

FRANCHISE AGREEMENT

between

COUNTY OF MENDOCINO

and

SOLID WASTES OF WILLITS, INC

for

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

September 1, 2010

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

5
6 This amended Franchise Agreement ("Agreement") is entered into this 14th day of
7 August, 2010, between the County of Mendocino ("County") and Solid Wastes of Willits,
8 Incorporated, a California corporation ("Grantee"), for the Collection, Transportation, and
9 Disposal of Solid Waste and the Collection, Transportation, Processing, and marketing of
10 Recyclable Materials in Solid Waste Refuse Collection Area No. Three (3).

11
12 **RECITALS**

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

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

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

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

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

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

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

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

50 **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**
51

52 A. The Franchise Agreement as previously amended including revisions as to rates, is
53 affirmed regarding the rights and obligations it assigned to the parties from its
54 original date of execution on June 24, 2008 until the Effective Date of this amended
55 Agreement herein.
56

57 B. The Franchise Agreement is hereby amended so that it is changed and replaced in its
58 entirety with the following amended Agreement herein:

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

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

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

C. In the event of and to the extent that any of the following (Items 1-3, below) require or are amended to require that either party take certain action or desist from taking certain action that affects the promises, covenants and/or performance of the parties hereunder, then this Agreement shall be amended to provide for the satisfaction of such requirements. Furthermore, should such amendments to this Agreement result in the Grantee having to incur additional expenses in performing its obligations hereunder, or if certain cost cutting measures are implemented that justify lower rates, then Grantee or 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. “Adjusted Gross Revenues” means any and all revenue or compensation (excluding revenues or compensation collected from Independent Government Agencies) 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 generated in the Franchise Area pursuant to this Agreement, excluding the redemption value of Recyclable Materials purchased, occasional sale of capital equipment, and interest earned.

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

D. “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.

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

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

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

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

I. “Board” means the Board of Supervisors of Mendocino County.

J. “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.

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

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

L. **"Collection"** means the act of collecting Solid Waste, Recyclable Materials, and other material at the place of generation in the Franchise Area.

M. **"Commercial Solid Waste"** includes all types of Solid Wastes generated by commercial, industrial, governmental, and other sources, which have been placed in an authorized Grantee-provided Solid Waste Container used for the temporary storage of Solid Waste awaiting pickup. 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.

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

O. **"Containers"** mean Carts, Bins, Compactors, and Debris Boxes

P. **"County"** means the County of Mendocino, State of California.

Q. **"Customer"** means any Person receiving Solid Waste or Recyclable Material service under the provisions of this Agreement.

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. **"Designated Collection Location"** shall mean that Location at which only an Authorized Recycling Entity may collect materials.

T. **"Department"** means Solid Waste Director, County of Mendocino, at the office designated by the County of Mendocino to administer this Franchise Agreement.

U. **"Demolition and Construction Debris"** means:

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

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

W. **"Designated Disposal Location"** means the Ukiah Transfer Station, 3551 Taylor Drive, Ukiah CA.

X. **"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.

Y. **"Discarded Recyclable Materials"** means any Recyclable Materials which the Generator disposes of without selling or donating.

Z. **"Disposal or Dispose (or variation thereof)"** means the ultimate Disposal of Solid Waste at a Disposal Site.

AA. **"Disposal Site"** means a facility for ultimate Disposal of Solid Waste as defined

in Public Resources Code Section 401.22.

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

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

DD. **"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.

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

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

GG. **"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.

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

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

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

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

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

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

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

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

OO. **"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.

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

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

RR. **"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.

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

TT. **"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 and non-hazardous scrap metal items weighing 10 lbs. or less.

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

VV. **"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 or debt interest in the Grantee. If any holder of such debt or equity is not a natural person, the term "responsible party" includes only the debtor, 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.

WW. **"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 following Collection.

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

YY. **"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.

