

County of Mendocino

Caspar Transfer Station Operations Agreement and Lease

CASPAR TRANSFER STATION OPERATIONS AGREEMENT & LEASE

between

COUNTY OF MENDOCINO

and

SOLID WASTES OF WILLITS, INC.

January 31, 2011

Table of Contents

RECITALS	6
SECTION 1 - GRANT AND ACCEPTANCE OF LEASE AND TRANSFER STATION MANAGEMENT	7
SECTION 2 – DEFINITIONS	7
SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS	12
SECTION 4 - TERM AND SCOPE OF AGREEMENT	12
A. Term of Agreement.....	12
B. Scope of Agreement.....	13
C. Limitations to Scope–Closed Landfills.....	14
D. Subcontracting	14
SECTION 5 – OPERATIONAL STANDARDS	14
A. Days & Hours of Operation	14
B. Holidays	14
C. Solid Waste Disposal	15
D. On-Site Materials Movement.....	15
E. Removal of Solid Waste from Premises	15
F. Litter and Dumping Prevention	15
G. Recycling Services.....	15
H. Reuse Facility.....	15
I. Storage of Recyclables.....	15
J. Site Security.....	16
K. Weed Abatement.....	16
L. Safety	16
M. Signage.....	16
N. Determination of Origin.....	16
SECTION 6 – Hazardous Waste Removal from Appliances.....	17
SECTION 7 -- PERSONNEL	17
A. Employment of Existing County Site Personnel	17
B. Transfer Station Site Attendants and Operators.....	17
C. Provision of Field Supervision	17
D. Driver Qualification.....	17
E. Employee Conduct & Courtesy.....	17
SECTION 8 – PRE-EXISTING HAULING CONTRACT.....	188
SECTION 9 - SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS.....	18

A. Responsibility to Identify Hazardous Waste.....	18
B. Response to Hazardous Waste Identified at Disposal Site or Processing Site	19
C. Notification for Hazardous Waste	19
SECTION 10 - DISPOSAL AND RECYCLING	19
A. Destination Facilities	19
B. Consolidation of Certain Recyclables.....	19
C. Change in Destination.....	20
D. Disposal of Recyclable Materials Prohibited.....	20
E. Recyclable Material Processing and Marketing	20
F. Grantee's Responsibility in Lieu of Direction by County.....	21
SECTION 11 - OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS	21
SECTION 12 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS.....	22
A. Record-keeping and Inspection.....	22
B. Financial and Operational Records	22
C. Service Records	22
D. CERCLA Defense Records.....	23
E. Quarterly Reports.....	23
F. Annual Financial Report	23
G. Annual Disclosure Statement.....	24
H. Reporting Requirements	25
I. Failure to Report	25
SECTION 13 - GRANTEE'S RATES.....	25
A. Sole Compensation to Grantee.....	25
B. Initial Rates on Effective Date of Agreement	26
SECTION 14 - RATE ADJUSTMENT PROCEDURES	26
A. Pass-through Rate Adjustment.....	26
B. Cost-of-Living & Fuel Rate Adjustments.....	27
C. Recycling Commodity Value Adjustment	28
D. Special Rate Adjustment.....	29
E. Rates Rounded to Nearest Quarter Dollar	30
SECTION 15 – FEES.....	30
SECTION 16 - LEASED PREMISES.....	30
A. Lease for Term of Agreement.....	30
C. Taxes and Assessments	30
D. Inventory of Existing Structures and Equipment.....	30
E. Condition of Leased Premises	31
F. Damage or Loss to Structures	31
G. Right of Inspection.....	31

SECTION 17 – PERMITS	31
SECTION 18 - BONDS, INSURANCE, AND INDEMNIFICATION.....	31
A. Bond.....	31
B. Insurance.....	32
C. Indemnification of County.....	33
D. Indemnification of Grantee.....	34
SECTION 19 - TRANSFER, ASSIGNMENT, AND RENEWAL	34
A. Transfer or Assignment.....	344
B. General Standards of Responsibility.....	35
C. Opportunity to Demonstrate Rehabilitation.....	36
SECTION 20 - TERMINATION.....	37
A. Events of Default	37
B. Right to Suspend, Amend, or Terminate	39
C. Procedures.....	39
D. Agreement - Revocation - Equipment Use by County	39
E. Liquidated Damages	39
SECTION 21 - RIGHTS OF COUNTY TO PERFORM DURING EMERGENCY	41
A. Provision of Emergency Services	41
B. Agreement Revocation - Emergency Actions.....	42
C. Labor Dispute - County Assumption of Duties – Authorized	42
D. Labor Dispute - County Assumption of Duties - Use of Revenue	42
E. Labor Dispute - County Assumption of Duties – Employees.....	43
SECTION 22 - GENERAL PROVISIONS.....	43
A. Entire Agreement.....	43
B. Force Majeure	43
C. Notice Procedures	44
D. Independent Contractor.....	44
E. Roadway Damage	44
F. Property Damage	45
G. Compliance with County Code.....	45
H. Severability	45
I. Waiver or Modification.....	45
J. Forum Selection	45
K. Court Costs and Attorney Fees	45

List of Exhibits

- A Employment Conditions of Existing County Personnel
- B County-Approved Rates
- C Transfer Station Site
- D Inventory of Structures and Equipment
- E Liquidated Damages

**CASPAR TRANSFER STATION OPERATIONS AGREEMENT & LEASE
BETWEEN
COUNTY OF MENDOCINO
AND
SOLID WASTES OF WILLITS, INC.**

This Transfer Station Operations & Lease Agreement ("Agreement") is entered into this _____ day of January, 2011, between the County of Mendocino ("County") and Solid Wastes of Willits, Incorporated, a California corporation ("Grantee"), for the operation of the Caspar Transfer Station on property co-owned by the County and the City of Fort Bragg ("City").

RECITALS

WHEREAS, County and City co-own and County operates a solid waste transfer station in Caspar, California; and

WHEREAS, to seek improved long-term cost efficiencies, City invited solid waste companies in September, 2010 to make proposals to take over the operation of the Caspar Transfer Station, and following consideration of two proposals received, City and County accepted Grantee's proposal; and

WHEREAS, subsequent to negotiations, County and Grantee reached this Agreement for Grantee to lease the site and assume operation of the transfer station; and WHEREAS, County has the authority pursuant to Government Code Section 25521 and the Caspar Joint Powers Agreement to lease County and City property, and has determined that the subject Transfer Station property will be available for lease; and

WHEREAS, Grantee has represented and warranted to County that it has the experience, responsibility, and qualifications to operate the transfer station; and the Board of Supervisors of County determines and finds that the public interest, health, safety and well-being would be best served if Grantee provides these services under the terms and conditions herein; and

WHEREAS, the interests and welfare of the existing County site attendant and site operator at the Transfer Station have been protected by the requirement that Grantee offer them employment in their current positions at not less than their current wages and hours; and

WHEREAS, the City, as co-owner of the Caspar Transfer Station, has reviewed this Agreement and approved it, and has specifically consented to County acting as the contracting party with Grantee, and all rights and powers of County under this Agreement are subject to any restrictions that may be imposed by the Joint Powers Agreement between County and City which governs their joint ownership of the Caspar Transfer Station property;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - GRANT AND ACCEPTANCE OF LEASE AND TRANSFER STATION MANAGEMENT

A. County grants to Grantee, for the term of and in accordance with this Agreement (including all extensions or renewals), the exclusive privilege, duty and right to operate and manage the Caspar Transfer Station at 14000 Prairie Way, Caspar, California.

B. County grants to Grantee a lease for the portions of County owned land at the Transfer Station site, identified and described in Exhibit C attached hereto, for performance of this Agreement subject to terms and conditions set forth herein.

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

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

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

SECTION 2 – DEFINITIONS

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

B. **“Agreement”** means this Caspar Transfer Station Operations Agreement and Lease between the County and Grantee.

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

D. **“Approved Recyclable Materials Processing Site”** means the Solid Wastes of Willits Material Processing Facility, 351 Franklin Avenue, Willits, California, where Grantee shall transport Discarded Recyclable Materials.

