

**SOLID WASTE COLLECTION FRANCHISE AGREEMENT FOR THE  
WEOTT-MYERS FLAT AREAS OF HUMBOLDT COUNTY**

This agreement is entered into this 26 day of October, 2010, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called COUNTY, and Eel River Disposal and Recovery, Inc., hereinafter called CONTRACTOR.

**RECITALS**

WHEREAS, the CONTRACTOR has provided solid waste service for the COUNTY for several years with last agreement expiring on December 31, 2010; and

WHEREAS, COUNTY has determined that CONTRACTOR is qualified to continue providing solid waste service for the Weott-Myers Flat Areas.

NOW, THEREFORE, the parties hereto mutually agree as follows:

**Section 1. Grant of Agreement.**

**A. Area Covered.** This Agreement shall pertain to that area of the unincorporated territory of the County of Humboldt which is more specifically described as follows (the "Franchise Area"):

Beginning at a point on the north line of Section 2, Township 3 South, Range 3 East, H.B.&M., one mile east of U.S. Highway 101;

Thence, northerly on a line parallel with and one mile east of said U.S. Highway 101 ten miles more or less to the west bank of the Eel River;

Thence following said west bank of the Eel River northerly and westerly to the center east/west quarter section line of Section 10, Township 1 South, Range 2 East, H.B.&M.;

Thence west along said quarter section line and along the east/west quarter section line of Section 9, Township 1 South, Range 2 East, H.B.&M., to a point in said Section 9, one mile west of U.S. Highway 101;

Thence southeasterly on a line parallel with and one mile west of U.S. Highway 101 to the north line of Section 4, Township 3 South, Range 3 East, H.B.&M.;

Thence easterly along said line and along the north lines of Sections 3 & 2, Township 3 South, Range 3 East, H.B.&M., two miles to the point of beginning.

RECEIVED

OCT 19 2010

i) **Exceptions.** The franchise granted to CONTRACTOR by this Agreement shall not apply to any of the following:

1. Any State or Federal lands, State or Federally owned or operated facilities and any areas within an incorporated city, or within Indian Tribal lands;
2. School districts, or special districts having the power to regulate solid waste collection;

Upon mutual agreement of the parties, territory can be added to the Franchise Area or this Franchise may be merged with another adjoining franchise.

## **B. Services Covered.**

i) **Exclusive Franchise for Franchise Solid Waste.** There shall be granted to CONTRACTOR, upon the terms and conditions hereinafter specified, an exclusive franchise for the collection, transportation and removal to solid waste processing and/or disposal facilities of Franchise Solid Waste, in the Franchise Area.

(1) **Enforcement.** COUNTY shall have no obligation to enforce the exclusivity provision of this Agreement against third party violators, but shall engage in good faith efforts to cooperate in such enforcement actions brought by CONTRACTOR.

**Section 2. Term of Franchise.** Unless earlier terminated pursuant to this Agreement, the term of this Agreement shall begin November 1, 2010 and terminate on June 30, 2020. The term may be further extended until June 30, 2025, by COUNTY at its sole discretion, pending determination by COUNTY as soon as practicable on or after June 30, 2019 that CONTRACTOR is providing service consistent with all requirements of this Agreement and all amendments hereto.

**Section 3. Definitions.** The definition of solid waste and all other definitions not otherwise defined in this document shall be as defined in Section 521-3, Chapter I of Division 2 of Title V of the Humboldt County Code, in Article 4 of Chapter 3 of Division 7 of Title 14 of the California Code of Regulations, or in the Public Resources Code.

A. Franchise Solid Waste means: All residential and commercial garbage, trash and rubbish, as those terms are commonly defined but excluding hazardous, low-level radioactive, electronic and medical waste, Recyclables, demolition and construction wastes, abandoned vehicles and parts thereof, white goods and other bulky waste, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure or animal solid and semisolid wastes, household

hazardous waste and other materials that by their nature cannot be legally transported to and disposed of in a Class III landfill. The forgoing notwithstanding, Franchise Sold Waste will also include incidental amounts of residential customer generated demolition and construction wastes, pet waste and vehicle maintenance items, all to the extent that they can be placed into the customer's collection can.

#### **Section 4. Records/ Reporting.**

##### **A. Record Keeping.**

**i) General.** In order to administer this Agreement it is necessary for CONTRACTOR to maintain accurate, detailed financial and operational information in a consistent format and to make such information available to COUNTY in a timely fashion. CONTRACTOR shall maintain records required to conduct its operations, to support requests it may make to COUNTY, and to respond to requests from COUNTY in the conduct of COUNTY's business as may be relevant to the parties' rights and duties under this Agreement. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years after the expiration of this Agreement.

**ii) Inspection of Records.** COUNTY, and/or agents selected by COUNTY, shall upon three business days notice, have the right, during regular business hours, to conduct on-site inspections of the records of CONTRACTOR required expressly or by inference pursuant to this Agreement, or any other similar records or reports of CONTRACTOR or entities providing service under this Agreement, and to make copies of any documents, all as may be relevant to this Agreement.

**iii) Solid Waste Records.** Records shall be maintained by CONTRACTOR for COUNTY relating to solid waste collections:

1. Service recipient services and billing by name, address and type of service;
2. Weight of solid waste by type (e.g., solid waste, Recyclables, and yard waste).
3. Routes;
4. Facilities, equipment and personnel used;
5. Facilities and equipment operations, maintenance and repair;

6. Processing and disposal of solid waste;
7. Types and quantities of hazardous waste inadvertently collected but diverted from landfilling;
8. Complaints; and,
9. Missed pick-ups.

CONTRACTOR shall maintain records of all solid waste collected in the service area for the period of this Agreement and all extensions to this Agreement or successor agreements. In the event COUNTY requests certain records or CONTRACTOR discontinues providing services to COUNTY, CONTRACTOR shall provide all solid waste records as described above to COUNTY within thirty (30) days of such request or discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

**iv) CERCLA Defense Records.** COUNTY views the ability to defend against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, COUNTY regards the ability to prove where solid waste collected in the service area was taken for transfer or disposal, as well as where it was not taken, to be matters of concern. CONTRACTOR shall maintain data retention and preservation systems which can establish where solid waste collected in the service area was disposed of, if other than the designated disposal facility (and therefore establish where it was not landfilled). This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement. At the termination of this Agreement, CONTRACTOR shall turn these records over to the COUNTY. CONTRACTOR shall provide these records to COUNTY in all organized and indexed manner rather than destroying or disposing of them.

