

**SECOND AMENDED AND RESTATED WASTE COLLECTION AGREEMENT**

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## SECOND AMENDED AND RESTATED WASTE COLLECTION AGREEMENT

This Second Amended and Restated Waste Collection Agreement (the "Agreement") is made as of December 20, 2017, by and between the City of Ukiah, a municipal corporation (hereinafter "City"), and Ukiah Waste Solutions, Inc., a California corporation (hereinafter "Company" or "Contractor"), with reference to the following:

WHEREAS, Company currently collects and disposes of Solid Waste generated in City pursuant to that certain First Amended and Restated Waste Collection Agreement dated October 7, 2015 (the "Prior Agreement"); and

WHEREAS, Company has invested its own funds to acquire land and facilities that increase diversion of Solid Waste from landfills, reduce greenhouse gasses, and create new jobs; and

WHEREAS, the parties wish to amend and restate the Prior Agreement on the terms herein;

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

1. Franchise Grant.

1.1 City hereby grants to Company, and Company hereby accepts from City, the exclusive franchise right and privilege, subject only to Section 1.3 below, to Collect, remove, transport, Recycle, Process, compost and Dispose of all Solid Waste generated in City in accordance with the provisions of City's laws and regulations pertaining to the accumulation, collection and removal thereof and any other applicable law, including applicable State and Federal statutes or administrative rules.

1.2 All Solid Waste Collected by Company pursuant to this Agreement shall become the property of Company upon its possession thereof, provided that nothing in this section shall be deemed a waiver by City of its rights and duties under this Agreement.

1.3 The franchise granted to Company hereunder shall in all respects be exclusive, except as otherwise provided by applicable law and as follows:

(a) Recyclables generated at any Residential, Commercial or Institutional Property that are Source Separated may be (i) transported personally by the Generating person for sale or donation to a Processing facility that has been duly approved and authorized as such by a governmental or other appropriate authority, including beverage containers Recycled at authorized facilities under the California Beverage Container Recycling Litter Reduction Act, (ii) may be sold or donated by the Generating person to any Charitable Entity, or (iii) sold by the Generating person to any licensed Recycler (provided the Generating person is not charged any amount by such Recycler, directly or indirectly);

(b) Solid Waste Generated at any Residential, Commercial or Institutional Property may be personally transported by the person Generating same to any licensed landfill, transfer station or materials recovery facility;

(c) Green Waste removed from a Residential, Commercial or Institutional Property by a gardening, landscaping or tree trimming contractor as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed transfer station or materials recovery facility, provided that such contractor does not store the box, bin or container used for such purpose at the location where the service is provided or remove such box, bin or container from such contractor's truck;

(d) Construction Debris and Demolition Debris removed from a Residential, Commercial or Institutional Property by a licensed construction or demolition contractor using its own employees and equipment as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed transfer station or materials recovery facility, provided that such contractor does not store the box, bin or container used for such purpose at the location where the service is provided or remove such box, bin or container from such contractor's truck; and

(e) Hazardous Waste and Household Hazardous Waste may be disposed of in any lawful manner.

1.4 To the extent permitted by applicable law, City agrees to take such steps as may be reasonably necessary to protect (a) Company's ownership of Solid Waste, including Recyclables, Green Waste and/or Mixed Organic Waste, placed at the curbside or designated collection location for Collection by Company under the terms of this Agreement, and (b) Company's exclusive rights to collect all Solid Waste, including Recyclables, Green Waste and Mixed Organic Waste, in accordance with the terms hereof. City's obligation under this Section 1.4 is subject to Company's agreement, upon request of City, to reimburse City's reasonable expenses, including attorneys' fees and litigation expenses, incurred in taking steps as agreed upon herein; provided, however, that nothing herein shall prevent Company from taking any lawful action to protect its rights hereunder.

1.5 Except as expressly provided herein, this Agreement shall supersede the Prior Agreement as of the Effective Date set forth in Section 3 below, when the Prior Agreement shall cease to have any effect (except for periods prior to such Effective Date).

## 2. Definitions.

2.1 "Authorized Facility" means a Disposal or Processing facility that has received and is maintaining in good standing all regulatory or other approvals required by law to perform the task for which Company is using the facility and which has been approved by the City pursuant to Section 5.11 below.

