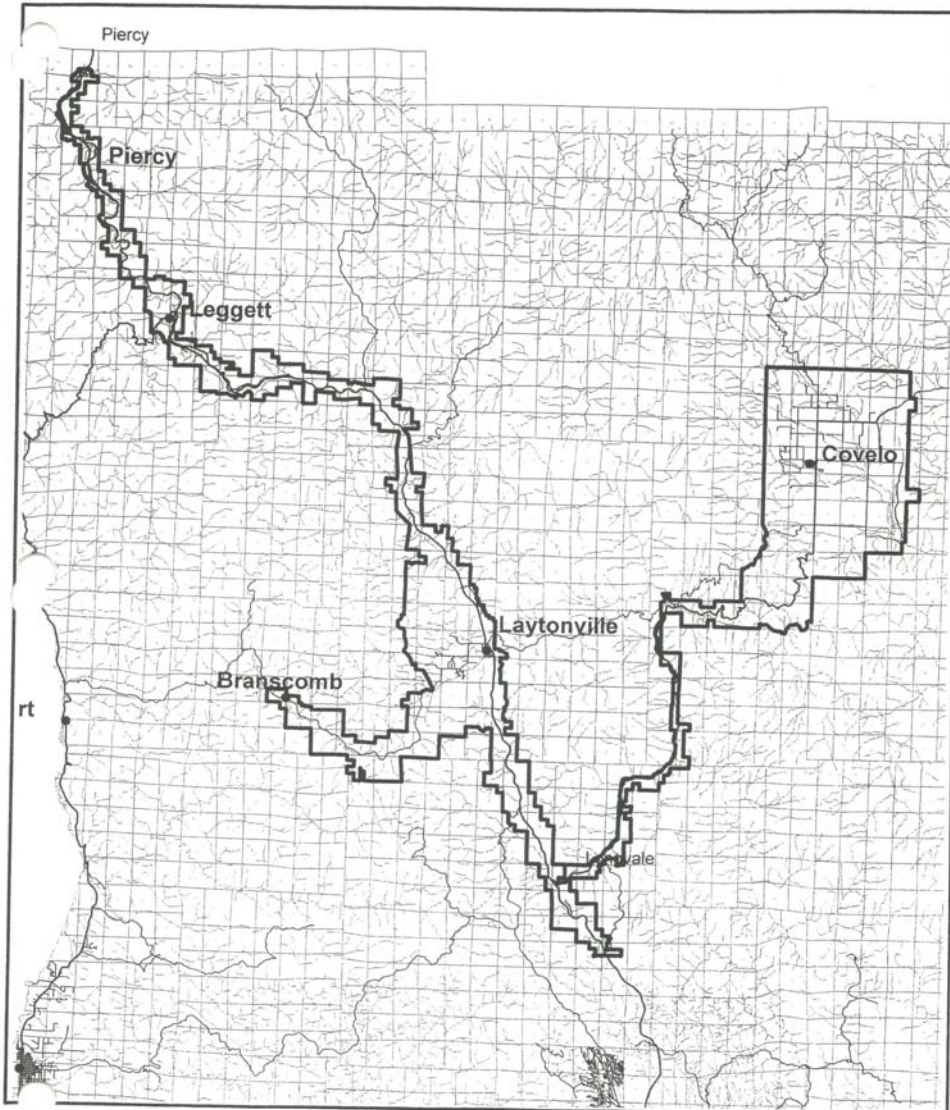


4 Mile Limits Around Willits



EXHIBIT D
2 of 4

SOLID WASTE REFUSE COLLECTION AREA NUMBER ONE - RATE ZONE A



Highway 101 and Highway 162



EXHIBIT D
3 of 4

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

COLLECTION QUALITY

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

CUSTOMER SERVICE RESPONSIVENESS

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

PUBLIC EDUCATION

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

BILLING

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

OTHER

18	Disposal of Recyclables. For each ton of Recyclable Materials Disposed of without written approval of the County	\$250/ ton
19	Use of Unauthorized Facilities. 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	Failure of Other Obligations. Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by 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.

Grantee
Initial Here: _____

County
Initial Here: _____