**v) Confidential or Proprietary Information.** COUNTY agrees not to disclose to the public financial or proprietary information, or trade secrets, that have been treated by the CONTRACTOR as confidential, when such information is marked as such, unless disclosure is authorized by the CONTRACTOR or required by law. In the event that a suit is brought against the COUNTY to compel disclosure of such records, CONTRACTOR agrees that, after receipt of reasonable notice and a request to defend, it will either authorize release of the records or defend the action, at its own cost and expense.

## **B. Reporting.**

**i) General.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine the number of subscribers to each service by service level, and the total revenues generated.
2. Determine the total quantity of material collected, transferred, recycled, processed and/or disposed through each program and service, by material type.
3. Evaluate past and expected progress towards achieving the COUNTY's diversion goals and objectives.
4. Determine needs for adjustment to programs; and, evaluate service recipient service and complaints.
5. Prepare AB 939 Annual Reports and any and all other State required reports.

CONTRACTOR 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 Franchise Contract Administrator. CONTRACTOR agrees to submit all reports electronically and shall to the extent that its existing computer system is capable, provide such data in a format that is compatible with COUNTY software. CONTRACTOR will provide a certification statement, under penalty of perjury, by the responsible CONTRACTOR official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

### **ii) Quarterly and Annual Reports.**

CONTRACTOR shall submit to the Franchise Contract Administrator a quarterly written report which identifies the number of tons or cubic yards of solid waste collected from in the Franchise Area, as well as tonnage self-hauled to CONTRACTOR's separate facility from the Franchise Area. Quarterly reports are due by the 15th day of the second month following the end of each calendar quarter; specifically, May, August, November and February 15<sup>th</sup>. Reports of tonnage shall be based on the formula for route collected Franchise Solid Waste that allocates disposed of waste among the jurisdictions as follows: Fortuna 60%, County 22%, Rio Dell 11% & Ferndale 7% provided, however, these percentages can be altered upon the agreement of all of the jurisdictions and CONTRACTOR will

cooperate in any studies undertaken by said jurisdictions as a part of their review of this division. Debris Box reported tonnage shall be the actual tonnage. Lastly, self haul Franchise Waste shall be determined by an estimate based on one weekly survey per quarter.

CONTRACTOR shall submit to the Franchise Contract Administrator quarterly written reports, which contain the information set forth below, on a quarterly basis. CONTRACTOR shall likewise submit an Annual Report. Information required in this report may be compiled on a monthly or quarterly basis. CONTRACTOR shall submit this report to the Franchise Contract Administrator by April 1 for the prior calendar year. Reports are to include the following information as to Contractor's operations in the Franchise Service Area, at a minimum:

1. Number of subscribers by type of service (i.e., residential, Commercial, or debris box), frequency of service, and container size, as of the last day of the preceding quarter;
2. Gross receipts during the preceding quarter from billings for services provided under this Agreement;
3. With respect to material collected by CONTRACTOR in COUNTY in the preceding quarter (under this Agreement and under any other agreement between CONTRACTOR and COUNTY, combined), the total number of tons disposed of at the Designated Disposal Facility, and the total number of tons processed at the Designated Processing Facility;
4. Number of non-collection tags issued to customers in accordance with Section 5.B(ii)(3) or Section 13.C(ii), summarized by reason for issuance);
5. Summary of service complaints received during the preceding quarter based on the complaint log required to be kept in accordance with Section 5.B(ii)(4).
6. Dates during the preceding quarter (if any) on which CONTRACTOR provided hazardous waste training to employees pursuant to Section 12.C(i).
7. Two copies (one to the Franchise Contract Administrator, one to COUNTY's Risk Management Division, 825 5<sup>th</sup> Street, Room 121, Eureka, California 95501 of all reports, pleadings, applications, notifications, notices of violation, communications or other material, materially relating specifically to CONTRACTOR's performance of services pursuant to this Agreement and adverse to CONTRACTOR, submitted by CONTRACTOR to, or received by CONTRACTOR from,

the United States or California Environmental Protection Agency, the California Integrated Waste Management Board (now CalRecycle), the Securities and Exchange Commission or any other federal, state or local agencies, including any federal or state court. Copies shall be submitted to COUNTY simultaneously with CONTRACTOR's filing or submission of such matters with said agencies. CONTRACTOR's routine correspondence with said agencies need not be routinely submitted to COUNTY, but shall be made available to COUNTY promptly upon COUNTY's written request.

8. Certification by a responsible official of CONTRACTOR, under penalty of perjury, that the information contained in the report being submitted is true and correct to the best knowledge of such official after his or her reasonable inquiry.
9. For each quarterly report for the quarter ended March 31, a declaration by a responsible official of CONTRACTOR, under penalty of perjury, stating the amount of gross receipts during the preceding calendar year from billings for Franchise Solid Waste services provided under this Agreement.
10. Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for COUNTY, as appropriate.
11. The address of each terminal within the County of Humboldt that houses collection vehicles, per Section 13.B of this Agreement.
12. Other information or reports that County may reasonably request or require.

Quarterly reports are due May 15 for the quarter ended March 31; August 15 for the quarter ended June 30; November 15 for the quarter ended September 30; and February 15 for the quarter ended December 31.

At COUNTY's request, CONTRACTOR agrees to submit quarterly reports in electronic format (e.g., Word and Excel files) using the computer software then in use by CONTRACTOR.

The information listed above shall be the minimum reported for each service. To the extent that the requested information is not tracked directly by the CONTRACTOR or can not be specifically established due to the nature of CONTRACTOR's operations, CONTRACTOR shall present to COUNTY a proposed method for estimating the required information, the reasonableness of which shall be subject to the approval of COUNTY.

CONTRACTOR shall supply additional information, when requested by the Franchise Contract Administrator, as specified by the California

Integrated Waste Management Act of 1989 (now CalRecycle) and other State or local laws.

**iii) Reporting Adverse Information.** CONTRACTOR shall provide COUNTY two (2) copies (one to the Franchise Contract Administrator, one to Risk Management) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material, materially relating specifically to CONTRACTOR's performance of services pursuant to this Agreement, submitted by CONTRACTOR to, or received by CONTRACTOR from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board (now CalRecycle), the Securities and Exchange Commission or any other federal, state or local agencies, including any federal or state court. Copies shall be submitted to COUNTY simultaneously with CONTRACTOR's filing or submission of such matters with said agencies. CONTRACTOR's routine correspondence to said agencies need not be routinely submitted to COUNTY, but shall be made available to COUNTY promptly upon COUNTY's written request.