353 ZZ. **"Solid Waste Collector"** means a Person who collects or Transports Solid Waste
354 under authority granted by the Board or Department including his/her agents and employees.
355

356 AAA. **"Solid Waste Ordinance"** means Title 9A of the Mendocino County Code, as
357 currently adopted by the Mendocino County Board of Supervisors and future amendments to
358 Title 9A as adopted by the Board of Supervisors.
359

360 BBB. **"Subcontractor"** means a party who has entered into a contract, expressed or
361 implied, with the Grantee for the performance of an act that is necessary for the Grantee's
362 fulfillment of its obligations under this Agreement.
363

364 CCC. **"Transportation"** means the act of transporting or state of being transported.
365

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

SECTION 3 - COMPLIANCE WITH LAWS AND REGULATIONS

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 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 September 1, 2010 and shall be the date on which Grantee initiates provision of Collection, Transportation, and Processing services required by this Agreement.

Between the Effective Date and Commencement Date, Grantee shall perform all activities necessary to prepare itself to start Collection, Transportation, and Processing, 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 September 1, 2010 (Commencement Date), to midnight December 31, 2024 unless the Agreement is extended by County pursuant to Section 4A(3) or terminated in accordance with Section 19C.

- (3) **Option to Extend Term.** County shall, at the County's sole discretion, have the option to extend this Agreement on one or more occasions provided that the combined extension period(s) do not extend beyond December 31, 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) **County's Rights upon Expiration or Revocation.** At the expiration or revocation of this Agreement, the County may proceed with a 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 service any Occupant or Owner to make all Solid Waste and Recyclable Material Collections within the Franchise Area, except as described in Section 4C or except as otherwise precluded by Applicable Law.

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

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

- (2) Transporting collected materials to the Designated Disposal Location, Approved Green Waste Processing Site, or Approved Recyclable Materials Processing Site.
- (3) Processing and marketing of Recyclable Materials Collected in the Franchise Area by Grantee.
- (4) Collecting Demolition and Construction Debris generated within the Franchise Area.
- (5) Operating a Recyclable Material buy-back center located at the Designated Recyclable Material Buy-Back Site.
- (6) Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- (7) Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, pass-through costs, utilities, etc.
- (8) 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.
- (9) Complying with Applicable Law.
- (10) Performing or providing all other services necessary to fulfill its obligations under this Agreement.

C. Limitations to Scope

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

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

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

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

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

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

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

(6) **Hazardous Wastes.** Household Hazardous Waste, Hazardous Waste, and Designated Waste regardless of its source.

(7) **State and Federal Wastes.** Materials generated by state and federal agencies, special districts, school districts, State parks, State correction facilities, and Indian reservations.

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

D. Subcontracting

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

E. Franchise Area Defined

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

F. Franchise Area Limits

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

SECTION 5 - SERVICES PROVIDED BY GRANTEE

A. County to Approve All Services

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

B. Collection Service

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

(1) Single-Family Units

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

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

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

(2) Multi-Family Premises

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

(3) Commercial and Industrial Premises

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

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

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

C. Recyclable Material Buy-Back Facility

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

D. Hours of Collection

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

E. Collection on Holidays

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

SECTION 6 - SPECIAL PROGRAMS AND SERVICES PROVIDED BY GRANTEE

A. Source Reduction and Waste Diversion Programs

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

operational problems that the new program may cause to Grantee. In exercising its right to direct changes in recycling or Green Waste services, County will consider the impact upon rates and the likelihood Grantee can recover all costs with the change.

B. Public Education.

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

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

C. Billing

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

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

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

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

Grantee shall be responsible for collection of payment from Customers with past due accounts ("bad debt"). Grantee shall make reasonable efforts to obtain

708 payment from delinquent accounts through issuance of late payment notices,
709 telephone requests for payments, and assistance from collection agencies.
710 Accounts that are delinquent for a period of ninety-days (90) or more
711 may be terminated by Grantee.
712

- 713 (2) **Bill Inserts.** County may direct Grantee to insert mailers (which shall be a single
714 sheet of paper no larger than 8.5 inches by 11 inches) relating to service with the
715 Bills. The mailers shall be printed on double-sided, post consumer content paper
716 and shall fit in standard envelopes. Grantee also agrees to insert with the Billings,
717 mailers describing activities of the County government. County will provide not
718 less than 30 calendar days' notice to Grantee before the date of any proposed
719 mailing, to permit Grantee to make appropriate arrangements for inclusion of the
720 County's materials. County will provide Grantee the mailers at least 15 calendar
721 days before the mailing date.
722

