

**SITE USE AGREEMENT FOR TAYLOR DRIVE SOLID WASTE TRANSFER STATION
BETWEEN SOLID WASTES SYSTEMS, INC. AND
THE COUNTY OF MENDOCINO**

This Site Use Agreement (the "Agreement") is made this 9TH day of MARCH, 2021, at Ukiah, California, between Solid Wastes Systems, Inc., hereinafter called the "OPERATOR" and the County of Mendocino, hereinafter called the "COUNTY," with reference to the following:

WHEREAS, the OPERATOR operates a solid waste transfer station at 3151 Taylor Drive, Ukiah, CA that is owned by the City of Ukiah (hereinafter called the "CITY"), hereinafter called the "TRANSFER STATION," pursuant to the terms of that certain CITY Second Amended and Restated Transfer Station Agreement dated October 7, 2015, as amended hereinafter called the ("TRANSFER STATION AGREEMENT"); and

WHEREAS, the OPERATOR and the COUNTY were parties to a previous Site Use Agreement dated June 3, 2003 (the "Prior COUNTY BOS Agreement 03-310"), which has expired, and now COUNTY wishes to provide for the terms upon which COUNTY users may continue to use the Transfer Station; and

WHEREAS, the COUNTY exercises flow control over Franchised Waste haulers of solid waste within the unincorporated areas of the COUNTY; and

WHEREAS, capitalized terms used but not defined in this Agreement shall have the respective meanings assigned them in the TRANSFER STATION AGREEMENT;

NOW, THEREFORE, in consideration of and reliance upon the above-recitals and for the mutual covenants herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

- 1) **TERM:** The term of this Agreement shall commence on the date hereof and shall continue until the sooner of the expiration (including extensions) or termination of the TRANSFER STATION AGREEMENT (which is scheduled to expire on December 31, 2031, with one conditional option to extend for five (5) years); provided, however, that (a) either party shall be entitled to terminate this Agreement in the event of the other party's material breach hereof upon sixty (60) days' prior written notice describing such breach, subject to the breaching party's right to cure such breach within such sixty-day period; and (b) the City or a new operator selected by the City may assume the obligations of the OPERATOR under this Agreement which shall remain in effect until December 31, 2036, if the TRANSFER STATION AGREEMENT is terminated prior to December 31, 2036.
- 2) **USERS:** The OPERATOR agrees to accept at the Transfer Station Acceptable Waste from all Franchised Waste Haulers franchised by the COUNTY ("COUNTY Franchised Waste Haulers"), to the extent the OPERATOR then accepts such Waste under the terms of the TRANSFER STATION AGREEMENT from Franchised Waste Haulers franchised by the

CITY ("CITY Franchised Waste Haulers"), on the same terms as apply to CITY Franchised Waste Haulers.

- 3) SELF-HAULERS: The OPERATOR agrees to accept at the Transfer Station Acceptable Waste, Segregated Recyclables, Segregated Green Waste and Segregated Wood Waste for disposal, diversion and/or recycling from all Self-Haulers that are residents of the COUNTY but not of the CITY ("COUNTY Self-Haulers"), to the extent the OPERATOR then accepts such materials under the terms of the TRANSFER STATION AGREEMENT from Self-Haulers that are residents of the CITY ("CITY Self-Haulers"), on the same terms as apply to CITY Self-Haulers.
- 4) RATES: The OPERATOR agrees to charge COUNTY Franchised Waste Haulers the same Rates per ton or cubic yard it then charges CITY Franchised Waste Haulers under the terms of the TRANSFER STATION AGREEMENT, and to charge County Self-Haulers the same Rates per ton or cubic yard it then charges City Self-Haulers under the terms of the TRANSFER STATION AGREEMENT.
- 5) NOTIFICATION OF RATE CHANGE: If the Rates are modified for any reason, the OPERATOR shall give the COUNTY and all County Franchised Waste Haulers then using the TRANSFER STATION a minimum of thirty (30) days' prior written notice of the modification(s).
- 6) HOURS OF OPERATION: The OPERATOR agrees to provide the same days and hours of operation at the TRANSFER STATION for COUNTY Franchised Waste Haulers and COUNTY Self-Haulers as it provides for CITY Franchised Waste Haulers and CITY Self-Haulers, respectively, under the terms of the TRANSFER STATION AGREEMENT.
- 7) AMENDMENT OF TRANSFER STATION AGREEMENT: The COUNTY acknowledges and agrees that the TRANSFER STATION AGREEMENT may be amended or restated, and any and all rates thereunder may be modified, at any time, by the OPERATOR and the CITY without the COUNTY's review, approval or consent.
- 8) COMMITMENT OF WASTE STREAM: The COUNTY agrees that, commencing on the date of this Agreement and throughout the term of this Agreement, the COUNTY shall deliver, or shall direct its COUNTY Franchised Waste Haulers to deliver, to the TRANSFER STATION all Acceptable Waste collected by the COUNTY and/or any COUNTY Franchised Waste Hauler in COUNTY Franchise Area 2 (Inland Rate Zone), inclusive of Ukiah Valley, Redwood Valley, Potter Valley and the Hopland area as set forth on the map attached hereto as Exhibit A (collectively, the "COUNTY Franchised Waste").
- 9) PUBLIC AND SAFETY HEALTH VIOLATION: The COUNTY retains the right to terminate this Agreement based on a Public Health and Safety Violation at the Transfer Station. A Public Health and Safety Violation at the Transfer Station shall be deemed to have occurred in the event of: (a) three (3)