**iv) Failure to Report.** The refusal or failure of CONTRACTOR to file any required reports, or to provide required information to COUNTY, or the inclusion of any materially false or misleading statement or representation by CONTRACTOR in such report shall be deemed a material breach of this Agreement and shall subject CONTRACTOR to all remedies which are available to COUNTY under this Agreement or otherwise.

## **Section 5. Service Obligations of Contractor.**

### **A. Description of Services.**

**i) Franchise Solid Waste.** CONTRACTOR is responsible for offering weekly collection and disposal of all Franchise Solid Waste within the Franchise Area set forth in this Agreement.

**ii) Automated Services.** CONTRACTOR may implement automated solid waste services for can service customers upon the advance written approval of the Franchise Contract Administrator. If the CONTRACTOR implements such automated solid waste services, CONTRACTOR shall provide all affected customers with solid waste toter containers suitable for automated machine handling, as approved by the Franchise Contract Administrator. Such toter containers will be furnished at no initial cost to the customers. All such containers will be the property of the CONTRACTOR.

**iv) Green waste.** CONTRACTOR may implement, subject to approval of the Franchise Contract Administrator, the weekly collection and disposal

of Green Waste. Green Waste consists of tree trimmings, grass cuttings, dead plants, leaves, branches, and dead trees (not more than 12 inches in diameter).

**v) Consistency of services.** If CONTRACTOR offers service to an incorporated city surrounded by or adjacent to the Franchise Area, CONTRACTOR shall provide notice to the Franchise Contract Administrator and offer to provide the same or similar service within the Franchise area under stated terms and conditions.

## **B. Standards.**

**i) General.** CONTRACTOR is responsible for making its own examination, investigation, and research regarding the proper method of doing the work and all conditions affecting the work to be done and the labor, equipment and the materials needed for the work before entering into this Agreement. CONTRACTOR acknowledges that the Franchise Contract Administrator may wish to conduct Franchise Solid Waste, and Green Waste generation and disposal characterization studies periodically. CONTRACTOR agrees to participate and fully cooperate with the Franchise Contract Administrator and its agents to accomplish studies and data collection.

### **ii) Customer Relations.**

**(1) Providing Information to Customers.** CONTRACTOR shall provide to new customers an information packet which contains the rates charged for different size containers, and contact information for entities which provide source reduction, recycling and hazardous waste disposal opportunities available to the customer. This information shall also be made available and provided to all CONTRACTOR's existing customers once each year, following the annual rate adjustment. Such information shall be provided whenever possible as part of the regular billing cycle to customers. Upon request by the COUNTY, CONTRACTOR shall provide a copy of said information to the Franchise Contract Administrator within thirty days of such request.

**(2) Customer Deposits.** CONTRACTOR shall not ordinarily require a deposit in order to establish a new customer account. However, in the event of a delinquency in customer payment to CONTRACTOR which exceeds sixty (60) days, CONTRACTOR shall be entitled to discontinue service to that customer, and shall be entitled to require a deposit in advance equal to one full billing cycle as a condition of the restoration of service to such customer. For occasional services, such as debris box rental, a deposit may be required in any amount deemed appropriate by CONTRACTOR,

up to a maximum of full payment in advance. In the event of repeated discontinuation of service to a customer for nonpayment or delinquency, CONTRACTOR may add a reinstatement fee (subject to approval by the Franchise Contract Administrator) to cover the administrative cost of restoring service to that customer.

**(3) Non-Collection Tags.** When Solid Waste is not collected from any customer, for reasons other than customer failing to place garbage cans at the curb or non-payment by customer, CONTRACTOR shall notify the customer by attaching tags approved by the Franchise Contract Administrator to the waste not collected which clearly identify the reasons for such non-collection. This requirement shall not apply when driver is unable to locate or have truck access to a solid waste receptacle or customer service has been discontinued due to non-payment.

**(4) Service Complaints.** All customer complaints shall be directed to CONTRACTOR. CONTRACTOR shall record all complaints received by mail, by telephone, electronically, or in person (including date, name, address of complainant and nature of complaint). CONTRACTOR agrees to use its best efforts to resolve all complaints by the close of business of the second business day following the date on which such complaint is received. Unless the matter is resolved to the satisfaction of the complainant, CONTRACTOR shall refer the complaint to COUNTY for review by the Franchise Contract Administrator. The COUNTY shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy available to the customer under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Agreement.

**iii) Frequency.** The options for frequency of service shall be determined by COUNTY. CONTRACTOR shall also offer to customers who require service less frequently, the option of purchasing trash bags from CONTRACTOR to be placed on the curb on regular collection days on an as needed basis. The service will be permitted as long as health and safety requirements are satisfied.

**iv) Hours of Operation/Noise.** CONTRACTOR agrees that, in order to protect the peace and quiet of residents, it shall not begin collection in residential areas before 5:00 a.m. or continue after 7:00 p.m., except as such collection activities are approved in advance by the Franchise Contract Administrator. In addition, the CONTRACTOR shall exercise care while loading, unloading, or operating its equipment, such that the noise level will not exceed 75 dBA at 50 feet. The COUNTY reserves the right to

modify the hours of operation should it determine that traffic or noise conditions are creating a nuisance.

**v) Hazardous Road Conditions.** When hazardous road conditions are present due to snow, ice, slides, or other reasons, the CONTRACTOR may, with approval of the Franchise Contract Administrator, suspend collection in those areas affected.

**vi) Clean up of Spills.** The CONTRACTOR shall be responsible for the cleaning of all earth, solid waste, or other materials spilled or tracked on any road, street, alley or public place by its personnel or equipment. If the CONTRACTOR fails to clean the same within four hours of being notified by the Franchise Contract Administrator, the Franchise Contract Administrator may cause such roads, streets, alleys or public places to be cleaned and deduct the cost thereof from the Performance Bond required in Section 7.D. The CONTRACTOR shall not be responsible for picking up garbage spilled or removed from cans by dogs or other animals.

## **Section 6. Obligations of Customer.**

**A. Waste Receptacle Location.** Customers shall place their containers in a convenient location for removal within five (5) feet of, and visible from, the public roadway. Customers with automated or semi-automated service must place Tote containers at least five feet from any building, vehicle or other object that might impede the automatic collection device. In rural areas, CONTRACTOR shall not be required to travel upon private driveways to collect solid waste.