E. **“Bin”** shall mean a container designed for mechanical emptying with a close fitting cover and of a design with capacity of approximately one to six cubic yards.

F. **“Board”** means the Board of Supervisors of the County of Mendocino.

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

H. **“City”** means the City of Fort Bragg, a municipal corporation in Mendocino County, California.

I. **“Collection”** means the act of collecting Solid Waste, Recyclable Materials, and other material at the Transfer Station.

J. **“Commercial Solid Waste”** includes all types of Solid Wastes generated by commercial, industrial, governmental, and other sources. The term "Commercial Solid Waste" does not include Hazardous Wastes generated by commercial, industrial, governmental, and other sources and which are placed in separate Containers and which are covered by Hazardous Waste manifests.

K. **“Compactor”** means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials.

L. **“Containers”** means Bins, Compactors, and Debris Boxes.

M. **“County”** means the County of Mendocino, State of California.

N. **“County Approved”** means approval by the official designated by the County for administration of this Agreement.

O. **“Corporate”** is defined as the single legal entity Solid Wastes of Willits, Inc., a California Corporation

P. **“Customer”** means any Person delivering Solid Waste or Recyclable Material to the Transfer Station under the provisions of this Agreement.

Q. **“Direct Operating Expenses”** means the actual costs incurred by Grantee for performance of this Agreement, including direct expenses of the Operation and indirect Corporate expenses. Indirect Corporate expense will be allocated to the Operation based on the

Corporate allocation procedures accepted by an independent Certified Public Accountant as part of the Review procedures of the Corporate financial statements which the County accepts as an allocation basis.

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

S. **“Department”** means County of Mendocino, at the office designated by the County of Mendocino to administer this Agreement.

T. **“Designated Disposal Location”** means the permitted solid waste landfill or transfer station, identified by this Agreement, and changed from time to time subject to County approval, where Grantee shall transport Solid Waste from the Transfer Station.

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

V. **“Discarded Recyclable Materials”** means any Recyclable Materials which the Generator disposes of without selling or donating.

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

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

Y. **“Generator”** means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste or Recyclable Materials as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

Z. **“Grantee”** shall mean Solid Wastes of Willits Inc. or any successor or assignee approved by County pursuant to this Agreement.

AA. **“Grantee Gate Fee”** means the rate charged to Customers less any Rent assessed by County pursuant to this Agreement.

BB. **“Gross Revenues”** means any and all revenue or compensation in any form derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents or any other Person or entity in which Grantee has a financial interest, in Collecting, Transporting, arranging, handling, and/or Disposing of Solid Waste or Recyclable Material collected pursuant to this Agreement.

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

DD. **"Holidays"** are defined as New Year's Day, Christmas Day, Thanksgiving Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, and Easter.

EE. **"Leased Premises,"** means the land at the Transfer Station, identified in Exhibit C, which is leased by this Agreement to Grantee to be used to perform the services required by this Agreement.

FF. **"Net Revenue"** shall mean the Gross Revenue less Direct and Indirect Operating Expenditures of Grantee.

GG. **"Non-Discarded Recyclable Materials"** means any Recyclable Materials, as defined herein, the Generator retains, sells, or donates.

HH. **"Operations"** includes all tasks related to the Operation of the Caspar Transfer Station that was formally operated by the County of Mendocino.

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

JJ. **"Processing"** means to prepare, treat, or convert through some special method.

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

LL. **"Rate Period"** means a 12-month period, commencing January 1 and concluding December 31 for which rates are calculated.

MM. **"Recyclable Material(s)"** includes materials which are reused or Processed or are in the future reused or Processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the Public Resources Code. No materials shall be considered Recyclable Materials unless such material is separated from Solid Waste.

Recyclable Materials shall include, but not be limited to: newspaper (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of any color (including brown, clear, and green glass bottles and jars); aluminum (including beverage containers, foil, food containers); steel, tin or bi-metal cans; plastic containers (no. 1 to 7); aseptic beverage boxes, non-hazardous scrap metal items weighing 10 lbs or less, tires, electronics, yard waste, unpainted wood, vehicle batteries and used motor oil.

NN. **“Rent”** means a payment by Grantee to County for use of the Transfer Station property which shall be established from time to time by County, with consent of City, and collected per cubic yard of Solid Waste as a separate amount in addition to Grantee Gate Fees.

Formatted: Font: Bold

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

PP. **“Segregated Recyclable Materials”** means those Recyclable Materials which: 1) have been source separated by the Person from whom they are being collected; or, 2) are physically separated from other waste material by the Generator.

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

RR. **“Solid Waste Ordinance”** means Title 9A of the Mendocino County Code, as currently adopted by the Mendocino County Board of Supervisors and future amendments to Title 9A as adopted by the Board of Supervisors.

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

“Transfer Station” or “Caspar Transfer Station” means the solid waste and recycling transfer facility that will be operated by Grantee pursuant to this Agreement at 14000 Prairie Way, Caspar, California.

TT. “Transportation” means the act of transporting or state of being transported.

SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS

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

SECTION 4 - TERM AND SCOPE OF AGREEMENT

A. Term of Agreement

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

The Commencement Date shall be January 31, 2011 and shall be the date on which Grantee assumes operation and management of the Transfer Stations as set forth herein.

Between the Effective Date and Commencement Date, Grantee shall perform all activities necessary to start the services required by this Agreement on the Commencement Date.

- (2) **Term.** The Term of this Agreement shall continue in full force from 12:01 a.m. on January 31, 2011 (Commencement Date), to midnight June 30, 2017 unless the Agreement is extended by County pursuant subsection (3) below or terminated in accordance with subsection (4) below or terminated in accordance with Section 20.

- (3) **Option to Extend Term.** County shall, at the County's discretion acting with concurrence of City, have the option to extend this Agreement on one or more occasions provided that the combined extension period(s) do not extend beyond December 31, 2029. If the County extends the Agreement, it shall give written notice to Grantee 180 calendar days prior to the extended expiration date of this Agreement. The County's written notice shall specify the number of years by which it elects to extend the Term of this Agreement and the revised expiration date of the Agreement.
- (4) If, prior to the expiration date of this Agreement, a new publicly owned transfer station capable of serving the franchised haulers and self-haul Generators opens at or in the vicinity of Caspar Transfer Station, under contract with County and/or City, this Agreement will terminate. County shall provide 90 days advance notice to Grantee of such termination. Grantee will fully cooperate with County to redirect customers to the new transfer station.
- (5) **County's Rights upon Expiration or Revocation.** At the expiration or revocation of this Agreement, the County may assume operations itself or proceed with competitive bidding or request for proposal process or exercise any other option available under Applicable Law.

B. Scope of Agreement

The Grantee shall have the exclusive right to operate solid waste and recycling services at the Transfer Station. The Grantee or its Subcontractor(s) shall be responsible for the following services at the Transfer Station:

- (1) Receiving Solid Waste and Discarded Recyclable Materials from the public.
- (2) Transporting collected materials to the Designated Disposal Location or approved Processing Site, and paying the disposal fees or recycling fees and receiving the recycling revenues.
- (3) Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement, except that existing gatehouse, free-standing roof, loading bays, load-check hazardous waste locker, and other existing fixtures shall be available to Grantee.
- (4) Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, use permit fees, regulatory fees, pass-through costs, utilities, etc.
- (5) Maintaining all land, facilities and fencing associated with the Transfer Station

Operations.

- (6) Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the County are provided timely, reliable, courteous and high-quality service at all times.
- (7) Distribute information flyers, provided by County, to all self-haul customers upon County request.
- (8) Complying with Applicable Law.
- (9) Performing or providing all other services necessary to fulfill its obligations under this Agreement.

C. Limitations to Scope–Closed Landfills

The Transfer Station is located at the site of a closed solid waste landfill which was operated by County and County retains the right and duty to perform certain closure and post-closure duties. Grantee shall have no responsibility for closed landfill monitoring, maintenance and leachate collection, but shall allow unconditional access to County employees and County contractors who carry out these activities. Grantee shall not interfere with or degrade any closed landfill areas or facilities.