- 723 (3) **Review of Billings.** Grantee shall review its Billings to Customers to determine
724 (i) if the amount the Grantee is billing each Customer is correct in terms of the
725 level of service (i.e., frequency of Collection, size of Container, backyard service)
726 Grantee is providing such Customer, and (ii) that all parties receiving service are
727 invoiced for service. Grantee shall review all Customer accounts at least every
728 other year, unless County directs Grantee to do otherwise. Grantee shall submit
729 to County every year, a written report of the billing review 30 days after the end
730 of each Rate Period. The scope of the review, the Grantee's work plan, and the
731 format of the report (including supporting exhibits) shall be submitted to the
732 County for approval no later than 60 days prior to commencement of the Billing
733 review process. Should Grantee fail to perform any such review, the County may
734 perform this review itself or through use of an agent, at Grantee's expense.
735

736 **D. Other Special Services**
737

738 Grantee can provide other special services as related to this Agreement at their discretion
739 provided said services and charges for such services are approved by the County.
740

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

747
748
749 **E. Containers - Refusal to Pick Up.**
750

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

F. Containers - Noticing Violators

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

G. Promotion of Waste Diversion to New Customers

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

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

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

A. Manner of Collection

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

B. Vehicles and Equipment - Standards

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

C. Vehicles - Identification

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

D. Vehicles and Equipment - Inspection

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

E. Vehicles - Shovel, Broom and Fire Extinguisher Required

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

F. Container Requirements

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

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

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

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

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

G. Personnel

- (1) **General.** Grantee shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner.
- (2) **Provision of Field Supervision.** Grantee shall designate at least one qualified employee as supervisor of field operations. The field supervisor will devote time in the field checking on Collection operations, including responding to complaints.
- (3) **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Grantee shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- (4) **Customer Service Representative Training.** Customer service representatives shall be trained on specific County service requirements upon hire and annually thereafter. A County information sheet shall be provided to each Customer service representative for easy reference of County requirements and general Customer needs. The information sheet, training agenda, and associated documentation shall be forwarded to the County.
- (5) **Safety Training.** Grantee shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection, Disposal, or Processing. Grantee shall train its employees involved in Collection to identify, and not to collect, Hazardous Waste or infectious waste. Upon the County's request, Grantee shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

(6) **No Gratuities.** Grantee shall not permit its employees to accept, demand, or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public for Collection services.

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

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

SECTION 8 - PUBLIC ACCESS TO GRANTEE

A. Name and Office Hours

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

B. Service Complaints

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

C. Overcharge

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

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.

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

If materials Collected by Grantee are delivered to a facility owned or operated by Grantee or an affiliate of Grantee, for purposes of transfer, Processing, or Disposal, load checkers and equipment operators at such facility shall conduct inspections in areas where Collection vehicles unload Solid Waste and Recyclable Materials to identify Hazardous Wastes. Facility 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 Generator. Grantee shall arrange for removal of the Hazardous Wastes by permitted haulers in accordance with Applicable Laws and regulatory requirements.

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

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 anywhere within the County, including on, in, under or about County property, including streets, easements, rights of way and County waste containers. In addition to other required notifications, if Grantee observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on County property, including streets, storm drains, or public rights of way, Grantee also will notify the County Director of Environmental Health or his/her designated County employee.

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1001 **D. Rights Reserved as to Hazardous Wastes.**

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1003 The County reserves the right to contract with other parties to have household Hazardous
1004 Wastes Collected, Transported, Disposed of, Processed and/or diverted.

1005

1006

SECTION 10 - DISPOSAL AND PROCESSING

A. Solid Waste Disposal

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

B. Recyclable Materials Processing and Marketing

- (1) **Processing.** Grantee shall Transport and deliver all Recyclable Materials collected in the Franchise Area 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 Processing Center is owned and/or operated by Grantee or by an Affiliate of Grantee, Grantee shall be responsible for marketing Recyclable Materials collected in the Franchise Area and shall be compensated for such Recyclable Materials at not less than fair market value.

Providing the Approved Processing Center 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 in the Franchise Area. 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 Processing Center 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 as required in Section 13. 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 within the Franchise Area 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.