**B. Protection from Animals, Etc.** Customers shall place all household garbage in covered cans and all yard trimmings in covered cans or plastic bags tied shut at the top.

## **Section 7. Insurance/Bonds.**

**A. Insurance Requirement.** Without limiting CONTRACTOR's indemnification provided herein, CONTRACTOR shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers with a current A.M. Best rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, employees or subcontractors:

**i) Liability.** Comprehensive or Commercial General Liability insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in all amount of \$3,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general

aggregate shall be \$5,000,000. Said policy shall contain, or be endorsed with, the following provisions:

a. The COUNTY, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, agents, and employees.

b. The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of the premium) to COUNTY by mail.

c. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

d. For claims related to this Agreement, the CONTRACTOR's insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to CONTRACTOR's insurance and will not be called upon to contribute with it.

e. Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, employees, and agents.

**ii) Automobile Insurance.** Automobile liability insurance with coverage at least as broad as Insurance Services Office, form CA 0001 06092, Code 1 (any auto) for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident combined single limit (ACSL). Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to COUNTY by mail.

**iii) Worker's Compensation.** Workers' Compensation insurance meeting statutory limits of the California Labor Code which policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees and provide for thirty (30) days prior written notice in the event of cancellation.

**iv) Environmental Liability.** Environmental Impairment Liability coverage appropriate for the hazardous materials/waste activity contemplated in the

Agreement; specifically, Sudden and Accidental Upset Pollution Liability. One million dollars (\$1,000,000) per claim; and two million dollars (\$2,000,000) annual aggregate. The effective date is to be no later than the commencement date. Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to COUNTY by certified mail.

**B. Endorsements.** CONTRACTOR shall furnish COUNTY with certificates and original endorsements affecting the required coverage prior to execution of this Agreement by COUNTY. Any deductible or self-insured retention over \$100,000 shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance.

**C. Condition of Execution of Document.** This Agreement shall not be executed by County, and Contractor is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the preceding provisions have been complied with, has been filed with the Clerk of the Humboldt County Board of Supervisors.

**D. Performance Bond.** CONTRACTOR shall post a fifty thousand dollar (\$50,000.00) bond or cash deposit to secure and guarantee the faithful performance of all the terms and conditions of this agreement by CONTRACTOR. Evidence of such bond shall be provided to COUNTY as of the effective date of this Agreement.

## **Section 8. Indemnification.**

**A. General Indemnification.** CONTRACTOR shall indemnify, defend and hold harmless, at CONTRACTOR's sole cost and expense, the COUNTY, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description. Such indemnification and defense shall be rendered, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and/or damage to property or for contribution or indemnity claimed by third parties (collectively, the Claims), arising out of or occasioned in any way by, directly or indirectly, CONTRACTOR's performance of, or its failure to perform, its obligations under this Agreement, but not limited to, CONTRACTOR's failure to comply with applicable laws or the CONTRACTOR's breach of its representation and warranties in this agreement. The foregoing shall also apply if the Claim is caused by the joint negligence of the COUNTY and CONTRACTOR, but only to the extent of CONTRACTOR's negligence. This indemnification will not extend to Claims to the extent they are

caused by the sole negligence or intentional misconduct or omission of the COUNTY.

**B. Hazardous Substance Indemnification.** CONTRACTOR shall indemnify, defend with counsel selected by COUNTY, protect and hold harmless the COUNTY and its officers, directors, employees, volunteers, and agents, and member agencies, its officers, directors, employees, volunteers, and agents, (collectively, indemnitee) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (Collectively, Damages) or any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitee arising from or attributable to the acts or omissions of CONTRACTOR, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this agreement, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remediation, response, closure, postclosure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, and/or construction and street debris, or other waste collected under this Agreement. This indemnity afforded indemnitee, shall only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitee, indemnitee delivery of material to CONTRACTOR which does not conform to the descriptions of Solid Waste under this Agreement and as provided below. The foregoing indemnity is intended to operate as an agreement in recognition of Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC 9607(e) and California Health and Safety Code 25364, to defend, protect, hold harmless, and indemnify the COUNTY from liability. This provision is in addition to all other provisions in this Agreement and is intended to survive the end of the Term of this Agreement. Nothing in this paragraph shall prevent CONTRACTOR from seeking indemnification or contribution from persons or entities other than indemnitee, for any liabilities incurred by CONTRACTOR, or the indemnitee.

**Section 9. Penalties/ Remedies for Breach.** In addition to any other remedies available pursuant to this Agreement or at law or equity, the CONTRACTOR shall be subject to the following penalties, as liquidated damages for violation of the terms and conditions of this Agreement.

**A. Reporting and Record Keeping Violations.**

1. For each failure to provide reports or documentation, as required by Section 4.B of this Agreement, by the date due, CONTRACTOR shall pay

to COUNTY the sum of fifty dollars (\$50.00) per day for each day's delay in reporting, beginning on the fifteenth (15<sup>th</sup>) day following the due date, and one hundred dollars (\$100.00) per day for each day's delay beginning on the 30<sup>th</sup> day following the due date, provided, however, that the COUNTY may not impose a fine in excess of one thousand dollars (\$1,000) without having given notice of a failure to provide reports or documentation.

2. For each failure to provide COUNTY access, in accordance with Section 4.A of this Agreement, to records required under Section 4.A or 4.B, within three business days of the COUNTY's request, CONTRACTOR shall pay to COUNTY the sum of fifty dollars (\$50.00) per day for each day's delay in providing access, beginning on the fourth day following the COUNTY'S request, and one hundred dollars (\$100.00) per day for each day's delay beginning on the 15<sup>th</sup> day following the request.

#### **B. Services and Operations Violations.**

1. For each account collected outside the collection hours specified in Section 5.B.iv, CONTRACTOR shall pay to COUNTY the sum of fifty dollars (\$50.00) per incident, beginning with the third incident reported to the COUNTY within a calendar year. COUNTY shall not assess such penalty without having given prior notice to CONTRACTOR of the incidents.

2. For each occurrence of excessive noise in violation of Section 5.B.iv, CONTRACTOR shall pay to COUNTY the sum of one hundred dollars (\$100.00) per incident, beginning with the third incident reported to COUNTY within a calendar year. COUNTY shall not assess such penalty without having given prior notice to CONTRACTOR of the incidents.

#### **C. Customer Relations Violations.**

1. For each failure to provide a customer information packet to a new customer as required by Section 5.B.ii.1, CONTRACTOR shall pay to COUNTY the sum of twenty-five dollars (\$25.00) per incident, beginning with the third incident reported to COUNTY within a calendar year. COUNTY shall not assess such penalty without having given prior notice to CONTRACTOR of the incidents.