D. Subcontracting

Grantee shall not engage any Sub-grantees for operation, maintenance, Transportation, Processing, or Disposal of Solid Waste or Recyclable Materials services without the prior written consent of County. Such consent is granted for USA Waste of California, Inc., under the existing hauling contract with County, as provided herein in Section (8).

SECTION 5 – OPERATIONAL STANDARDS

A. Days & Hours of Operation

Unless County gives written authorization for changes in days and hours, Grantee shall open the Transfer Station to the public as follows: Monday through Wednesday, 9 a.m. to 3 p.m., Saturday and Sunday, 9 a.m. to 4 p.m.

B. Holidays

Grantee may close the Transfer Station on the following holidays: Christmas Day, New Year's Day, Thanksgiving, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, and Easter.

C. Solid Waste Disposal

Grantee or its Subcontractor shall provide, maintain and operate appropriate equipment to sufficiently receive all solid waste delivered by the public to the Transfer Station.

D. On-Site Materials Movement

Grantee shall provide any loaders, forklifts, or roll-off trucks necessary for compacting, moving, or loading solid waste or recyclables at the Transfer Station.

E. Removal of Solid Waste from Premises

Grantee shall remove Solid Waste from the Transfer Station premises at least as frequently as required by facility permits, and in no case shall solid waste be stored at the Transfer Station for longer than fourteen (14) days. Removal shall be done by USA Waste of California, Inc., pursuant to the hauling agreement between County and USA of California, Inc., also known as BOS Agreement #09-115, as amended, as long as said hauling agreement remains in effect.

F. Litter and Dumping Prevention

No storage of Solid Waste on the ground shall be allowed. Grantee will remove litter from the Transfer Station vicinity, including any litter which has blown onto adjoining roads or property and illegally dumped material outside the Transfer Station gate, not less than daily.

G. Recycling Services

Grantee shall accept the following recyclables from the public at the Transfer Station: aluminum cans, tin cans, glass bottles and jars, plastic containers, recyclable rigid plastics, scrap metal, metal appliances, electronics, newspaper, cardboard, box board, office paper, magazines, tires, used motor oil, vehicle batteries, yard waste and wood.

H. Reuse Facility

If a qualified entity applies to operate a reuse facility at the Transfer Station and provides proof of insurance, and County approves the proposed reuse facility, Grantee shall provide a suitable location for the reuse facility at the Transfer Station subject to the reuse operator's compliance with reasonable contractual conditions specified by Grantee.

I. Storage of Recyclables

Grantee shall provide appropriate containers and equipment to receive, store and transport all Recyclable Materials, which may include roll-off boxes, transfer trailers, custom steel containers, or walled storage bays, except that equipment and bins shall be provided pursuant to the hauling agreement between County and USA Waste of California, Inc., also

known as BOS Agreement #09-115, as amended, as long as said agreement remains in effect.

J. Site Security

Grantee shall maintain fences around the Transfer Station with gates that will be locked at all times that the Transfer Station is closed to the public. The Transfer Station shall be equipped with a land-line or cellular telephone.

K. Weed Abatement and Roadway

Grantee shall keep vegetation cut sufficiently to prevent contact with vehicles at all locations at Transfer Station where vehicles might drive over vegetated areas, including, but not limited to, sides of driveways, parking areas, and container storage areas. Grantee shall maintain the access driveway from Prairie Way to the Transfer Station gatehouse, including pavement repair to fix any deterioration that may damage customer vehicles.

L. Safety

Grantee shall ensure public safety at the Transfer Station by use of guard chains, backup alarms, signage and other necessary measures. Grantee shall identify unsafe conduct that may occur by customers and shall train Grantee's employees in procedures to prevent such conduct. Grantee shall provide County with Grantee's written safety procedures for the Transfer Station operations. No use of drugs or alcoholic beverages by any person at any time shall be permitted by Grantee at the Transfer Station. No scavenging, sight-seeing or any public activities not required for disposal of Solid Waste and Discarded Recyclable Materials shall be permitted. All children or spectator passengers shall be required to remain inside vehicles.

M. Signage

Grantee shall provide and maintain all signs necessary for efficient and safe use of the Transfer Station by the public, including, but not limited to: entrance sign listing hours of operation and charges, caution signs at solid waste dumping locations; recycling locations and materials accepted for recycling.

N. Determination of Origin

1. Grantee's personnel shall determine of the jurisdiction of origin of incoming paid materials at the Transfer Station by asking all customers the following question: "Did this waste come from inside the City of Fort Bragg or inside the unincorporated County?"

2. In case the customer cannot answer the question stated in subsection (1) above, Grantee shall record the address of origin and independently determine what jurisdiction it falls in.

3. Grantee shall record the jurisdiction of origin for all paid materials delivered by

customers to the Transfer Station.

SECTION 6 – Hazardous Waste Removal from Appliances

Grantee shall utilize the appliance hazardous waste removal service of the Mendocino Solid Waste Management Authority for refrigerants, lubricants and mercury switches, as long as it continues to be available, and shall store and arrange major appliances so that the Authority's hazardous waste technicians can gain easy access to the appliances and remove hazardous materials safely and efficiently.

SECTION 7 – PERSONNEL

A. Employment of Existing County Site Personnel

Grantee shall offer employment to certain existing County employees at the Transfer Station as described in Exhibit A.

B. Transfer Station Site Attendants and Operators

Grantee shall employ and assign sufficient qualified site attendants, equipment operators and drivers to efficiently, safely and reliably carry out all services required by this Agreement.

C. Provision of Field Supervision

Grantee shall designate at least one qualified employee as supervisor of field operations for the Transfer Station who shall be identified to County.

D. Driver Qualifications

All drivers of solid waste or recyclable transfer vehicles and transfer station loader operators shall be trained and qualified in the operation of the vehicles they operate, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Grantee shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

E. Employee Conduct and Courtesy

Grantee shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Grantee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct site attendants in accurate methods of measuring solid waste to determine charges. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, including making incorrect customer charges, Grantee shall take all appropriate corrective measures.

SECTION 8 – PRE-EXISTING HAULING CONTRACT

- A. Provision of containers and hauling of Solid Waste and Recyclables from the Transfer Station are subject to the hauling contract between County and USA Waste of California, Inc., as amended, also known as BOS Agreement #09-115, entered into on or about June 23, 2009 with a term ending June 30, 2014.
- B. In an amendment dated July 27, 2010 to aforesaid hauling contract, County and USA Waste of California, Inc., agreed as follows: “County may enter into a contract for operation and management of the Caspar Transfer Station by SWOW[Solid Wastes of Willits Inc.], and Contractor consents to the assignment by County of its obligations under the Agreement to SWOW, providing SWOW assumes said obligations in writing, which include, but are not necessarily limited to, notifying Contractor of the need to haul bins, receiving Contractor’s bills and reports, timely paying Contractor for services provided under the Agreement, and revising Contractor’s fees for service in accordance with the terms of the Agreement. County, however, with the consent of both Contractor and SWOW, shall retain all rights and duties pertaining to termination or extension of the Agreement.” By execution of this Transfer Station Agreement herein, Grantee assumes the aforesaid obligations.
- C. Paragraph (B) above notwithstanding, redirection of Solid Waste, recyclable metal and appliances, single-stream recyclables, and recyclable wood and yard waste shall remain the exclusive right of County, acting with consent of the City.
- D. Upon expiration of aforesaid hauling agreement with USA Waste of California, Inc., Grantee, at Grantee’s sole discretion, may extend it or amend it if County consents, but expiration of the hauling agreement shall not be cause for increase in any gate fees charged by Grantee to Customers under this Agreement.

SECTION 9 - SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS**A. Responsibility to Identify Hazardous Waste**

Grantee shall keep current with the regulations regarding Hazardous Waste substances and identification of such substances and to comply with all federal, state, and local regulations concerning such substances. Grantee shall make every reasonable effort to prohibit the Collection and the Disposal of Hazardous Waste in any manner inconsistent with applicable law.