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

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

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

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

- (1) The County has the right to direct Solid Waste to be Disposed of at any Solid Waste facility or in any manner, respectively, the County may designate; and
- (2) The County has the right to direct Solid Waste to be diverted at any transfer or Processing station the County may designate; and
- (3) The County has the right to direct Discarded Recyclable Materials collected by Grantee to be Processed at or marketed to a specific facility when in the best interest of the County and provided the collector would receive a reasonable, competitive market value for the Recyclable Materials.

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

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

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

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

D. 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 in the Franchise Area 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.

E. Invalidation of County Flow Control Voids Franchise.

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

SECTION 11 - OWNERSHIP OF SOLID WASTE AND RECYCLABLE MATERIALS

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

SECTION 12 - PRIVACY

A. Customers Rights of Privacy

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

B. Use of Customer Lists

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

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

A. Customer List and Routes

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

B. Record-keeping and Inspection

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

C. 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.

D. Collection Service Records

Records shall be maintained by Grantee for County relating to:

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

(8) Recyclable Materials sales revenue;

(9) End use and markets for Recyclable Materials.

E. Transfer, Processing, and Disposal Records

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

F. Customer Service Records

Records shall be maintained by Grantee for County related to:

(1) Categories (compliments, missed pickups, complaints, damage, etc.) of calls;

(2) Complaint log noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution;

(3) New Customer accounts.

G. 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 was Disposed (and therefore establish where it was 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.

H. Quarterly Reports

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

(1) Solid Waste Services. Total tonnage Collected and Disposed.

(2) Recyclable Materials & Green Waste

Tonnage Collected and Recycled and tonnage of residue Disposed. If the

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

(3) Customer Service.

(a) Number of Customer calls that pertain to compliments, missed pickups, scheduled clean-ups, Billing concerns, damage claims, etc.

(b) Number of complaints received, whether delivered in person, telephone, mail, or others means. The report shall show the date the complaint was received, actions taken to rectify the complaint, and the date the actions were taken.

(4) Account Information. In table format, the number of Customers and service levels.

I. Annual Financial Report

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

Grantee shall, at its own expense, be required to annually provide the Department 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 Statement for the Franchised Area operations. The Income Statement should disclose revenue by line of business and expenses by line of business and detail expense descriptions.

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

(1) Supporting documentation to determine the reasonableness of revenues (e.g., average number of monthly residential, industrial, and commercial Customers and average monthly rates for each type of Customer service).

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

J. Annual Operations Report.

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

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

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

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

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

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

K. Annual Disclosure Statement.

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

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

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

Subcontractor by final judgment in any state or federal court within the preceding 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.

L. 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 month. Grantee shall submit annual reports no later than 60 calendar days after the end of the reporting year.

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

1389 Solid Waste Director, County of Mendocino, at the office designated by County for
1390 administration of this Agreement.

1391
1392 **M. Failure to Report**
1393

1394 The refusal, failure, or neglect of the Grantee to file any of the reports required, or the
1395 inclusion of any materially false or misleading statement or representation made knowingly by
1396 the Grantee in such report shall be deemed a material breach of the Agreement, and shall subject
1397 the Grantee to all remedies, legal or equitable, which are available to the County under the
1398 Agreement or otherwise.
1399

SECTION 14 - GRANTEE'S RATES

A. County's Powers

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

B. Rate Requirements

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

1444 35 gallon Containers that the excess solid waste fills multiplied by the 35
1445 gallon Container once per month rate as set forth in Exhibit B.

1446

1447 (8) All compensation paid to the Grantee shall be paid by its Customers and the
1448 County is in no way obligated to provide the Grantee any compensation for
1449 services described in this Agreement.

1450

SECTION 15 - RATE ADJUSTMENT PROCEDURES

A. Pass-through Rate Adjustment

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

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

Provided that the Department staff have received and considered the request and documentation described above, and has concluded that the requested rate adjustment is reasonable and appropriate and is solely to recover the direct cost of the additional pass-through expense, the rates given in Exhibit B shall be amended by the County Executive Officer or his/her designated County employee.