2. For each failure to provide copies of customer notices to the Franchise Contract Administrator within thirty days of a rate adjustment as required by Section 5.B.ii.1, CONTRACTOR shall pay to COUNTY the sum of one hundred fifty dollars (\$150.00) per day beginning on the 31<sup>st</sup> day following the rate adjustment.

3. For each failure to attach non-collection tags to waste not collected as required by Section 5.B.ii.3 or Section 13.C.ii, CONTRACTOR shall pay to COUNTY the sum of fifty dollars (\$50.00) per incident, beginning with the third incident reported to COUNTY within a calendar year. COUNTY shall not assess such penalty without having given prior notice to CONTRACTOR of the incidents.

**D. Disposal Facility Violations.** For each documented failure of CONTRACTOR to dispose of non-hazardous waste collected pursuant to this Agreement at the Disposal Facility designated by COUNTY under Section 12, CONTRACTOR shall pay to COUNTY the sum of five hundred dollars (\$500.00) per incident.

In the event that CONTRACTOR believes that any of the above penalties have been assessed in violation of the terms herein, CONTRACTOR may request a review of the alleged violation by the County Administrative Officer, and shall have the right to an appeal to the County Board of Supervisors.

#### **Section 10. Payment of Franchise Fee.**

**A. Establishment of Fee.** For the rights and privileges granted by this exclusive franchise, CONTRACTOR shall pay to COUNTY a franchise fee, in the amount set by the Board of Supervisors pursuant to Humboldt County Code Section 521-9(a), which shall be a percentage of the gross receipts received by CONTRACTOR from its operations in the franchise area (not including recycling services), as described in Section 1 in accordance with County Code Section 521-9(a) adopted by the Humboldt County Board of Supervisors. The franchise fee is initially set at nine percent (9%). COUNTY may unilaterally, at any time, increase this franchise fee, so long as the collection rates charged by CONTRACTOR shall be adjusted such that the increased cost is a pass-through to CONTRACTOR. COUNTY shall give CONTRACTOR at least 90 days written notice of its intent to increase the franchise fee.

**B. Payment of Fee.** The franchise fee shall be due and payable monthly, with payment for each calendar month due on the 15<sup>th</sup> day of the following month. Payments made later than the 25<sup>th</sup> day shall be subject to a ten percent (10%) penalty on the amount due. Failure to remit the delinquent amount, on or before a thirty (30) day period following the date the first amount due becomes delinquent, will result in a second penalty equal to ten percent (10%) of the amount due in addition to any other amounts due, including the penalty first imposed.

**C. Verification of Gross Receipts.** CONTRACTOR shall keep records of the gross receipts obtained in the exercise of the franchise. CONTRACTOR shall, no later than April 1<sup>st</sup> of each year, submit a declaration under penalty of perjury, stating the amount of gross receipts received during the previous year. The COUNTY shall have the right to audit and examine records of the gross receipts

or the CONTRACTOR may elect to hire an independent Certified Public Accountant approved by the COUNTY Auditor-Controller to perform a review of the gross receipts using an agreed upon procedure conforming to audit standards if required. In the event that such audit procedure concludes that underpayment by CONTRACTOR to COUNTY of two percent (2%) or more has occurred, CONTRACTOR shall, in addition to paying the delinquent amount and the penalty provided in Subsection B above, reimburse COUNTY for any costs incurred in performing the audit. In the event that such audit finds no evidence of payment not made as required, COUNTY shall reimburse CONTRACTOR in an amount equal to the COUNTY's cost to have performed the audit itself. In the event that such audit finds evidence of payment not made as required, but less than 2% of the amount due, CONTRACTOR and COUNTY shall share equally the cost incurred by COUNTY to perform the audit.

**Section 11. Payment of Countywide Fees.** CONTRACTOR shall collect any County Wide Programs fee levied by COUNTY or an agency authorized to conduct environmental programs on behalf of the COUNTY, which would be assessed at the point of disposal, on all waste collected within the Franchise Area under this agreement. Failure to remit such amounts within 30 days of the date due shall subject the CONTRACTOR to a penalty of five hundred dollars (\$500.00) per incident.

## **Section 12. Directing Disposal.**

**A. Designation of Disposal Facility.** All non-hazardous solid waste collected by CONTRACTOR pursuant to this Agreement shall be disposed of at the Disposal Facility designated by COUNTY, as may be changed from time to time. As of the date of this Agreement, the designated location is the Eel River Disposal Transfer Station at 965 Riverwalk Drive, Fortuna, California. In the event that COUNTY designates an alternative location for disposal of collected waste, the provisions of Subsection C below shall determine any increase or decrease in the amount of payment to which CONTRACTOR is entitled.

**B. Disposal Facility Fee.** The COUNTY or Disposal Facility shall charge the CONTRACTOR a disposal fee for use of the Disposal Facility designated by COUNTY for use by CONTRACTOR. Such disposal fee may include, but is not limited to, the collection of funds as authorized by state law for the purposes of implementing AB 939. CONTRACTOR shall be entitled to increase collection rates to provide for any increases in the amount of such Disposal Facility costs, including local fees, as specified in Section 15.B.iv. Such fees shall be specified in Exhibit A, as Disposal Rate, and shall not be included in the annual CPI adjustment paid to CONTRACTOR.

**C. Change of Disposal Facilities; Change in Compensation.** When COUNTY determines that it is necessary to acquire or use an alternative Disposal Facility or Disposal Facilities, the CONTRACTOR shall not be entitled to any

compensation by reason thereof, except in the amount hereinafter prescribed. When a new Disposal Facility is acquired and is designated for use, or when a specified Disposal Facility is abandoned and an alternative Disposal Facility is designated for use, the CONTRACTOR shall deliver garbage from established connection routes to the new or alternate Disposal Facility as may be ordered by COUNTY. The amount of increase or decrease in compensation due to the CONTRACTOR from customers for such change in Disposal Facility shall be computed as follows:

1. The Franchise Contract Administrator shall measure the one-way distances, along the most direct route on the usable highways, roads, and streets from the geographical center of each collection route along which garbage is normally hauled, to the entrance of the Disposal Facility. The geographical center of said collection routes shall be determined by the Franchise Contract Administrator from the route maps provided by the CONTRACTOR. Such distances shall be averaged and, for convenience of computation, this average shall be called Distance A.
2. The Franchise Contract Administrator shall also measure the one-way distance, along the most direct route on usable highways, roads, and streets from the geographical center of each collection route which will use the new or alternate Disposal Facility to the entrance of the new Disposal Facility. The average of these distances shall be called Distance B. The difference in miles between Distance A and Distance B, multiplied by two (2) and by the number of loads thus hauled, as determined by the Franchise Contract Administrator, shall equal the number of Load-Miles.
3. If Distance A is less than Distance B, increased compensation to the CONTRACTOR shall be made as follows: Multiply the Load-Miles above by the Load-Mile Rate as designated in the current rate schedule. This product shall be the gross increase. Divide the gross increase by the total number of customers served to determine the amount of increase to each customer. The collection rate to each customer will be adjusted by this increase to the nearest \$0.05.
4. If Distance B is less than Distance A, decreased compensation to the CONTRACTOR shall be made as follows: Multiply the Load-Miles above by the Load-Mile Rate as designated in the current rate schedule. This product shall be the gross decrease. Divide the gross decrease by the total number of customers served to determine the amount of decrease to each customer. The collection rate to each customer will be adjusted by this decrease to the nearest \$0.05.
5. If Section 12.C of this Agreement is implemented, the Load-Mile Rate shall be increased or decreased per the Consumer Price Index (CPI) rate

adjustment described in Section 15.B.ii to bring it up to the date of implementation.

### **Section 13. Compliance with Laws.**

**A. General.** CONTRACTOR warrants that it will comply with all applicable federal, state and local laws and regulations in effect during the term of this Agreement, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environment Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601, *et seq.*, the California Integrated Waste Management Act of 1989 (AB 939), and all other applicable laws of the State of California. CONTRACTOR shall also comply with all final and binding judgments and administrative orders entered against CONTRACTOR in connection with performance under this Agreement.

**B . Air Quality.** CONTRACTOR shall be and remain in compliance with all applicable air pollution control laws and regulations, and shall report annually to the Franchise Contract Administrator the address of each terminal within the County that houses collection vehicles.

### **C. Hazardous Waste.**

**i) Prohibition of Hazardous Waste.** CONTRACTOR shall not knowingly allow hazardous waste to enter the solid waste system. COUNTY recognizes that it is impossible for CONTRACTOR to inspect every can and plastic bag. However, CONTRACTOR shall use all feasible efforts and due diligence in keeping hazardous waste from entering the solid waste system. Such efforts shall include, but not be limited to, a program of regular training of CONTRACTOR's employees on hazardous waste identification and periodic inspection of collected solid waste for hazardous content.

**ii) Non-Collection.** CONTRACTOR shall cooperate with the Disposal Facility and COUNTY in efforts to prevent the improper disposal of hazardous waste. In the event that CONTRACTOR reasonably believes that cans, bins, or other containers set out for collection contain hazardous materials, such containers shall not be collected, but shall be left at the collection location with a notice from CONTRACTOR explaining the reason for non-collection of the container. Such notice shall include information regarding the proper handling and disposal of hazardous materials, as well as the procedure for customers to follow for ensuring the collection of the container, once the hazardous materials have been removed. COUNTY shall assist CONTRACTOR, upon request from CONTRACTOR, in preparing such informational materials.

## **Section 14. Changes to Contract.**

**A. Changes to Existing Services And the Adding of New Services.** In the COUNTY's discretion, it can direct CONTRACTOR to change existing services or add new services under this Agreement. In such event, the CONTRACTOR and the Franchise Contract Administrator shall first meet and confer on the change and attempt to arrive at a rate change that would provide the CONTRACTOR with fair compensation for such change. If they cannot arrive at an agreement the matter will be submitted to dispute resolution under this Agreement. Provided, however, that any change in rates requires the approval of the Board of Supervisors under the procedures required by law and while the Board shall consider the result of the dispute resolution process, the Board shall not be bound by it.

In the event of a need for urgent implementation of a change to existing service or the adding of a new service prior to the time that a new rate can be set hereunder, a new rate may be immediately set by the Board of Supervisors under the procedures required by law. If the result of dispute resolution under this Agreement on an immediate implementation determines that a different rate would be fair compensation for such change, the rate determination shall thereafter be reviewed again by the Board. In such event, any further rate change could only occur following action taken by the Board of Supervisors under the procedures required by law.

## **Section 15. Rates.**

**A. Collection Rates and Conditions.** The rates to be charged customers by the CONTRACTOR shall be set by the Board of Supervisors, which rates, except for annual adjustments as provided for in this section, shall not be increased without the holding of a public hearing. The maximum rates which may be charged by the CONTRACTOR in the unincorporated area served by this Agreement are those rates shown in Exhibit A of the Agreement. These rates are based on disposal of collected waste at the location designated by COUNTY, and are inclusive of all fees charged by the Disposal Facility. If an alternate Disposal Facility is designated by the COUNTY, the rates shall be adjusted as provided in Section 12.C of this Agreement.

### **B. Rate Changes.**

**i) Control of Rates.** The Board of Supervisors shall control the rates to be charged customers by the CONTRACTOR, which rates, except for annual adjustments as provided for in this section, shall not be adjusted without the holding of a public hearing. It is the policy of the Board of Supervisors to consider rate adjustment requests only on an annual basis. The rates specified in Exhibit A are the rates that will be in effect commencing on the date of execution of this Agreement.

**ii) Annual Adjustment of Rates.** Rates paid to CONTRACTOR shall be adjusted annually to reflect changes to the Consumer Price Index (CPI).

CPI rate changes, if applicable, shall be made on July 1 of each year beginning July 1, 2011. The percentage increase or decrease shall be computed on the basis of the CPI - All Cities Average-Urban Wage Earners and Clerical Workers, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor. The month of March shall be used as the month of comparison. Such CPI adjustment shall be applicable only to the base rate, and shall not be applied to the Disposal Facility fee (which may include state, local, and other regulatory fees) or other pass through fees.

**iii) Exceptional Rate Increase.** A request for a rate increase greater than the 8%, or for an increase other than those described in sub-section ii above or iv below, shall require justification by the CONTRACTOR. In addition to any other relevant information, COUNTY may additionally require accounting records and financial statements, as described below, along with supporting documents, compiled by a Certified Public Accountant licensed in the State of California. All costs associated with the submittal shall be borne by the CONTRACTOR.