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

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

If Hazardous Wastes are detected at the Transfer Station, Grantee's personnel shall remove these materials for storage in approved, on-site, Hazardous Materials storage Container(s). Grantee shall make reasonable efforts to identify and notify the person responsible for generating the Hazardous Waste. Grantee shall arrange for removal of the hazardous wastes by permitted haulers in accordance with Applicable Laws and regulatory requirements. Any costs by Grantee contributable to the removal of Hazardous Wastes will be included in Direct Operating Expenses.

C. Notification for Hazardous Waste

Grantee shall, if required based on reportable levels, notify all agencies with jurisdiction, including the California Department of Toxic Substances Control, and, if appropriate, the National Response Center, of reportable quantities of Hazardous Waste, found or observed by Grantee in Solid Waste and/or Recyclable Materials at the Transfer Station or in any materials received from the public at the Transfer Station. Grantee shall be responsible for any costs associated with any Hazardous Waste violation.

SECTION 10 - DISPOSAL AND RECYCLING**A. Destination Facilities**

At its own expense, and subject to Section (8) of this Agreement, Grantee shall transport and deliver all Solid Waste and all Discarded Recyclable Materials collected at the Transfer Station to the following destinations:

Solid Waste	Mixed recyclables	Scrap metal & appliances	Wood	Yard waste	Tires	Electronics
Willits Transfer Station	Willits Material Recovery Facility	Ukiah Transfer Station	Cold Creek Compost	Cold Creek Compost	Waste Recovery West	California Electronic Asset Recovery

Facility addresses:

Willits Transfer Station, 350 Franklin Avenue, Willits, CA 95482

Ukiah Transfer Station, 3151 Taylor Drive, Ukiah, CA 95482

Willits Material Recovery Facility, 351 Franklin Avenue, Willits, CA 95482

California Electronic Asset Recovery, 3678 Lemay St., Mather, CA 95655

Cold Creek Compost, 6000 Potter Valley Road, Ukiah, CA 95482

B. Consolidation of Certain Recyclables

Tires, scrap metal and electronics may be collected in containers or trailers provided by the destination vendor and removed from a Transfer Station by the vendor.

C. Change in Destination

Grantee will obtain prior written approval from County for any change in destination. County and Grantee agree that minimizing disposal and transportation cost shall be a major objective in selecting destinations. County, acting with approval by the City, may exercise its sole discretion to redirect any material but shall do so only for cause, such as deficiency of facility, environmental-superior end use, or a substantial reduction in transportation emissions. Grantee may initiate a Rate adjustment as outlined under Section 15A, to recover any additional costs or lost revenue caused by such redirection. In exercising its discretionary right to direct Solid Waste and Discarded Recyclable Materials, the County will consider the impact upon rates, and the likelihood Grantee can recover all costs with the destination facility.

D. Disposal of Recyclable Materials Prohibited

Recyclable Materials may not be disposed of in lieu of Recycling the material.

E. Recyclable Material Processing and Marketing

- (1) **Processing.** Directly, or using USA Waste of California Inc. as subcontractor pursuant to Section (8) above, Grantee shall Transport and deliver all Recyclable Materials collected from the Transfer Station to the Approved Recyclable Materials Processing Site. Grantee shall pay all costs associated with the Transporting and Processing of all Recyclable Materials.

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

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

- (2) **Marketing.** Providing the Approved Recyclable Material Processing Site is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall be responsible for marketing Recyclable Materials collected from the Transfer Station and shall be compensated for such Recyclable Materials at not less than fair market value.

Providing the Approved Recyclable Material Processing Site is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall prepare and

maintain a County-approved marketing plan for all Recyclable Materials collected from the Transfer Station. The plan shall be in place on or before the Commencement Date of this Agreement. The marketing plan shall fully describe the Grantee's marketing methods and approach, targeted primary and contingent markets, pricing policy and assumed salvage value for each collected type of Recyclable Material products, and contingency plans if market conditions are severe.

Providing the Approved Recyclable Material Processing Site is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall provide proof to the County that all Recyclable Materials collected are marketed for Recycling or reuse in such a manner that materials shall be considered as diverted in accordance with the State regulations established by the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time. No Recyclable Material shall be transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

Providing the Approved Processing Center is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall provide County with a list of broker/buyers it uses each month County may audit one broker or buyer per month to confirm that materials are being recycled. If Grantee becomes aware that a broker or buyer has illegally handled or disposed of material generated from the Transfer Station or elsewhere, Grantee shall immediately inform the County and terminate its contract or working relationship with such party. If Grantee has provided County with a list of broker/buyers for the month, Grantee shall provide a monthly list only to the extent that the list differs from the list provided in the prior(s) months.

F. Grantee's Responsibility in Lieu of Direction by County.

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

SECTION 11 - OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS

All Solid Waste, prior to being placed in a Grantee-provided Container or bay at the Transfer Station and placed at a designated Collection point, shall be the property of the

Generator or producer, if known. All Solid Waste, upon being placed in a Grantee-provided Container and all Recyclable Materials, upon being placed in a Grantee-provided Container shall become the property of the Grantee. Upon being legally deposited in a Disposal Site, or transferred to a Processing Site or transfer station not owned by the Grantee, all Solid Waste and Recyclable Materials shall forthwith become the property of the permitted operator of the approved transfer station, Disposal Site, or Processing Site .

SECTION 12 - GRANTEE'S BOOKS AND RECORDS; REPORTS AND AUDITS

A. Record-keeping and Inspection

Grantee shall maintain detailed records of all receipts and expenditures received or incurred in the performance of this Agreement, 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 revenues and expenditures and all other information that pertains to the rights and obligations under this Agreement. The County will make reasonable effort to protect proprietary information, if labeled.

All documents produced and maintained in connection with this Agreement shall be subject to the Public Records Act.

B. Financial and Operational Records

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.

C. Service Records

Records shall be maintained by Grantee for County relating to:

- (1) Customer services, receipts and billing, for the Transfer Station;
- (2) Weight and volume of material collected by type (e.g., Solid Waste and Recyclable Materials), for the Transfer Station;
- (3) Facilities, equipment and personnel used;
- (4) Facilities and equipment operations, maintenance and repair;
- (5) Tonnage of Solid Waste and Recyclable Materials listed by Processing Site or Disposal Site where such materials were delivered, for the Transfer Station;
- (6) Recyclable Materials sales revenue.

D. CERCLA Defense Records

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

E. Quarterly Reports

Grantee shall provide quarterly reports to County with the following information:

- (1) Solid Waste. Total tonnage collected and disposed, by month.
- (2) Recyclable Materials tonnage collected and Recycled, by type.
- (3) Gate receipts and charge account billings, by month.
- (4) Disposal fees paid or charged for Solid Waste and Discarded Recyclable Materials delivered from the Transfer Station.
- (5) Revenues received or billed for Discarded Recyclable Materials delivered from the Transfer Station.

F. Annual Financial Report

Grantee shall maintain accounting records specific to the Transfer Station, separate from all other activities, and will additionally maintain consolidated accounting records for all activities pursuant to this Agreement.

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

The annual financial statement or audit report must include an Income and Expense Statement for the Transfer Station operations pursuant to this Agreement, which shall accurately identify disposal costs and recycling revenues, and the Recycling Commodity Value Index described in Section 15 herein.

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

- (1) Copies of customer receipts and revenue records;

- (2) Supporting documentation (invoices and descriptive schedules) for major expense line items including but not limited to depreciation, salaries, repair and maintenance, equipment rental, and Disposal expense.
- (3) Supporting documentation for all transactions with affiliated companies.
- (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 County 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.

G. Annual Disclosure Statement

In conjunction with the annual financial report, 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), for purpose of this subsection, USA Waste of California, Inc. is not a 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 three years;
- (3) A listing of any instances in which a permit or contract held by the Grantee or Subcontractor was terminated by a final judgment in any state or federal court within the preceding three years;
- (4) A listing of all final adjudications finding the Grantee or Subcontractor in contempt of any state or federal court order enforcing any state and federal law within the preceding three years;
- (5) A listing of all final convictions or pleas of nolo contendere of the Grantee or Subcontractor, under state or local laws governing safety of operations, compliance with environmental and other franchise requirements in the County, whether misdemeanors or infractions.