- (2) If a jurisdiction other than the County establishes or increases surcharges or fees that affect Grantee's expenses, the same procedures as described in (1), above, apply.
- (3) There shall be no retroactive adjustments because of Grantee's failure to request a pass through rate adjustment increase. However, Grantee shall be allowed to retroactivity bill Customers from the date of pass-through rate adjustment approval to the end of the billing cycle in the next billing period.
- (4) At any time that the Board either eliminates a County surcharge on Grantee's Customers, decreases an existing County surcharge on Grantee's Customers, decreases the Franchise Fee rate, decreases the Disposal charge at the County owned facilities, County may apply to the Grantee for a pass-through rate adjustment to offset the eliminated or decreased fees. In applying for a pass-through rate adjustment the County must:

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

b) Specify the amount of the requested decrease for each rate given in Exhibit B; and,

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

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

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

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

B. Cost-of-Living & Fuel Rate Adjustments

(1) Four to six months prior to the end of a Rate Period, or by October 1, 2010 for the first Rate Period, Grantee may apply for cost-of-living (COLA) and a fuel rate adjustment to become effective on January 1, 2011, and annually thereafter. The rate adjustments shall be based on: 1) 90% of the change in the value of the most recently published All Urban Consumers 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 would be divided into three components – Fuel, Pass-through and All Other. The Fuel Component would equal 8.4% of the first

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

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

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

All Other Component: Existing Billed Rate x 80.7% 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 reviewed to correspond to the percentage of fuel, disposal cost and other expenses out of total operating expenses.

C. Larger Rate Increases

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

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

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

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

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

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

D. Rate Decreases

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

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

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

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

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

E. Recycling Commodity Value Adjustment

The gross market commodity value of Discarded Recyclable Materials collected by Grantee pursuant to this Agreement 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

Franchise Agreement Area No. Three

comparison to the Rate Period ending December 31, 2010.

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

Four to six months before the end of the Rate Period, beginning with the Rate Period ending December 31, 2010, 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 50% of the change in gross commodity value will be applied proportionately to reduce rates in case of a gain and increase rates in case of a decline.

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

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

F. County Rate Setting Authority

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

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

SECTION 16 - FEES

A. Franchise Fee - Amount

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

B. Franchise Fee - Quarterly Payments and Revenue Statements

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

C. Franchise Fee - Deposit.

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

D. Franchise Fee - Delinquency Penalty

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

E. Refund of Franchise Fees

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

SECTION 17 - BONDS, INSURANCE, AND INDEMNIFICATION

A. Bonds

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

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

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

B. Insurance

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

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

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

TWO MILLION DOLLARS (\$2,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) 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, its 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 may possess including any self-insured retention the County may have, and any other insurance the County 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 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 and 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

(1) Indemnification of County

(a) Grantee shall defend the County with counsel reasonably acceptable to the County and indemnify the County 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 17B, above.

(b) Grantee agrees that it shall protect and defend the County with counsel reasonably acceptable to County, indemnify and hold harmless County, its 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 with counsel reasonably acceptable to the County, indemnify and hold the County 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.

(2) Indemnification of Grantee.

(a) Except as provided by subparagraph (3) AB939 Indemnification, the County shall defend, with counsel reasonably acceptable to Grantee, indemnify and hold Grantee harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the County and/or Grantee for the County's failure to meet the requirements of AB939, its amendments or any successor legislation and/or all rules and regulations promulgated hereunder if said failure is due solely to the negligence or misconduct of the County, including but not limited to the County's

12 failure to adopt Source Reduction and Recycling Elements
13 mandated under AB939.

14 (b) In the event that the County directs the Grantee to Dispose of or
15 Transport Solid Waste, and/or Recyclable Materials to a specific
16 facility, the Grantee shall not be held liable for damages at or to
17 that facility, or to the County as a result of the acts or omissions of
18 that facility, unless the damages are caused by the willful or
19 negligent acts of the Grantee.

20 (3) AB939 Indemnification. Grantee shall defend with counsel reasonably
21 acceptable to the County, indemnify and hold the County harmless from any
22 and all fines, penalties and assessments levied against or threatened to be
23 levied against the County for the County's failure to meet the requirements
24 of AB939, with respect to the Waste Stream under Grantee's control, its
25 amendments or any successor legislation and/or all rules and regulations
26 promulgated hereunder if said failure results from Grantee's failure to comply
27 with this Agreement and/or Grantee's failure to comply with said laws,
28 rules or regulations, including but not limited to failing to timely supply to the
29 County the reports and information required by the County in order to comply
30 with AB939.
31

SECTION 18 - FRANCHISE TRANSFER, ISSUANCE, AND RENEWAL

A. Franchise Transfer

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, this Agreement will be considered 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 13K; 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, the Board 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

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

- (1) Intentionally misrepresented or concealed any material fact in the disclosure statement;
- (2) Obtained a license, permit, contract, or franchise from the County by intentional misrepresentation or concealment of a material fact;
- (3) 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;
- (4) 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
- (5) 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.