**(1) Contractor's Accounting Records.** CONTRACTOR shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to, and showing the basis for allocation and computation of, all costs associated with the services provided for under this Agreement. The accounting records shall be maintained using Generally Accepted Accounting Principles (GAAP) consistently applied.

**(2) Financial Statements.** Financial statements and/or pertinent sections thereof made available to the COUNTY shall show CONTRACTOR's results of operations for services provided under this Agreement as a separate cost center of the CONTRACTOR's business, including the specific revenues received and expenses incurred for those services. The financial statements shall be prepared at least annually in accordance with Generally Accepted Accounting Principles (GAAP) by the CONTRACTOR and/or its designee and shall be compiled and marked "unaudited". Such statements should include an additional statement of certification by the CONTRACTOR's management.

**iv) Pass Throughs.** In the event of an increase in the franchise fee and/or solid waste tipping fee, an amendment to adjust the rates in Exhibit A will be executed, such that the increased cost is a pass-through to

CONTRACTOR. Should the rate increase exceed the percentage specified in Section 521-8(b), Chapter 1 of Division 2 of Title V of the Humboldt County Code, approval of the Board is required following a public hearing.

**v) Changes in Law Compliance.** CONTRACTOR's cost of compliance with the Solid Waste Collection Vehicle Rule, or similar rules or other changes in Law for which CONTRACTOR will be required to incur additional cost for compliance as required under Section 13 hereof, shall be agreed to and added to the rates hereunder. Provided, however, the initial rates in this Franchise Agreement include the cost of such compliance with law as of the first day of the Term of this Agreement.

**vi) Basis for Calculation.** The rates in Exhibit A are based on an average density of solid waste equal to 30 pounds per 30 gallon container and 202 pounds per cubic yard. CONTRACTOR agrees that this average density determination shall be used to compute the rates in the attached Exhibit A unless the COUNTY and CONTRACTOR agree that a different average density is justified. COUNTY agrees to adjust the rates accordingly if such a determination is made.

**vii) Procedure for Approval of Rate Increases.** All rate increases which exceed eight percent per annum, or which are attributable to factors other than those authorized by subsections ii. and iv. of Section 15.B. (CPI increases; Pass-throughs) must be approved by the Board of Supervisors, following a public hearing. Those increases which do not require a public hearing may be approved by the Franchise Contract Administrator, who is authorized to execute an amendment to this agreement to reflect the change in rates.

**Section 16. Termination - For Cause.** If any term or condition of the Agreement is violated, COUNTY may give to CONTRACTOR and his surety a notice to remedy such violation(s) within a thirty (30) day period; and if such violation(s) is substantial and is not remedied within said period of time, COUNTY at its election, may terminate the Agreement; except that, if the breach is such that the public health, welfare or safety may be endangered, termination may be immediate. If CONTRACTOR becomes insolvent, is adjudged bankrupt, or makes an assignment for the benefit of creditors, the Agreement may be immediately terminated by COUNTY. Upon such involuntary termination, CONTRACTOR shall supply a complete list of customers to the COUNTY. Upon any breach and/or termination of the Agreement, any work that CONTRACTOR has failed to do may be performed by COUNTY, either directly or by contracting therefor, at the expense of CONTRACTOR and his surety. COUNTY may operate the system, or carry out any portion of the assigned work utilizing its own or CONTRACTOR's equipment until CONTRACTOR has demonstrated to the satisfaction of COUNTY that it is again capable of meeting

the terms of the Agreement. On each such occasion, COUNTY shall notify CONTRACTOR, in writing, of the specific failure of CONTRACTOR to perform the required work, and the action to be taken by COUNTY. If CONTRACTOR fails to cure such breach within the specified period of time, COUNTY may terminate the Agreement, and operate the system. In so doing, COUNTY may utilize CONTRACTOR's equipment for a period of up to 120 calendar days from the date of termination of the Agreement. Liability of COUNTY to CONTRACTOR for loss or damage of equipment used by COUNTY shall be that of a bailee for hire. Ordinary wear and tear is specifically exempt from such liability.

**Section 17. Termination - Changed Circumstances.** Either party may terminate this agreement by giving the other party written notice of such termination not less than 180 days prior to the date of the proposed termination, in the event of a significant and substantial change in the law or in the circumstances and assumptions forming the basis of this Agreement. Events which shall be deemed significant and substantial changes and which may support termination include, but are not limited to, the following:

A. Adoption of an ordinance or resolution pursuant to Section 25830 of the Government Code or other applicable State law, establishing a schedule of fees for solid waste disposal and imposing said fees ("dwelling unit equivalents") on land within the territory covered by the Agreement;

B. A finding by a court of competent jurisdiction that any material term, condition, or covenant of this agreement is invalid, void or unenforceable.

C. Action by the Humboldt Waste Management Authority which the COUNTY finds will significantly impact the ability of CONTRACTOR to perform its responsibilities as required by the Agreement.

In the event of termination pursuant to the terms of this section, COUNTY may negotiate a new Agreement with CONTRACTOR or may call for bids.

**Section 18. Dispute Resolution.** If both COUNTY and CONTRACTOR agree, the issues which are the subject of a dispute may be submitted to arbitration in accordance with the rules of the American Arbitration Association (AAA), provided that COUNTY and CONTRACTOR may agree to have the arbitration hearing heard by a single arbitrator acceptable to both COUNTY and CONTRACTOR, but otherwise in accordance with the rules of the AAA. Such Arbitration shall take place in Eureka, California.

**Section 19. Assignment and Transfer of Control.** Except as provided in this Section, CONTRACTOR shall neither assign its rights nor delegate or otherwise transfer its obligations under this Agreement or change its control to any other person or entity without the prior written consent of COUNTY. Any such

assignment without the consent of COUNTY shall be void and the attempted assignment shall constitute a material breach of this Agreement.

At the time of signing this Agreement, all of the stock of Eel River Disposal & Resource Recovery, Inc. is owned by Harry Hardin. A change in control shall be a change in ownership of more than one half of the corporation's outstanding stock. A change in control will not include a transfer of stock into a revocable trust fully controlled by Harry Hardin or to his estate upon his death.

CONTRACTOR shall inform COUNTY, in writing, at least 60 days prior to any assignment or change in control stock transfer proposals, and shall not consummate any stock transfer or assignment without approval of COUNTY.

CONTRACTOR must also pay COUNTY its reasonable expenses for attorney's fees and investigation costs to investigate the suitability of the proposed assignee or transferee and to review and finalize any documentation required for such assignment or transfer.