If the Grantee or Subcontractor is a chartered lending institution or a publicly held company or a wholly-owned subsidiary of such a company required to file annual or quarterly reports under the Securities and Exchange Act of 1934, the Grantee or Subcontractor may

provide the above required information by submitting quarterly or annual reports for the preceding three years. If these reports are incomplete or if they fail to contain the information requested in subsection D items 1, 2, 3, 4, and 5 herein, the Grantee or Subcontractor shall make such information available to County. The County may also require, at applicant/grantees' expense, preparation and submittal of a Dunn and Bradstreet or comparable report.

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

H. Reporting Requirements

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

Grantee shall submit quarterly reports within 30 calendar days after the end of the reporting quarter. Grantee shall submit annual reports no later than 120 calendar days after the end of the reporting year.

Grantee shall submit (via mail and e-mail) all reports to: County of Mendocino, at the office designated by County for administration of this Agreement.

I. Failure to Report

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

SECTION 13 - GRANTEE'S RATES

A. Sole Compensation to Grantee

Charges to customers to receive Solid Waste and certain Discarded Recyclable Materials, according to the approved Rates, and proceeds from sale of Discarded Recyclable Materials including state reimbursements for electronics and redemption containers, shall be the sole compensation to Grantee for all services performed under this Agreement.

Grantee shall carry out at its sole expense all capital improvements to the Transfer Stations which are necessary for the continued safe and efficient operation of the Transfer Stations, maintenance of the Transfer Station in condition not less than their condition on the commencement date, compliance with state regulatory requirements, and revised methods of operation.

B. Initial Rates on Effective Date of Agreement

- (1) Grantee shall charge customers at the Transfer Station the rates set forth in Exhibit B, "Grantee Gate Fees", beginning on the effective date of this Agreement, plus any Rent pursuant to Section 16(B).
- (2) The Grantee Gate Fees specified in Exhibit B may be modified in accordance with the Rate Adjustments as described in Section 14 of this Agreement.
- (3) No Solid Waste or Discarded Recyclable Materials shall be received by Grantee at the Transfer Station at any Rates not approved pursuant to this Agreement.
- (4) All compensation paid to the Grantee shall be paid by its Customers and the County is in no way obligated to provide the Grantee any compensation for services described in this Agreement.

SECTION 14 - RATE ADJUSTMENT PROCEDURES

A. Grantee Gate Fee

The provisions of this Section apply only to the Grantee Gate Fee and not to the total rate charged to Customers, which may include Rent established pursuant to Section 16(B).

B. Pass-through Rate Adjustment

- (1) At any time that the County either institutes a County surcharge or changes an existing County surcharge, Grantee shall apply to County for a pass-through rate adjustment to offset the new or changed fees. In applying for a pass-through rate adjustment the Grantee must:
 - (a) Submit a request for the adjustment, in writing, to County;
 - (b) Specify the amount of the requested adjustment for each rate given in Exhibit B; and,
 - (c) Provide documentation that the specified rate adjustment is reasonable and appropriate and does not include rate adjustments for any other reason than to allow for the change in direct cost of the pass-through expense.

Provided that County has received and considered the request and documentation described above, and has concluded that the requested rate adjustment is reasonable and appropriate, the rates given in Exhibit B shall be amended following written authorization from County, which shall not be unreasonably withheld.

- (2) If a government jurisdiction other than the County establishes or changes surcharges or fees that affect Grantee's expenses, the same procedures as described in (1), above, apply.
- (3) If a Disposal Site or Processing Site used by Grantee pursuant to this Agreement changes its gate fee for Solid Wastes or Recyclable Material, the same procedures as described in (1) above, apply.
- (4) Grantee shall notify County in writing whenever Grantee learns of an event that justifies a pass-through rate adjustment under this Section. There shall be no retroactive increases in Rates because of Grantee's failure to request a pass through rate adjustment increase.

C. Cost-of-Living & Fuel Rate Adjustments

Four to six months prior to the end of a Rate Period, Grantee may apply for cost-of-living (COLA) and a fuel rate adjustment to become effective on January 1, 2012, and annually thereafter subject to approval by the County. . The rate adjustments shall be based on: 1) 90% of the change in the value of the most recently published All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before, and 2) 100% of the change in the value of the most recently published Series ID:wpu057303; Commodity Code 0573-03 #2 Diesel Fuel compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor and its value twelve months before. Grantee shall notify the County of the adjustments to take place and shall provide the County with its computations and documentation therefore.

For calculation of adjustments, the rates shall be divided into three components – Fuel, Pass-through and All Other. The Fuel Component would equal 2% of the first year rate. The Pass-through Component would equal 29%. The All Other Component would equal 69% of the rate. When the first adjustment to rates occurs, it will be done in the following manner:

Fuel Component: Existing Billed Rate x 2% x Diesel Fuel Index

Pass-through Component: None, since pass-through increases, if any, will be made pursuant to Section 14(A) above.

All Other Component: Existing Billed Rate x 69% x CPI Index

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

Grantee acknowledges that the aforesaid rate adjustment mechanism will adequately compensate Grantee for any increases in charges Grantee will pay under the hauling agreement with USA Waste of California, Inc.

D. Recycling Commodity Value Adjustment

The gross market commodity value of certain Discarded Recyclable Materials collected by Grantee pursuant to this Agreement as mixed Recyclables shall be estimated from the tons collected and the average composite market value as calculated by the following weighted profile, with each category multiplied by the market price including any California Redemption Value, FOB at the Designated Recycling Processing Facility. The values below shall constitute the baseline for comparison to the Rate Period ending December 31, 2011.

Formatted: Left

COMPOSITE MARKET VALUES EFFECTIVE JANUARY 1, 2011

Composition	Commodity	Scrap		Weighted
		Value/Ton	CRV/Ton	Value/Ton
14.75%	OCC	122.00		18.00
44.08%	Mixed Paper	88.00		38.79
0.53%	HDPE Color	333.00	110.00	2.35
0.51%	HDPE Natural	499.00	110.00	3.11
1.94%	PET	401.00	1,180.00	30.67
1.25%	Rigid Plastics	99.00		1.24
1.82%	Tin	5.00		0.09
24.41%	Glass 3 Mix	(10.00)	84.00	18.06
0.71%	Alum. Cans	1,248.00	2,820.00	28.88
10.00%	Refuse	(70.33)		(7.03)
				\$134.15

Total Composite Market Value Per Ton = \$134.15

Four to six months before the end of the Rate Period, beginning with the Rate Period ending December 31, 2011, Grantee shall calculate the average composite market value per ton over the previous 12 months, and use it to determine the change in the gross commodity value of Discarded Recyclable Material collected by Grantee compared to the previous Rate Period. Rates will be adjusted so that 100% of the change in gross commodity value will be applied proportionately to reduce rates in case of a gain .

Grantee will provide County with all data used for calculation of this adjustment.

E. Special Rate Adjustment

The baseline volume of Solid Waste, scrap metal, wood and yard waste at the Transfer Station shall be 22,203 cubic yards per year. At each annual rate adjustment, the Grantee Gate Fee per cubic yard as calculated in paragraphs (B), (C) and (D) above, for separated scrap metal, wood and yard waste shall be established at \$1.00 less than the Grantee Gate Fee for Solid Waste for each 1,000 cubic yards of total volume of all paid materials received at the Transfer Station in the previous year that is in excess of the baseline volume. If the total volume for the prior year is

Formatted Table

less than the baseline volume, the Grantee Gate Fee for scrap metal, wood and yard waste shall be equal to the Grantee Gate Fee for Solid Waste.

F. Rates Rounded to Nearest Quarter Dollar

Any Rate adjusted pursuant to this Section shall be rounded up or down to the nearest quarter dollar increment so that all Rates will be evenly divisible by 25 cents.