2.2 "Billing Fees" means the billing fees payable to City pursuant to Section 6.6 below, including any fees or charges adopted to replace or supplement such billing fees.

2.3 "CCC" means Cold Creek Compost, Inc.

2.4 "Change in Law" means the enactment, adoption, promulgation, issuance, modification, or written adoption or change in administrative or judicial interpretation on or after the Effective Date of, any law, regulation, rule, order, judgment, decree, permit, approval or other requirement of any governmental agency (including City) having jurisdiction over this Agreement or Company's performance hereunder.

2.5 "Charitable Entity" means any not-for-profit organization or entity maintained for community service, education or the public good, including service clubs, scouting organizations, religious and educational organizations and recognized charities.

2.6 "Collect" or "Collection" means the collection, transportation and removal of Solid Waste within and from City.

2.7 "Commercial Property" means property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property that are permitted under applicable zoning regulations and are not the primary use of the property.

2.8 "Construction Debris" means used or discarded construction materials generated during the construction or renovation of a building, structure or other man-made improvement on a Residential, Commercial or Institutional Property.

2.9 "Containers" means any and all types of Solid Waste receptacles supplied by Company, including but not limited to rectangular bins, cylindrical containers, and any and all other kinds of receptacles or bags, irrespective of size or shape.

2.10 "Customer" means the owner or occupant of Residential, Commercial or Institutional Property.

2.11 "Demolition Debris" means used construction materials generated during the razing or renovation of a building, structure or other man-made improvement on a Residential, Commercial or Institutional Property.

2.12 "Disposal" means the permanent placing of Solid Waste in a facility legally permitted to receive it.

2.13 "Disposal Costs" means Company's costs to deposit Solid Waste collected under this Agreement at the Transfer Station (as defined in Section 5.11 below) or any other Authorized Facility.

2.14 "Food Waste" means food scraps, including animal and vegetable foods, paper tissues, paper napkins and towels, coffee grounds and filters, pizza boxes, food soiled paper plates and cups, and miscellaneous paper not suitable for recycling that is discarded (as from a Commercial or Residential Property kitchen).

2.15 "Franchise Fees" means the franchise fees payable to City pursuant to Section 4 below, including any fees or charges adopted to replace or supplement such franchise fees.

2.16 "Generate" means to create or render. A Customer is not considered to be the Generator of Solid Waste if the material has merely been transported or moved to the Customer's site.

2.17 "Green Waste" means tree trimmings, grass cuttings, plants, leaves, branches and trees (not more than six (6) inches in diameter or more than four (4) feet in length) and similar materials generated at a Residential, Commercial or Institutional Property.

2.18 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste or extremely Hazardous Waste by the State of California, or identified as Hazardous Waste by the U.S. Environmental Protection Agency, under applicable laws or regulations.

2.19 "Household Hazardous Waste" means Hazardous Waste that is generated at Residential Properties.

2.20 "Institutional Property" means the premises or site of any governmental entity, including city, county, state and/or federal buildings, public schools, colleges, and public recreational sites.

2.21 "Mixed Organic Waste" means Green Waste and Food Waste.

2.22 "Multi-Family Residential Property" means any building or structure, connected structure or series of structures used for residential purposes, and consisting of three (3) or more distinct dwelling units, irrespective of whether the dwelling units are rental units or are owner-occupied.

2.23 "Pass-Through Costs" means Disposal Costs, Processing Costs and Regulatory Costs.

2.24 "Processing" means the act of salvaging, reprocessing, marketing and selling or reusing Recyclables (including Green Waste and Mixed Organic Waste) for the purpose of Recycling, whether directly or through one or more third parties (including, in the case of Green Waste and Mixed Organic Waste, composting or anaerobic digestion), and shall include other means of diverting Solid Waste from landfills.



2.25 "Processing Costs" means fees, if any, paid by Company to a Processing Facility for Processing Recyclables, Food Waste, Green Waste, Mixed Organic Waste, Wood Waste and Solid Waste collected by Company. The amount paid by Company to PRS for Food Waste, Mixed Organic Waste, Green Waste or Wood Waste delivered to the PRS Facility shall be as determined under that certain First Amended and Restated Agreement for Receipt of Wood Waste, Green Waste and Mixed Organic Waste among PRS, UWS and SWS of even date herewith and attached as Exhibit D hereto (the "PRS Agreement").