violations of California environmental law by the OPERATOR at the Transfer Station within three (3) consecutive calendar months for the same deficiency as documented by the monthly inspection reports by the Local Enforcement Agency or LEA (currently the Mendocino County Environmental Health Division), or five (5) violations of California environmental law by the OPERATOR at the Transfer Station within twelve (12) consecutive calendar months for the same deficiency as documented by the monthly inspection reports by the LEA. However, an area of concern as documented by the LEA will not be considered such a violation.

- 10) AMENDMENT OR WAIVER: Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written instrument signed by both parties.
- 11) SECTION REFERENCES; INTERPRETATION: All section headings contained in this Agreement are for convenience of reference only. Section headings are not intended to define or limit the scope of any provision of this Agreement. This Agreement shall not be construed in favor of or against either party, it having been negotiated and prepared with the participation of both parties.
- 12) NOTICES: All notices required or permitted by this Agreement shall be deemed properly given when personally delivered, three (3) days after being deposited, postage prepaid, in the United State mails, or the day after being sent by nationally-recognized overnight courier for next-day delivery, addressed to the following addresses:

County of Mendocino Department
of Transportation Solid Waste
Division
340 Lake Mendocino Drive Ukiah,
CA 95482

Solid Wastes Systems, Inc.
Attn: David M. Carroll, President
P.O. Box 60 or 3151 Taylor Drive
Ukiah, CA 95482
- 13) SEVERABILITY: If any section, sentence, clause or phase of this Agreement or any part thereof is, for any reason, held to be void or unenforceable, such decision shall not affect the validity of the remaining portions of this Agreement or any part thereof. The parties further agree to replace such void or unenforceable provision with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.
- 14) GOVERNING LAW: This Agreement is made in, and shall be construed in accordance with the internal laws (irrespective of choice of law principles) of, the State of California.

- 15) FORUM SELECTION: The OPERATOR and the COUNTY stipulate and agree that any litigation relating to the enforcement or interpretation of this Agreement shall be brought in the federal or state courts in and for Mendocino County, California and that venue will lie in such courts.
- 16) COURT COST AND ATTORNEY FEES: In the event legal action is instituted by either party to enforce, or in connection with, this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs incurred in such action.
- 17) INTEGRATION: This Agreement, including the Exhibits hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements between the parties, whether written or oral, relating to such subject matter, including the Prior Agreement.
- 18) THIRD PARTY BENEFICIARIES: The CITY is a third-party beneficiary of this Agreement with the same rights as a party to enforce its terms. Other than the CITY, no other third-party beneficiaries are intended or created by the terms of this Agreement.
- 19) SUCCESSORS AND ASSIGNS: Except as otherwise set forth herein, this Agreement shall be binding upon, and shall inure to the benefit of, the permitted successors and assigns of the parties.

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IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW: Transportation

Howard N. Dashiell
Digitally signed by Howard Dashiell
DN: cn=Howard Dashiell, o=Mendocino County,
ou=HDS&C, email=dashiell@mendocinocounty.org,
c=US
Date: 2021.03.11 14:15:42 -0800

March 1, 2021

HOWARD N. DASHIELL, Director DATE

Budgeted: ☐ Yes ☐ No

Budget Unit: 4510

Line Item: N/A rate payers

Grant: ☐ Yes ☒ No

Grant No.: None

COUNTY OF MENDOCINO

By:

Dan Gjerde
DAN GJERDE, Chair
BOARD OF SUPERVISORS

Date:

3-11-2021

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By:

Lindsey Daugherty
Deputy

MAR 11 2021

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

CARMEL J. ANGELO, Clerk of said Board

By:

Lindsey Daugherty
Deputy

MAR 11 2021

INSURANCE REVIEW:

By:

Carmel J. Angelo
Risk Management

03/02/2021

Date:

SOLID WASTES SYSTEMS, INC :

By:

David M. Carroll

Solid Wastes Systems, Inc.