SECTION 15 – FEES

If Grantee delivers Solid Waste from the Transfer Station directly to a disposal facility outside Mendocino County, Grantee shall pay the Mendocino Solid Waste Management Authority surcharge on solid waste directly to the Authority. Grantee will remit surcharge to the Authority for on a monthly basis, paid within 90 days of the end of the month.

SECTION 16 - LEASED PREMISES

A. Lease for Term of Agreement

County shall be Lessor and Grantee shall be lessee for the Leased Premises, which are the portions of the Transfer Station site identified in Exhibit C. The lease will run concurrently with this Agreement, will be extended automatically if the Agreement is extended, and will terminate at the same time as the Agreement.

B. Rent

Grantee shall pay County Rent each quarter in an amount per cubic yard of Solid Waste received at the Transfer Station, to be prorated for partial cubic yards or cans. The amount of the Rent shall initially be \$3.00 per cubic yard and changes in the amount shall be determined from time to time by County, with consent of the City. The Rent shall be a separate charge collected by Grantee from customers above and beyond the Grantee Gate Fee for Solid Waste which is established in Exhibit B and adjusted pursuant to Section (14).

C. Taxes and Assessments

Grantee shall pay any real property or personal property taxes and assessments on Grantee's property that may be located on the Leased Premises as a consequence of this Agreement. Any "possessory interest tax" levied by the County of Mendocino may be submitted by Grantee as the justification for a Pass-Through Rate Adjustment pursuant to Section 14(A) .

D. Inventory of Existing Structures and Equipment

The County's structures and equipment at the Leased Premises that will be made

available to Grantee for performance of this Agreement are listed in Exhibit D. Any new structures or fixtures constructed by Grantee on the Leased Premises shall immediately become the property of County and City. Grantee shall keep all structures, fixtures, equipment and improvements in good repair and order and maintain them at Grantee's expense.

E. Condition of Leased Premises

Grantee agrees to accept the use of the Leased Premises in their current condition on the Effective Date of this Agreement, understanding that County makes no representations as to the condition of the Leased Premises or its suitability for the use by Grantee. Grantee represents that it has made a thorough inspection of the Leased Premises and shall repair any conditions that may constitute a hazard or dangerous condition to employees, customers or visitors at the Leased Premises.

F. Damage or Loss to Structures

Grantee shall be responsible for replacing or restoring any structures, fixtures or equipment damaged or destroyed due to fire, collision, explosion, earthquake or other occurrence, and shall maintain at Grantee's discretion any insurance on Leased Premises that Grantee deems necessary and County agrees to. County shall have no responsibility for insurance on the Leased Premises or loss thereto.

G. Right of Inspection

County shall have unrestricted access to the Leased Premises at all times, both to inspect Grantee's operations and confirm compliance with this Agreement, and because County must perform post-closure inspection and maintenance on landfills at or near the Leased Premises.

SECTION 17 – PERMITS

Grantee warrants that it will comply with all applicable permits or licenses in effect during the term of this Agreement, including permits for electronics collection, used motor oil collection, solid waste transfer station, material processing facilities and with other agencies with jurisdiction relating to services provided by Grantee under this Agreement.

SECTION 18 - BONDS, INSURANCE, AND INDEMNIFICATION

A. Bond

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. Grantee's cost in obtaining a Performance Bond shall be a pass-through expense for rate adjustment pursuant to Section 15.

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 due to liability of the Grantee 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 County provided the County determines that such waiver or modification does not unreasonably increase the risk of exposure to the County, including the fact that 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 THREE MILLION DOLLARS (\$3,000,000.00) aggregate and THREE MILLION DOLLARS (\$3,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding TWO HUNDRED THOUSAND (\$200,000.00) per occurrence. Said insurance shall protect Grantee and County from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations are by Grantee itself, or by its agents, employees and/or Subcontractors. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the Department. Endorsements are required to be made a part of all of the following insurance policies required by this Section:
 - (a) "The County of Mendocino and City of Fort Bragg, their employees, agents, and officers, are hereby added as insured's as respects liability arising out of activities performed by or on behalf of Grantee."
 - (b) "This policy shall be considered primary insurance as respects any other valid collectible insurance the County or City may possess including any self-insured retention the County may have, and any other insurance the County or City does possess shall be considered excess insurance and

shall not contribute with it."

- (c) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
 - (d) "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the County in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the Department."
- (3) Vehicle Liability. Grantee shall obtain and maintain in full force and effect throughout the entire term of this Agreement a vehicle liability policy with a minimum limit of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence for bodily injury and TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) per occurrence for property damage. Said insurance shall protect Grantee, City and County from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operation of owned and non-owned vehicles. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the Department.

The limits of such insurance coverage, and companies, shall be subject to review and approval by the County every year and may be increased at that time if necessary to, at a minimum, match the coverage provided by the County's own liability insurance policy. The County shall be included as a named insured on each of the policies, or policy endorsements.

C. Indemnification of County

- (a) Grantee shall defend the County and City with counsel reasonably acceptable to the County and City and indemnify the County and City from and against any and all liabilities, costs, claims and damages which are caused by Grantee's negligence or failure to comply with applicable laws and regulations, including but not limited to liabilities, costs, claims and damages described in Section 18B, above.
- (b) Grantee agrees that it shall protect and defend the County and City with counsel reasonably acceptable to County and City, indemnify and hold harmless County and City, their officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments (including attorney's fees), arising out of or resulting in any way from Grantee's exercise of this Agreement, unless such claim is due to the sole negligence or willful acts of the County, its officers, employees, agents or contractors, or from County's grant of this Agreement to Grantee.

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

D. Indemnification of Grantee.

- (a) Except as provided by subparagraph (c) 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.
- (c) 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.

SECTION 19 - TRANSFER, ASSIGNMENT, AND RENEWAL

A. Transfer or Assignment

In the event that ownership interest of a Grantee is sold, transferred, leased, assigned,

mortgaged, pledged, hypothecated, or otherwise encumbered or Disposed of in whole or in part, directly or indirectly, whether voluntarily or by operation of law or through any stock transfer, transfer in trust, change in control, consolidation or merger, the Board may declare this Agreement non-transferable unless all of the following conditions are met:

- (1) The Grantee notifies the County, in writing, at least sixty (60) days in advance of the transfer in ownership interest, as defined above, and submits a Disclosure Statement in accordance with Section 12G and
- (2) The Grantee and the party to which ownership interest is being transferred demonstrate that the party to which ownership interest is being transferred has the financial means, experience and capabilities to fulfill the requirements of this Agreement; and
- (3) The party to which ownership interest is being transferred demonstrates that the best interest of the public will be served, and that service levels will not decline or rates increase as a result of the transfer of ownership.

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

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

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

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

B. General Standards of Responsibility

- (1) The Board may refuse to approve the transfer of this Agreement, if the Board finds by a preponderance of evidence that the buyer has:
 - (a) Intentionally misrepresented or concealed any material fact in the disclosure statement;

- (b) Obtained a license, permit, contract, or franchise from the County by intentional misrepresentation or concealment of a material fact;
 - (c) Been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within the three years preceding the issuance of the license or permit, or execution of the contract or Agreement;
 - (d) Been adjudicated in contempt of an order of any court enforcing laws of this state or the federal government within three years preceding the issuance of the license or permit, or execution of the contract or Agreement; or
 - (e) Disregarded the public safety, as evidenced by convictions or pleas of nolo contendere to the violation of state and local law governing safety of operations, compliance with environmental and other franchise requirements within the County.
- (2) In deciding whether to renew or allow transfer of this Agreement, the Board shall consider the facts and mitigating factors surrounding the foregoing including:
- (a) The relevance of the offense to the business for which the license, permit, contract or franchise is issued;
 - (b) The nature and seriousness of the offense;
 - (c) The circumstances under which the offense occurred;
 - (d) The date of the offense; and
 - (e) The ownership and management structure in place at the time of the offense.
- (3) The County shall notify the Grantee of its determination within sixty (60) days following the Grantee's submittal of the disclosure form. Failure by the County to make a determination regarding the Grantee's fitness or transfer, within the time frame indicated above, shall in no case result in the revocation of the Grantee's rights under the Agreement, an order to cease operations, or a termination of this Agreement.