2.26 "Recyclables" means Solid Waste which may be reused or processed into a form suitable for reuse through reprocessing or remanufacture consistent with the requirements of the California Integrated Waste Management Act of 1989, as amended ("AB 939"), including, without limitation, paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, beverage containers, compostable materials (including Green Waste and Food Waste), and wood, brick and stone in reusable size and condition. Recyclables shall include those items of Construction Debris and Demolition Debris which are described in this Sections 2.8 and 2.11. Company shall report changes in Recyclables collected at the curbside to the City Manager who must approve those changes.

2.27 "Recycle" means the process of reusing or processing Solid Waste into a form suitable for reuse consistent with the requirements of AB 939.

2.28 "Regulatory Costs" means all regulatory and governmental fees and charges incurred by Company in connection with providing services under this Agreement, including, without limitation, Franchise Fees, Billing Fees, commercial oversight fees and landfill closure costs payable to City.

2.29 "Residential Property" means Single Family Residential Property and Multi-Family Residential Property.

2.30 "Single Family Residential Property" means any building or structure, connected structure or series of structures used for residential purposes, and consisting of less than three (3) distinct dwelling units, irrespective of whether the dwelling units are rental units or are owner-occupied.

2.31 "Solid Waste" means all putrescible and nonputrescible residential refuse, commercial solid waste, institutional solid waste, garbage, Green Waste, Food Waste, Mixed Organic Waste and rubbish as defined in Public Resources Code Section 40191, including, without limitation, for the purposes of this Agreement Construction Debris, Demolition Debris, Recyclables, but excluding Hazardous Waste and Household Hazardous Waste.

2.32 "Source Separated" means Recyclables that are separated at the Residential, Commercial or Institutional Property where they are generated from Solid Waste and other Recyclables that are Collected separately, and which are saleable or acceptable for Processing without further sorting, including, but not limited to, Recyclables consisting of glass, paper, plastic, cardboard, tin cans and aluminum cans which are separated from all other Recyclables

and Solid Waste, Green Waste which is separated from all other Recyclables and Solid Waste, and Mixed Organic Waste which is separated from all other Recyclables and Solid Waste.

3. Term. It is the parties' intention that, subject to prior termination hereunder or thereunder, the term of this Agreement be coextensive with the term of the Second Amended and Restated Transfer Station Agreement dated October 7, 2017, as modified by Addendum One to the Transfer Station Agreement dated September 21, 2016, between City and Solid Wastes Systems, Inc. (the "Transfer Station Agreement"). Accordingly, subject to earlier termination in accordance with the terms of this Agreement, the term of this Agreement shall commence on October 1, 2015 (the "Effective Date") and continue for a period of sixteen (16) years and three (3) months through December 31, 2031, provided that Contractor shall have one (1) option to extend this Agreement and the rights granted hereunder on the terms and conditions herein for a period of five (5) years (the "Option") commencing January 1, 2032 and ending December 31, 2036. Contractor's exercise of the Option is subject to the following conditions: (a) notice of Contractor's exercise of the Option must be given at least twelve (12) months prior to December 31, 2031; and (b) Solid Wastes Systems, Inc. must have satisfied conditions (b)-(d) in Section 3 of the Transfer Station Agreement. The Option may not be exercised unless Contractor is in material compliance with the terms of this Agreement, and Solid Wastes Systems, Inc. is in material compliance with the Transfer Station Agreement and the Transfer Station Lease attached as Exhibit F to the Transfer Station Agreement."