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

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

The Department shall recommend to the Board whether the buyer is fit to retain the rights granted under this Agreement. 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 Department to make a recommendation regarding the Grantee's fitness for 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 Department shall first allow the buyer to submit evidence of rehabilitation and shall consider the buyer's efforts to prevent recurrence of unlawful activity. Items to be considered by the Department shall include:

- (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 Department determines that pursuant to the above, mitigating factors exist, or, pursuant to this Section 18C, that the buyer has demonstrated rehabilitation, the Department shall recommend to the Board the transfer of this Agreement.

SECTION 19 - 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 perform the franchised activity, 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 franchised activity, or when the franchised activity has become a nuisance or is detrimental to the public health, safety or welfare. If Grantee does not perform franchise 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 Department, or in the event of

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

D. Agreement - Revocation - Equipment Use by County

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

E. Liquidated Damages

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

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

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 F of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to 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 F.

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 18E(2). 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 F subject to annual adjustment described below.

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

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

For example:

Current Liquidated Damage Amount = \$150.00

Most recently published index (May 2004) = 193.5

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

Adjusted Liquidated Damage Amount = $\$150.00 \times (193.5/191.0) =$
\$151.96

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 general manager, order the termination of the
exclusive Collection rights granted by this Agreement, or all of the above.

SECTION 20 - 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 15C. 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. Franchise Revocation - Emergency Actions

Notwithstanding provisions of this Agreement to the contrary, the Department 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 Department 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 franchise. Appeals to the Board are governed by Section 21.

C. Labor Dispute - County Assumption of Duties - Authorized

In the event the refuse Collection of a Grantee is interrupted by a labor dispute and scheduled Collections are discontinued for more than seventy-two (72) hours, 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 franchise granted herein may be terminated.

Should the County exercise its right to take temporary possession of Grantee's facilities 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 Grantees facilities 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 Adjusted Gross Revenues attributable to operations during such period and shall pay there from 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 Adjusted Gross 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 21 - 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 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, 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 20 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:

A. If to County:

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

B. If to Grantee:

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

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

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

D. Independent Contractor

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

E. Roadway Damage

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

F. Property Damage

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

G. Compliance with County Code

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

515
516
517 **H. Severability**
518

519 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
520 Agreement or any part thereof is, for any reason, held to be illegal, such decision shall not affect
521 the validity of the remaining portions of this Agreement or any part thereof, except as
522 specifically set forth herein.
523

524 **I. Waiver or Modification**
525

526 No waiver, alteration, or modification of any of the provisions of this Agreement shall be
527 binding unless in writing and signed by a duly authorized representative of both parties to this
528 Agreement.
529

530 **J. Forum Selection**
531

532 Grantee and County stipulate and agree that any litigation relating to the enforcement or
533 interpretation of this Agreement, arising out of Grantee's performance or relating in any way to
534 the work shall be brought in Superior Court in Mendocino County.
535

536 **K. Court Costs and Attorney Fees**
537

538 In the event legal action is instituted by either party to enforce this Agreement, the
539 prevailing party shall be entitled to reasonable attorney fees and actual costs in connection with
540 such action.
541
542

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
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: 8.9.10

COUNTY OF MENDOCINO

Carre Brown, Chair, BOARD OF SUPERVISORS

Date: AUG 17 2010

ATTEST:

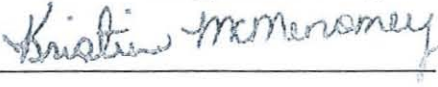
Clerk of the Board

By:  DEPUTY

APPROVED AS TO FORM:
Jeanine B. Nadel, County Counsel

By: 

APPROVED AS TO INSURANCE REQUIREMENTS:
Kristin McMenomey, Risk Manager

By: 

I hereby certify that according to
the provisions of Government Code
sections 25103, delivery of this
document has been made.