C. Opportunity to Demonstrate Rehabilitation

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

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

Where the County determines that pursuant to the above, mitigating factors exist, or, pursuant to this Section 19C, that the buyer has demonstrated rehabilitation, the County shall recommend to the Board the transfer of this Agreement.

SECTION 20 - TERMINATION

A. Events of Default

Each of the following shall constitute an event of default ("Event of Default") hereunder:

- (1) Grantee has demonstrated an inability to properly provide the services required under this Agreement, failed to comply with one or more of the terms or conditions of this Agreement, or future amendment(s) to this Agreement, failed to comply with any material federal, state or local laws, ordinances, rules or regulations pertaining to the services under this Agreement, or when the Transfer Station operations have become a nuisance or is detrimental to the public health, safety or welfare. If Grantee does not perform the services for a period in excess of 15 days, this Agreement may be terminated by the County. Grantee shall not be in default of this Agreement if Grantee commences such action required to cure the particular breach within 7 calendar days after such notice, and it continues such performance diligently until completed.

- (2) Any representation, warranty, or disclosure made to County by Grantee in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;
- (3) There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Grantee, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Grantee's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and Holidays;
- (4) Grantee files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Grantee or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Grantee for any part of Grantee's operating assets or any substantial part of Grantee's property, or shall make any general assignment for the benefit of Grantee's creditors, or shall fail generally to pay Grantee's debts as they become due or shall take any action in furtherance of any of the foregoing;
- (5) A court having jurisdiction shall enter a decree or order for relief in respect of the Grantee, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Grantee shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Grantee or for any part of the Grantee's operating equipment or assets, or orders the winding up or liquidation of the affairs of Grantee;
- (6) If Grantee (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of County to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an Applicable Law, and the County believes in good faith that Grantee's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the County may, at its option and in addition to all other remedies it may have, demand from Grantee reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the County believes in good faith is reasonably

necessary in the circumstances to evidence continued ability to perform under the Agreement. If Grantee fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by County, such failure or refusal shall be an event of default.

B. Right to Suspend, Amend, or Terminate

Upon an "Event of Default" by Grantee, the County may suspend, amend, or terminate this Agreement.

C. Procedures

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

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

In the event of a serious violation, as determined by the County, 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 trucks and other equipment of the Grantee for the purpose of operating the Transfer Station, 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; and (iii) 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 Transfer Station operation 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 County's right to treat such non-performance as an event of default under this Section, the County and Grantee agree that the Liquidated Damages amounts established in Exhibit E of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

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

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

Liquidated Damages will only be assessed after Grantee has been given the opportunity but failed to rectify the damages as described in this Agreement. County shall give Grantee notice of its intention to assess Liquidated Damages. The notice will include a brief description of the incident(s) and non-performance. The County may review (and make copies at its own expense) all information in the possession of Grantee relating to incident(s) and non-performance. County may, within 10 calendar days after issuing the notice, request a meeting with Grantee. County may present evidence of non-performance in writing and

through testimony of its employees and others relevant to the incident(s) and non-performance. County will provide Grantee with a written explanation of his or her determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section. The decision of County shall be final and Grantee shall not be subject to, or required to exhaust, any further administrative remedies.

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

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

Adjusted Liquidated Damage Amount = Then-current Liquidated Damage Amount x most current CPI-U divided by CPI-U 12 months previous.

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

- (4) **Timing of Payment.** Grantee shall pay any Liquidated Damages assessed by County within 10 calendar days of the date the Liquidated Damages are assessed. If they are not paid within the 10-day period, and providing Grantee has exhausted its right to administrative review in accordance with this Section, County may proceed against the performance bond required by the Agreement, request replacement of Grantee's Transfer Stations operation supervisor, or all of the above.

SECTION 21 - RIGHTS OF COUNTY TO PERFORM DURING EMERGENCY

A. Provision of Emergency Services

Grantee shall provide emergency services at the County's request in the event of major accidents, disruptions, or natural calamities. Emergency services may include, but are not limited to, assistance handling salvaged materials, Processing, Disposing of Solid Waste or Recyclable Materials following a major accident, disruption, or natural calamity. Grantee shall be capable of providing emergency services within 24 hours of notification by the County or as

soon thereafter as is reasonably practical in light of the circumstances. Emergency services, which exceed the Grantee's obligations, shall be compensated in accordance with Section 15A. If Grantee cannot provide the requested emergency services, the County shall have the right to take possession of the Grantee's equipment for the purposes of providing emergency services.

B. Agreement Revocation - Emergency Actions

Notwithstanding provisions of this Agreement to the contrary, the County may temporarily suspend this Agreement, without prior notice and a hearing, whenever an emergency exists which poses an immediate threat to the public health, safety, or welfare. In such a case, the County shall attempt to notify the Grantee at least twenty four (24) hours prior to the proposed action. A hearing shall be held within seventy two (72) hours of the action taken to suspend the Agreement. Appeals to the Board are governed by Section 23.

C. Labor Dispute - County Assumption of Duties – Authorized

In the event the operation or transportation services for the Transfer Station by Grantee is interrupted by a labor dispute for more than five days, the County shall have the right to forthwith take temporary possession of all facilities and equipment of the Grantee for the purpose of continuing the service which the Grantee has agreed to provide in order to preserve and protect the public health and safety. The County shall have the right to retain possession of such facilities and equipment and to render the required service, until the Grantee can demonstrate to the satisfaction of the County that required services can be resumed by the Grantee; provided, however, that such temporary assumption of the Grantee's obligations under this Agreement shall not be continued by the County for more than one hundred twenty (120) days from the date such operations were undertaken. Should the Grantee fail to demonstrate to the satisfaction of the County that required services can be resumed by the Grantee prior to the expiration of the aforementioned one hundred twenty (120) days, the rights and privileges granted to the Grantee may be forfeited and the Agreement herein may be terminated.

Should the County exercise its right to take temporary possession of Grantee's equipment and the Leased Premises used in providing service under this Agreement, County shall recognize Grantee's obligations to provide service in accordance with other agreements and shall cooperate with Grantee in its efforts to provide such other service using the Leased Premises in the County's temporary possession.

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

During any period in which the County has temporarily assumed the obligations of the Grantee under this Agreement, the County shall be entitled to the Gross Adjusted Revenues attributable to operations during such period and shall pay therefrom only those costs and expenses, including a reasonable rental for use of trucks and equipment, applicable or allocable to the period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury to the County to the credit of the General Fund. Final adjustment and allocation of Gross Adjusted Revenues, costs and expenses to the

period during which the County temporarily assumed the obligations of the Grantee shall be determined by an audit, by a certified public accountant or licensed public accountant, and prepared in report form with that person's unqualified opinion annexed thereto.

E. Labor Dispute - County Assumption of Duties – Employees

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

SECTION 22 - GENERAL PROVISIONS

A. Entire Agreement

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

B. Force Majeure

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

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

In the event a labor disturbance interrupts Collection, Transportation, Disposal, and/or Processing of Solid Waste or Recyclable Materials by Grantee as required under this Agreement, County may elect to exercise its rights under Section 21 of this Agreement.

C. Notice Procedures

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

(1) If to County:

Solid Waste Director
County of Mendocino
Mendocino Solid Waste Management Authority
P.O. Box 123
Ukiah, CA 95482

(2) If to Grantee:

Solid Wastes of Willits, Inc.
Gerald W. Ward, President
PO Box 1425
Willits, CA 95490

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

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

D. Independent Contractor

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

E. Roadway Damage

Grantee shall be responsible for any extraordinary damage (not including normal wear) caused by Grantee's negligence to County's driving surfaces, whether or not paved, resulting from the weight of vehicles providing transportation for the Transfer Station. This Agreement does not purport to affect, in any way, Grantee's civil liability to any third parties.

F. Property Damage

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

G. Compliance with County Code

Grantee shall comply with those provisions of the County Code which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement, subject to Section 3.

H. Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof except that if the replacement of existing County site attendants by Grantee's site attendants is held to be unlawful, this Agreement shall terminate.