4. Franchise Fee; Other Fees. Company shall be liable to City for a franchise fee equal to fifteen percent (15%) of the gross revenues collected by Company from Customers within the City limits during the term of this Agreement or such other percentage of such gross revenues as the City Council may establish from time to time. Within thirty (30) days after the end of each calendar month, Company shall send City a statement detailing gross revenue received by Company from Commercial and Institutional Customers, and from the Multi-Family Residential Customers that Company bills, for the prior calendar month, and City shall send Company a statement showing how City calculated the amounts withheld in accordance with this Section 4 and Section 6.6 below from its payment to Company for the prior calendar month. As soon as City's billing system permits it to generate the following statement, City will provide Company within thirty (30) days after the end of each calendar month with a statement detailing the amounts billed by City to the Residential Customers billed by City, the amounts collected by City from such Customers, the amounts paid to Company and all amounts withheld from such payments in accordance with this Section 4 and Section 6.6 below for the prior calendar month. In addition, each party shall maintain copies of all its billing and collection records for three (3) years following the date of billing for inspection and verification by the other party. Company shall also owe City a Billing Fee pursuant to Section 6.6 below, a commercial oversight fee of \$10,000 per calendar year and a landfill closure cost of \$60,000 per calendar year. The Franchise Fee, the Billing Fee, the oversight fee and the landfill closure fee shall all be paid by means of City's withholding such amounts from the payments City makes to Company in respect of the revenues City bills to Residential Customers in accordance with Section 6.6 below. The annual oversight and landfill closure fees will each be withheld at the rate of one-twelfth per month.

5. Services.

5.1 Solid Waste. Company shall Collect and Dispose of all Solid Waste (other than Source Separated Recyclables, which are subject to Section 5.2 below, and Source Separated Green Waste and Mixed Organic Waste, which are subject to Section 5.3 below) generated at every Single Family Residential Property within City once each week on a regularly scheduled day, and at every Multi-Family Residential, Commercial and Institutional Property within City upon a schedule established between Company and each Generating person (or the owner, landlord or property manager, in the case of Multi-Family Residential Properties), but at least once each week on a regularly scheduled day, in accordance with this Agreement. Solid Waste shall not be put out for Collection with Hazardous Waste or Household Hazardous Waste in the same Container. Company will not collect Solid Waste, including Recyclables, on New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day or Christmas Day, and will make appropriate adjustments to its collection schedule in order to avoid an excessive accumulation of Solid Waste on such days.

5.2 Recyclables. On the same day as specified by Company under Section 5.1, Company shall collect all Source Separated Recyclables (other than Green Waste and Mixed Organic Waste) Generated at every Residential Property within City once each week on a regularly scheduled day in accordance with this Agreement. Company shall collect all Source Separated Recyclables (other than Green Waste and Mixed Organic Waste) Generated at every Commercial and Institutional Property within City upon a schedule established between Company and each Generating person (or the owner, landlord or property manager, in the case of Multi-Family Residential Properties), but not less frequently than weekly.

5.3 Green Waste and/or Mixed Organic Waste. On the same day as specified by Company under Section 5.1, Company shall collect all Source Separated Green Waste and/or Mixed Organic Waste Generated at every Residential Property within City once each week on a regularly scheduled day in accordance with this Agreement. Company shall collect all Source Separated Green Waste and/or Mixed Organic Waste Generated at each electing Commercial and Institutional Property within City upon a schedule and at rates established between Company and each Generating person, but not less frequently than weekly.

5.4 Food Waste. Subject to any revisions to the Food Waste Collection Program adopted pursuant to Section 5.17, Food Waste shall be collected only in the Green Waste containers approved by the City Manager pursuant to Sections 5.7 and 5.8 below as a component of Mixed Organic Waste deposited in said containers by Customers on Residential, Commercial or Institutional Properties.

5.5 Contaminated Materials. Company may refuse to collect Solid Waste, Recyclables, Green Waste and/or Mixed Organic Waste Generated by, and shall not be obligated to continue to provide any Solid Waste, Recyclables or Green Waste and/or Mixed Organic Waste Container to, any person who after reasonable warning, fails to sort Solid Waste, Recyclables, Green Waste and/or Mixed Organic Waste properly, or fails or refuses to allow Company to Collect, on an exclusive basis, said person's Solid Waste, Recyclables, Green Waste

and/or Mixed Organic Waste. Company shall make available to City any warning notices issued by Company for this purpose, and City shall investigate same to determine whether the person receiving the notice has violated the applicable ordinance. Company may alternatively assess a contamination charge in accordance with Exhibit E in such instances.