CARMEL J ANGELO
Clerk of the Board

By: 
Deputy

EXHIBIT A

SOURCE REDUCTION and WASTE DIVERSION PROGRAMS

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

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

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

EXHIBIT B

COUNTY-APPROVED RATES

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

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

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

EXHIBIT C

PERFORMANCE BONDING REQUIREMENTS

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

Due to the demonstrated performance of the Grantee in the Collection and Transportation of Solid Waste in Mendocino County, the County hereby waives the requirement for the Grantee to post a performance bond. However, the County may, at any time during the Term of this Agreement, notify the Grantee in writing that this waiver has been rescinded and require the acquisition of a performance bond in the amount and with terms as specified by the County. County agrees that should this waiver be rescinded, the actual cost to the Grantee of the bond will be considered a new, County-imposed cost to the Grantee that may be recovered as a pass-through rate adjustment as described in Section 15 of this Agreement.

EXHIBIT D

PUBLIC EDUCATION AND COMMUNITY OUTREACH PROGRAMS

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

Residential Education Program (minimum requirements)

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

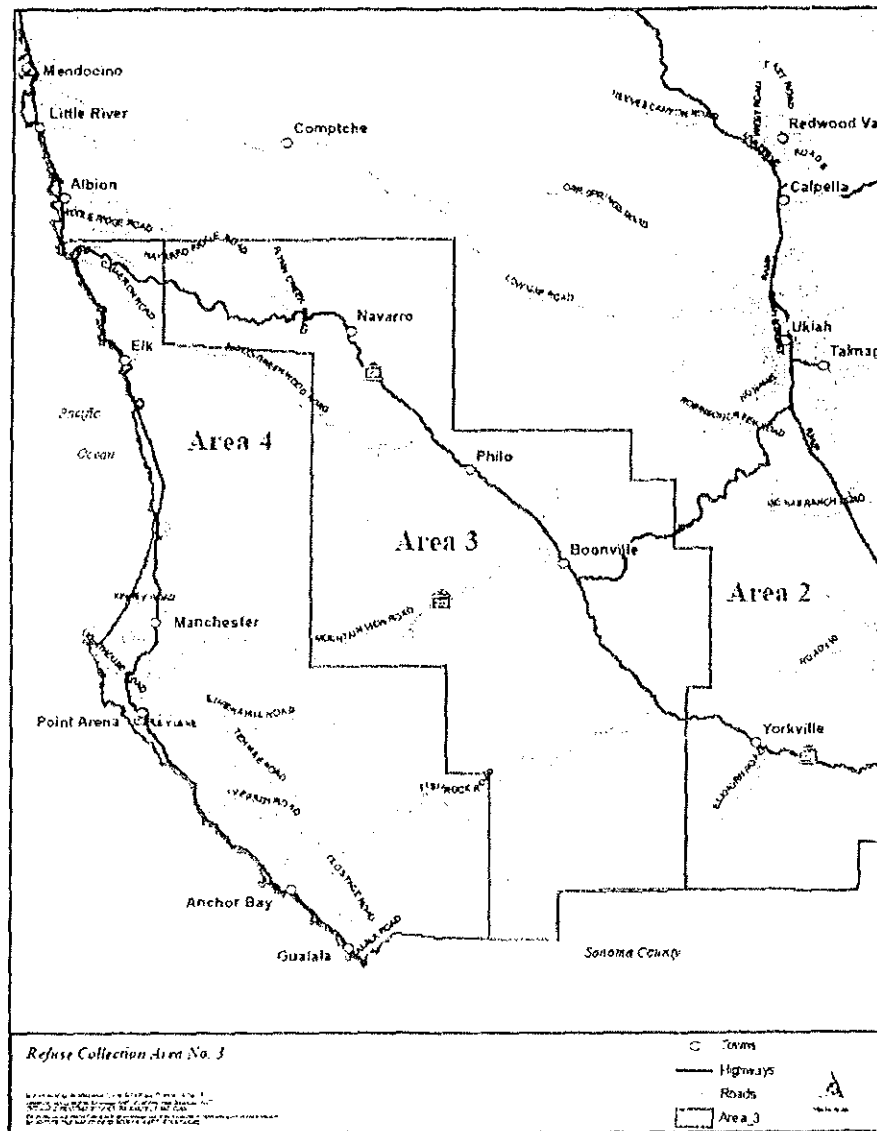
Commercial Education Program (minimum requirements)