I. Waiver or Modification

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

J. Forum Selection

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

K. Court Costs and Attorney Fees

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

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

GRANTEE: Solid Wastes of Willits, Inc.

Gerald W. Ward, President
Solid Wastes of Willits Inc.
P.O. Box 1425
Willits, CA 95490

Date: _____

COUNTY OF MENDOCINO

Kendall Smith, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

Clerk of the Board

By: _____

RECOMMENDED BY:

Chief Executive Officer

APPROVED AS TO FORM:

Jeanine B. Nadel, County Counsel

By: _____

APPROVED AS TO INSURANCE REQUIREMENTS:

Kristin McMenomey, Risk Manager

By: _____

EXHIBIT A**EMPLOYMENT CONDITIONS OF COUNTY PERSONNEL**

1. Grantee shall offer employment to those persons who occupied on January 1, 2011 the following positions at their current wages and at not less than the current hours as stated below:

Refuse Site Attendant – Caspar – 40 hr/week - \$14.73

Refuse Site Operator – Caspar – 40 hr/week - \$18.76

2. In recognition of their record as County employees, the affected employees will be offered Grantee positions without testing or qualification requirements. Grantee asks that the affected employees participate in a Company orientation with Grantee's Personnel Director prior to employment to fill out required information for their employment file and to review and discuss the Grantee's Policies and Procedures.

3. The affected employees will begin to accrue Grantee's vacation and sick leave benefits immediately upon employment without the standard waiting period.

4. The affected employees will have job choice preference for their current positions and work locations and will not be reassigned or relocated without their consent.

5. The affected employees will not be discharged or suspended without just cause, and if Grantee's management believes job performance is deficient, fair warning and opportunity for correction will be allowed prior to discharge or suspension unless an employee's proven misconduct is so severe as to make continued employment impossible (e.g. in case of theft, assault or similarly severe misconduct).

6. Grantee may modify the duties of the affected employees to add additional functions such as site cleanup, maintenance, accounting, or loader operation.

7. All affected employees working at least 30 hours per week will be eligible to immediately enroll in Grantee's hospitalization plan with Blue Shield with benefits for injury and sickness that result in hospitalization.

As described above, Grantee provides health insurance benefits to regular full-time and part-time employees. The Company pays these benefits for the employee only. Coverage under the Company's Hospitalization Plan with Blue Shield can be extended to include the employee's

spouse and dependent children. The employee will need to provide the Plan Administrator the names, date of birth and relationship of the family member(s). When premiums are due, Grantee will deduct from the employee's paycheck, on a "pre-tax" basis, the cost of providing benefits in the Hospitalization Plan with Blue Shield to family members.

Grantee reserves the right to change insurance companies if it will benefit the employees and/or the Company.

8. All affected employees will also be immediately eligible to participate in Grantee's own health reimbursement account which pays any qualified medical claim not paid by the group health plan, and also any qualified dental claims for employees and their dependents up to a maximum per employee, which is presently \$1,600 per year. Affected employees working 24 hours per week will also be eligible to participate, but benefits will be 60% of the stated benefits in the Grantee's Policies and Procedures.

9. All affected employees will be eligible after six months of employment to enroll in Grantee's 401(k) pension plan. Under this plan, Grantee makes a contribution equal to 2% of an employee's wages to the 401(k), and the employee can also make tax-deferred contributions.

10. The affected employees will benefit without discrimination from all other Grantee programs as set forth in Grantee's Policies and Procedures regarding paid vacation, unscheduled time off, sick leave, holidays, medical leave, pregnancy disability leave of absence, Section 125 Cafeteria Plan, bereavement leave and personal leave of absence.

EXHIBIT B

INITIAL GRANTEE GATE FEES

(Does not include any Rent established pursuant to Section 16(B))

Refuse and Solid Waste

Loose Refuse	\$22.00	per cubic yard
Loose Refuse	\$11.00	per ½ cubic yard
Demolition Waste	\$22.00	per cubic yard (if over 4 cubic yards)
1 – 33 gallon can	\$ 4.00	
2 – 33 gallon cans	\$8.00	
3 – 33 gallon cans	\$11.00	

Pay Recyclable Material (Scrap Metal, Unpainted Wood, Green Waste)

Loose Recyclables	\$22.00	per cubic yard
Loose Recyclables	\$11.00	per ½ cubic yard

Passenger Vehicle Tires

Automobile & Pickup Truck Tires \$ 3.00 + \$2.00 w/rim

Commercial Vehicle Tires & Heavy Equipment Tires

Dump Truck & Simi Truck Tires \$12.50 + \$5.50 w/rim

Rear Farm Tractor Tires \$42.50 + \$46.00 w/rim

Heavy Equipment tires (Loaders, Graders and Backhoes, etc.) will not be accepted. Customer must contact Business Office for proper fee and disposal arrangements.

Mixed Recyclables (bottles, cans, paper, cardboard, etc.): No charge

Electronics: No charge

Used motor oil: No charge

EXHIBIT C

TRANSFER STATION SITE

[This exhibit will consist of aerial photograph of the site with an overlay boundary line delineating the portion of the site which is leased to Grantee.]

EXHIBIT D
INVENTORY OF STRUCTURES AND EQUIPMENT

The Transfer Station is generally in a state of good repair. At the time of commencement, of the lease agreement and operational transfer, a detailed set of photographs will be taken and duplicate sets of copies provided for the records of both parties.

Caspar Transfer Station, 14000 Prairie Way, Caspar, California:

- 1) Site Attendant Shack (larger size – wood frame construction) containing: desk, chairs, and employee amenities – break room table and small refrigerator.
- 2) Bottled water system, which powers eye wash station as required by law.
- 3) Two (2) typical Hazardous Materials Safety (Hazmat) sheds containing spill kits and cleanup supplies required by law. Shed also has required containment floor for storage of materials until transport to proper facility.
- 4) 500 gallon fuel tank.
- 5) Typical paved driveway access road and customer unloading areas adjacent to typical covered solid waste refuse container. Typical uncovered recycle drop off stalls with platform and access stairs.
- 6) Open, at grade, recycle and drop off asphalt paved and unpaved areas for appliances, wood, and metal.
- 7) 500 gallon used oil recycling tank.

EQUIPMENT TO BE SOLD – NOT INCLUDED IN LEASE

County to offer for sale:

1992 Volvo roll-off truck, estimated value \$1,000

EXHIBIT E
SCHEDULE FOR LIQUIDATED DAMAGES

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

DAY AND HOURS RELIABILITY

1.	Maintain Collection Schedule. For each failure over 5 during any Rate Period to operate the Transfer Station on the scheduled days and hours	\$500 per occurrence
----	---	----------------------

SITE OPERATIONS

2	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 onto ground, except in dedicated storage bays, or failure to clean up such material immediately	\$150/ event
3.	Cleaning Collection Vehicles. For each occurrence over 12 during the Rate Period of failure to clean vehicles used for transfer of Solid Waste or Recyclable Materials at least one time per week.	\$75/ event
4.	Litter Clean-up. For each occurrence, failure to clean up litter at Transfer Station at end of day, or failure to remove illegally dumped material at gate at beginning of day.	\$75/ event
5.	Signs. For each occurrence, failure to maintain signs required by the Agreement including gate fees and hours, and safety signs at dumping areas.	\$75/ day
6.	Discourteous Behavior. For each occurrence of discourteous behavior by Collection personnel, Customer service personnel, or other employees of Grantee.	\$100/ event

REPORTING AND NOTICING

7.	Quarterly Reports. Failure to submit quarterly report (as described in Section 13) in the time frame specified in Agreement	\$50/ day report is overdue
8.	Annual Reports. Failure to submit annual reports (as described in Sections 13) in the timeframe specified in Agreement.	\$150/ day report is overdue
9.	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

10.	Failure to distribute flier to customers after fliers provided to Grantee by County	\$75/ day

OTHER

11	Disposal of Recyclables. For each ton of Recyclable Materials Disposed of without written approval of the County	\$250/ ton
12	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
13	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: _____