5.6 Changes; Missed Pick-Ups. Company shall not alter or adjust Collection services without providing prior notice to all service addresses, and any schedule modifications shall not result in reduced service frequency to any Customer. Company shall collect and remove Solid Waste and Recyclables from any premises "missed" or "skipped" during the regularly scheduled time, within one (1) working day after demand for collection is made by the Customer or City.

5.7 Containers-Single Family Residential. Company shall collect Solid Waste, Recyclables, Green Waste and Mixed Organic Waste from Single Family Residential Properties in City in the following types of Containers: Solid Waste – 20, 32, 64 or 96 gallons, Recyclables – 32 (Billy Goat Run) or 96 gallons, and Green Waste and/or Mixed Organic Waste – 32 (Billy Goat Run) or 96 gallons. Company has provided and distributed one set of Solid Waste, Recyclables and Green Waste Containers, at no cost in addition to the monthly rates, to each Single Family Residential Property in City where collection can be accomplished using Company's standard curbside collection equipment, and has also provided a new Green Waste Container or modified an existing Green Waste Container of the approved size to each such Single Family Residential Property. Nothing in this section shall be deemed to preclude the use of bins or other Containers of a size and shape, which are compatible with approved rates, acceptable to and supplied by Company and, in the event City and Company shall institute new programs hereunder which require bins or other Containers of a particular size and shape, Customers on single unit Residential Properties shall use bins or other Containers supplied by Company meeting such requirements.

5.8 Containers- Multi-Family Residential, Commercial and Institutional. Company shall collect Solid Waste, Recyclables, Green Waste and/or Mixed Organic Waste from Multi-Family Residential Properties, Commercial Properties and Institutional Properties in City in a size and shape suitable for each such location from the following capacities: 32, 64 or 96 gallon carts, two-yard, three-yard, four-yard and six-yard bins, and 15-yard, 20-yard and 30-yard boxes, provided that Green Waste and/or Mixed Organic Waste shall be collected only in 64 gallon carts or two-yard bins and only commingled in the same container.

5.9 Replacement or Addition of Containers. Company shall replace, at no charge to a Single Family Residential Generator but not more than once a calendar year, a Solid Waste, Recyclables or Green Waste Container that is stolen from the curb. If from time to time a Single Family Residential Generator may wish to have additional Containers, Company shall make additional Containers available for free and adjust the Generator's service rate. A replacement Container will be provided free to any Single Family Residential Generator returning the original Container for a Container of a different size, but not more than twice a calendar year. Company will maintain and repair Containers at its cost, and shall repair or replace damaged Containers, at Company's option, upon request of a Customer or City. The ownership of all Containers purchased by Company under this Agreement shall be and remain with Company.

5.10 Personnel and Equipment. Company shall furnish sufficient personnel, labor and equipment required for the Collection, removal, handling, Processing and Disposal of all Solid Waste Generated within the corporate limits of the City in compliance with this Agreement and the City's applicable law or City policy.

5.11 Disposal and Processing Facilities.

(a) Solid Waste. Company shall transport all Solid Waste collected by it in City to the transfer station operated by SWS and located at 3151 Taylor Drive, Ukiah, California (the "Transfer Station"). All of such Solid Waste that is not Recycled shall be hauled to a licensed disposal facility in accordance with the terms of the Transfer Station Agreement. The gate fee paid by Company to SWS for Solid Waste delivered to the Transfer Station shall be as determined under the Transfer Station Agreement.

(b) Recyclables. Company shall transport all Source Separated Recyclables (other than Green Waste and Mixed Organic Waste) Collected by it curbside from Residential Customers in City to the materials recovery and green waste facility operated by Pacific Recycling Solutions, Inc. ("PRS") and located at 4260 North State Street and 3501 Taylor Drive and 3515 Taylor Drive, Ukiah, California (the "PRS Facility") for Processing pursuant to the Amended and Restated Recyclable Materials Agreement between PRS and Company attached hereto as Exhibit B (the "Recyclable Materials Agreement"). Company shall transport all other Recyclables collected in City to the Transfer Station. Any residue from such Recyclables that cannot be Recycled shall be Disposed of in accordance with the Transfer Station Agreement if delivered to the Transfer Station, or at any Authorized Facility selected by PRS, if delivered to the PRS Facility. PRS shall pay Company the amounts determined, or charge Company the amounts permitted, under the Recyclable Materials Agreement. The amount, if any, paid by Company to SWS for Recyclables delivered to the Transfer Station shall be as determined under the Transfer Station Agreement.