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

All Customers

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

EXHIBIT E **MAP OF SOLID WASTE REFUSE COLLECTION** **AREA**



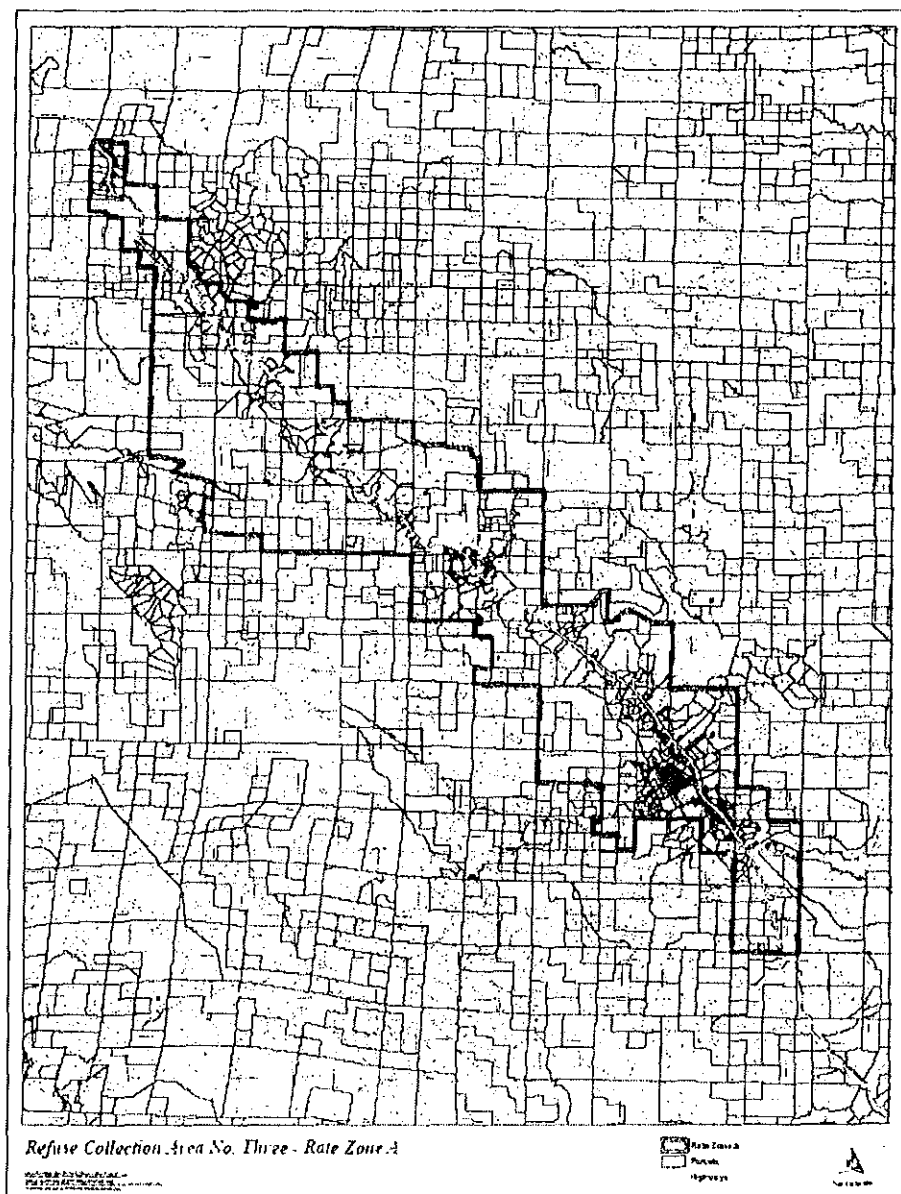


EXHIBIT F SCHEDULE FOR LIQUIDATED DAMAGES

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

COLLECTION RELIABILITY

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

COLLECTION QUALITY

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

CUSTOMER SERVICE RESPONSIVENESS

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

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

PUBLIC EDUCATION

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

BILLING

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

OTHER

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

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

County Initial Here: A.W.  Grantee Initial Here: _____

Carmel G. Angelo