Attn: David M. Carroll, President

P.O. Box 60 or

3151 Taylor Drive Ukiah, CA 95482

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By:

Christian M. Curtis

Deputy

Date: March 1, 2021

EXECUTIVE OFFICE/FISCAL REVIEW:

By:

Seamus O'Neil
Deputy CEO

03/02/2021

Date:

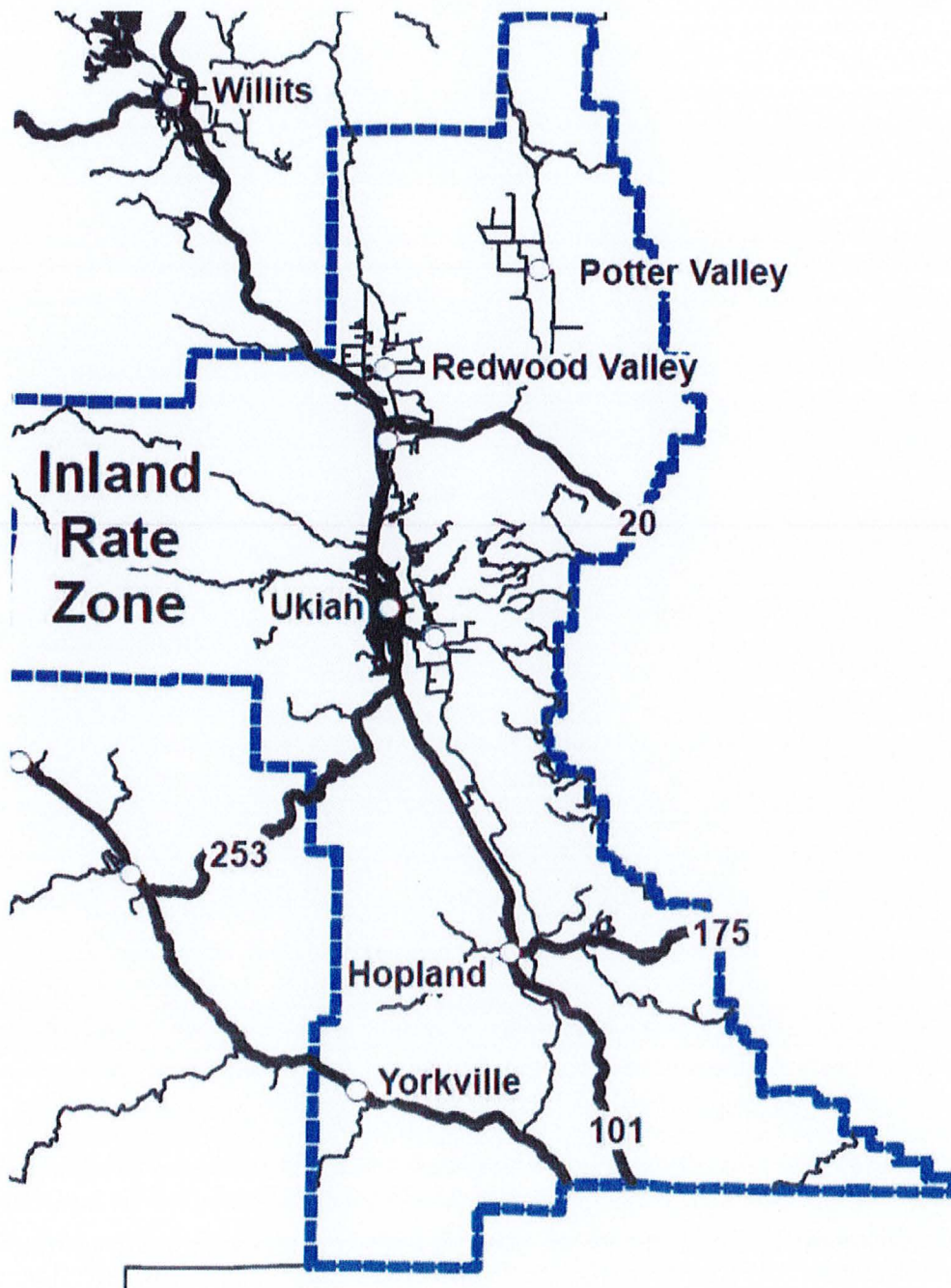
Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

EXHIBIT A



MAP OF COUNTY FRANCHISED SOLID WASTE AREA #2 INLAND RATE ZONE