(c) Green Waste and Mixed Organic Waste. Company shall transport all Source Separated Green Waste collected by it in City to any or all of the following facilities: the Transfer Station, the PRS Facility, the CCC composting facility (the "CCC Facility"), or the Scotia biomass conversion facility (the "Scotia Facility"), or other biomass conversion facility approved by the City Manager for Processing; provided, however, that, notwithstanding any other provision in this Agreement and subject to the receipt by PRS of all government approvals and permits necessary for PRS to receive, commingle, store and handle Mixed Organic Waste, Company shall deliver all Mixed Organic Waste generated in City from curbside collection from Residential, Multi-Family Residential, Commercial and Institutional Properties to the PRS Facility for transport from the PRS Facility to the CCC Facility during the term of and in accordance with the Agreement for Mixed Organic Waste Services between PRS and CCC dated September 15, 2015, which is attached as Exhibit 1 to Exhibit D to this Agreement (the "CCC Agreement"); provided, however, that the exercise of any option to extend that agreement by PRS must be approved by City. Any residue from the Green Waste or Mixed Organic Waste generated in City that cannot be Processed shall be disposed of in accordance with the Transfer

Station Agreement if delivered to the Transfer Station, or at any Authorized Facility selected by PRS, if delivered to the PRS Facility. The amount paid by Company to SWS for Green Waste delivered to the Transfer Station shall be as determined under the Transfer Station Agreement, and the amount paid by Company to PRS for Green Waste and/or Mixed Organic Waste delivered to the PRS Facility shall be as determined under the PRS Agreement.

(d) Alternate, Successor and Other Authorized Facilities. Company shall provide City with written notice as soon as Company knows that it will use a Processing Facility instead of or in addition to the PRS Facility, the Scotia Facility, or other biomass conversion facility approved by the City Manager for Processing, or the CCC Facility; provided, however, that Company and PRS shall only be entitled to propose an alternate Processing Facility (or Disposal Facility, if available) to receive Mixed Organic Waste from PRS if CCC shall refuse, due to no fault of Company, SWS or PRS, to accept Mixed Organic Waste that is not a Contaminated Load (as defined in the CCC Agreement) or if the CCC Facility shall shut down or cease operating. The notice shall provide the name and location of the proposed Facility, the anticipated gate fee and other charges for Processing at that Facility, and a copy of the proposed contract between Company and such Facility. Company shall also provide City with the increased or decreased transportation costs, if any, associated with using the proposed Facility (in the case of Mixed Organic Waste) and with any additional information about the proposed Facility reasonably requested by City. Company's use of the proposed Processing Facility shall be subject to approval by the City Council, which shall not be unreasonably withheld. In acting on a request for approval, the City shall consider, among other things, whether the use of that Facility is available at a reasonable cost to the ratepayers considering the environmental benefits and the available alternatives, and otherwise qualifies as an Authorized Facility. The City Council may consider any other factor reasonably related to a legitimate City interest in its management of waste collection and disposal, including, but not limited to, alternative technologies and facilities, the impact on rates, past performance and regulatory compliance history of the Processing Facilities under consideration, factors affecting the facilities' future performance, and the public interest. City and Company acknowledge that, as of the date of this Agreement, very few Processing Facilities will accept Mixed Organic Waste and, if not Processed, such Waste cannot be stockpiled and may not be permitted to be Disposed of in a landfill. Accordingly, and notwithstanding any other provision in this Agreement, in the case of a written request by Company to use a Processing Facility (or Disposal Facility, if available) other than CCC for Mixed Organic Waste: (i) City will, in its sole discretion and within sixty (60) days after its receipt of such request, approve the use of the proposed Facility or select an alternate Processing Facility or Disposal Facility, if available, to Process or Dispose of the Mixed Organic Waste, and (ii) Company's service rates will be adjusted to cover any increase or decrease in its costs for Processing or Disposal, and/or transportation resulting from City's decision, effective as of the date of such request; and, provided, further, that if City does not accept the proposed Facility or select an alternate Facility in accordance with this sentence, Company shall direct PRS to deliver the Mixed Organic Waste for Processing to any licensed facility, with the costs to PRS of using the new facility being deemed to consist of the tonnage of Mixed Organic Waste delivered by PRS to the new facility multiplied by the then effective per ton or per yard Rate for MSW charged at the Transfer Station, and with the excess of such costs to PRS over the costs to PRS of using the CCC Facility being passed through to Company and