CONTRACTOR shall furnish COUNTY with such financial and experience information as the COUNTY determines is reasonably required to assist it in its review.

If COUNTY does not respond within 60 days, COUNTY approval shall be considered granted. Provided, however, that said period may be extended by the COUNTY for such additional time as it may need to review and consider the matter. COUNTY shall not unreasonably delay or withhold its consent.

**Section 20. Nuclear Free Ordinance Compliance.** CONTRACTOR certifies by its signature below that CONTRACTOR is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor, as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR becomes a Nuclear Weapons Contractor.

**Section 21. Notices.** A letter addressed and sent by certified U.S. Mail, by either party to the other at its business address shown herein, shall be sufficient notice whenever required for any purpose of this agreement.

County of Humboldt  
Contract Administrator  
1106 Second Street  
Eureka, California, 95501

Eel River Disposal &  
Resource Recovery, Inc.  
P.O. Box 266  
Fortuna, CA 95540

## **Section 22. Interpretation of Agreement.**

**A. Entire agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions, including those contained in all prior amendments hereto.

**B. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

**C. Right to Require Performance.** The failure of COUNTY at any time to require performance by CONTRACTOR of any provision hereof, shall in no way affect the right of COUNTY thereafter to enforce same, nor shall waiver by COUNTY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

**D. Execution in Counterparts.** This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute one and the same Agreement.

**E. Severability.** If any clause, provision, subsection, Section or Division hereof or attachment hereto shall be ruled invalid by any court of competent jurisdiction, then the parties shall:

1. Promptly meet and negotiate a substitute for such Agreement provision which shall, to the greatest extent legally permissible, effect the intent of the parties therein;
2. Negotiate such changes in, substitutions or additions to the remaining provisions hereof as may be necessary in addition to and in conjunction with item 1 above to effect the intent of the parties in the invalid Agreement provision.

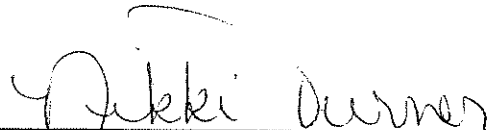
The invalidity of such Agreement provision shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid Agreement provision did not exist, unless either party invokes its right to termination for changed circumstances pursuant to Section 17 herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first hereinabove written.

COUNTY OF HUMBOLDT

Attest:

  
\_\_\_\_\_  
Chair, County Board of Supervisors

  
\_\_\_\_\_  
Clerk of the Board of Supervisors

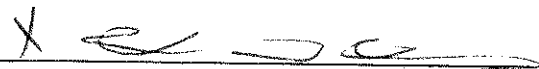
APPROVED AS TO FORM:

INSURANCE certificates reviewed and APPROVED:


BY:   
\_\_\_\_\_  
Deputy County Counsel

BY: \_\_\_\_\_  
Risk Manager

**EEL RIVER DISPOSAL & RESOURCE RECOVERY, INC.**

BY:   
\_\_\_\_\_

TITLE: \_\_\_\_\_

BY:   
\_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT A: WEOTT/MYERS FLAT AREA FRANCHISE RATES**  
EFFECTIVE NOVEMBER 1, 2010

A	B	C	D	E	F	G	H	I
Type of Service	Prior Yr Base Rate \$	Bond & Insurance Premium Adjustment \$	Current Yr Base Rate \$	Disposal \$	Sub-Total	Franchise Fee 9%	Total Rate	Frequency of Service
<b>TABLE 1 CAN RATES - RESIDENTIAL and COMMERCIAL</b>								
20 Gallon Can	8.83	4.37	13.20	\$5.11	\$18.30	\$1.81	\$20.11	Weekly
32 Gallon Can	14.07	4.37	18.44	\$7.66	\$26.10	\$2.58	\$28.68	Weekly
40 Gallon Can	19.34	4.37	23.71	\$10.21	\$33.92	\$3.35	\$37.27	Weekly
90 Gallon Can	42.05	4.37	42.05	\$22.98	\$65.03	\$6.43	\$71.46	Weekly
OCCASIONAL 30 Gal.	4.34	4.37	6.52	\$1.77	\$8.29	\$0.82	\$9.11	Per pick-up
<b>TABLE 2 LARGE CONTAINERS Monthly service, including bin rental</b>								
1.0 CY	110.08		114.45	\$51.57	\$166.02	\$16.42	\$182.44	Once per week
2.0 CY	144.80		149.17	\$103.15	\$252.32	\$24.95	\$277.27	Once per week
4.0 CY	216.93		221.30	\$206.30	\$427.60	\$42.29	\$469.89	Once per week
6.0 CY	287.40		287.40	\$309.45	\$596.85	\$59.03	\$655.88	Once per week
15.0 CY	820.30		820.30	\$773.62	\$1,593.92	\$157.64	\$1,751.56	Once per week
20.0 CY	961.33		961.33	\$1,031.49	\$1,992.82	\$197.09	\$2,189.92	Once per week
40.0 CY	1,376.49		1,376.49	\$2,062.99	\$3,439.48	\$340.17	\$3,779.64	Once per week
<b>Per Pick up rates for one container</b>								
1.0 CY	67.80		67.80	\$11.90	\$79.70	\$7.88	\$87.58	Per pick-up
2.0 CY	122.99		122.99	\$23.80	\$146.79	\$14.52	\$161.31	Per pick-up
4.0 CY	200.53		200.53	\$47.61	\$248.14	\$24.54	\$272.68	Per pick-up
6.0 CY	296.67		296.67	\$71.41	\$368.08	\$36.40	\$404.48	Per pick-up
15.0 CY	212.30		212.30	\$178.53	\$390.83	\$38.65	\$429.48	Per pick-up
20 YD	254.62		254.62	\$238.04	\$492.66	\$48.72	\$541.38	Per pick-up
40 YD	343.70		343.70	\$476.07	\$117.84	\$11.65	\$129.49	over 2.02 tons
					\$819.77	\$81.08	\$900.85	Per pick-up
					\$117.84	\$11.65	\$129.49	over 4.04 tons

**TABLE 3 CONTAINER RENTAL RATES**

Current Year Rate	
Monthly	Daily

1 YARD  
2 YARD  
4 YARD  
6 YARD  
15 YARD  
20 YD Covered  
40 YD Covered

\$22.90  
\$25.83  
\$30.62  
\$36.63  
\$29.17  
\$36.48  
\$43.80

\$9.37  
\$9.37  
\$9.37  
\$9.37  
\$14.59  
\$14.59  
\$14.59