treated as a Pass-Through adjustment to the Rates on the next Rate Adjustment Date pursuant to Section 6.3 below. In the event that the Transfer Station, the PRS Facility, the CCC Facility, the Scotia Facility or any other Authorized Facility described above cannot accept Solid Waste, Recyclables, Green Waste, or Mixed Organic Waste Generated in City on a temporary basis due to no fault of Company, or due to events beyond the control of Company, such as acts of God, public emergency, strike or lockout by employees of another entity unrelated to Company, Company shall locate and use an alternate licensed facility for the duration of such circumstance; provided, however, that City approval in accordance with this Section 5.11(d) shall be required if the Authorized Facility cannot accept Solid Waste for a period of time exceeding three (3) months. In addition, in adjusting the MOW Processing Rate (as defined in the PRS Agreement) at the PRS Facility during each five year review of rates conducted under Section 4c. of that Agreement, the adjustment shall include in the per ton rate all costs incurred by PRS to accommodate the Processing of Mixed Organic Waste, including, but not limited to, the capital costs of improvements to the PRS Facility, operational costs, transportation costs, and other costs required to accommodate the processing of Mixed Organic Waste and shall allow for a reasonable profit to PRS.

5.12 Local Office. Company shall maintain an office in or in close proximity to the City, as approved by the City Manager, where service may be applied for and complaints made. The address and telephone number of such office shall regularly be included in Customer billings and service information distributed to the public. Company's office shall have a responsible individual available daily between the hours of seven-thirty o'clock a.m. and four o'clock p.m., excepting Saturday, Sunday and holidays. Calls for missed collections shall be received 24 hours per day, by answering machine after four o'clock p.m. and on Saturdays, Sundays and holidays.

5.13 Pick-Ups at City Facilities. Company shall provide Containers and remove, without charge, all Solid Waste, Source Separated Recyclables and Source Separated Green and Food Waste Generated at all City facilities, including from City street cans, (of the nature and in the amounts currently collected) at least once per week, but Company may charge all other public agencies for services rendered at the same rates and on the same basis as Commercial Customers are charged for similar services. Company shall also remove, without charge, all grit and screenings from City's wastewater plant as scheduled by Company and City

5.14 Outreach and Public Education.

(a) Company shall execute a public awareness campaign for recycling by Residential and Commercial Customers, which campaign will include an up to date Web Site that includes educational information, a business waste reduction program, a school Recycling program and a flyer in Company's billing statements (or posted on Company's website) not less than every six months. City shall provide Company with free space at all City-sponsored events to promote the campaign. Additional activities shall be available at additional cost by mutual agreement of the parties. Company shall also provide each new Customer with a packet of information regarding the curbside Recycling and Green Waste programs, and, if in effect, a Food Waste program, as well as information cards to be used in the event that a Customer places

materials out for Recyclables, Green Waste or Food Waste collection that are not acceptable as set forth in this Agreement. Such card shall be left with the Customer's container or bin and shall inform the Customer why the materials were not picked up.

(b) No later than the second City Council meeting in March and September 2018, and each September thereafter, the Company shall propose to the City Manager an annual public awareness plan for the ensuing calendar year, which shall detail the Company's proposals for increasing the customers' proper use of the Recyclables and Green Waste containers provided pursuant to Section 5.7, including the required condition of the materials deposited in those containers. At the same time, the Company shall submit a report to the City Manager detailing the Company's implementation of the plan approved for the current year. The City Manager, or his or her designee, may work with the Company to improve the plan, and shall place the plan and the Company's report on a City Council meeting agenda for review and approval by the City Council.

5.15 Fall Leaf Collection. Company shall provide all Customers with reasonable leaf collection without charge during the week after Thanksgiving each year in Containers and/or bags approved or provided by Company. City shall prepare and pay for an insert in all Customer billing advertising this service.

5.16 Spring Clean-up Week. Company shall provide all Customers with reasonable Green Waste collection without charge during the third week of April each year, including the collection of tree branches not to exceed six (6) inches in diameter or four (4) feet in length.

5.17 Additional or Modified Services. Company shall provide additional or modified services upon request of City, or upon the proposal of Company as approved by City pursuant to Section 5.19 below, subject, if the costs incurred by Company to provide such services increase or decrease, to the establishment by mutual written agreement of a reasonable service Rate, or service Rate adjustment, therefor.

5.18 Permits and Licenses. Company shall obtain and maintain throughout the term of this Agreement all permits, licenses and approvals necessary or required for Company to perform the work and services described herein. City shall reasonably cooperate with Company in connection with obtaining or renewing such permits, licenses and approvals.

5.19 Diversion Requirements. In an effort to assure City's continuing compliance with the current and any future diversion requirements set forth in the California Integrated Waste Management Act of 1989, as amended ("AB 939"), Company shall propose and City may require Company to adopt and implement various recycling, Solid Waste reduction, public education and reporting programs for City and its residents, subject to City taking all actions necessary to implement such programs and approving reasonable service rate increases needed, if any, in connection therewith.

## 6. Rates.



6.1 Establishment of Rates. The service rates specified in Exhibit E to this Agreement (the "Rates") shall take effect on the Effective Date, subject to approval by the City Council and compliance with the notice and hearing requirements in Article XIII.D of the California Constitution and Government Code Sections 53750 et seq. (collectively, "Proposition 218"). Such Rates shall be adjusted pursuant to Sections 6.2, 6.3, 6.4 and 6.5 below, subject to compliance with the notice and public hearing requirements of Proposition 218 as provided in such Sections. The parties' agreement to subject the Rates and certain adjustments thereto to the notice and public hearing requirements of Proposition 218 is precautionary only and shall not be deemed an admission that Proposition 218 applies to the Rates or such adjustments. Company shall not charge any amount in excess of the approved Rates for services required by or permitted under this Agreement.

6.2 Modification Based on Consumer Price Index, Fuel Index, Recycling Adjustment and Certain Pass-Through Costs.

(a) Adjustment Calculation. Each Rate shall be adjusted January 1st every year, beginning January 1, 2018 ("Rate Adjustment Date") to reflect (i) changes in the CPI, (ii) changes in the Fuel Index, (iii) the Recycle Adjustment, and (iv) changes in certain Pass-Through Costs, all by a percentage determined in accordance with the Curbside Rate Calculation attached hereto as Exhibit C (the "Calculation").

(b) Definitions. For purposes of Rate adjustments pursuant to this Section 6.2 and the Calculation, the following terms shall have the following meanings.

(i) "Base Fuel Costs" means Company's actual costs for diesel and other fuels used in performing services under this Agreement for the year ended December 31, 2010 or \$200,641.15.

(ii) "Base Revenue" means Company's total revenue received from Customers during the Comparison Year.

(iii) "Base Year" means the year ended June 30<sup>th</sup> one year prior to June 30<sup>th</sup> of the Comparison Year.

(iv) "Comparison Year" means the year ended June 30<sup>th</sup> immediately prior to the relevant Rate Adjustment Date.

(v) "Commercial Oversight Fees" means the total amount of commercial oversight fees, including any fees or charges adopted to replace or supplement such fees, paid by Company to City in accordance with Section 4 and 6.6 during the Comparison Year.

(vi) "CPI" means the Consumer Price Index, All Urban Consumers, All items in San Francisco-Oakland-San Jose, CA, (Series CUURA422SA0, CUUSA422SA0) (Index 1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics.

(vii) "Disposal Fees – Garbage" means the actual Disposal Costs paid by Company to SWS for Solid Waste delivered by Company to the Transfer Station during the Comparison Year.

(viii) "Disposal Fees – Green Waste" means the actual Processing Costs paid by Company to PRS or any other Authorized Facility for Green Waste and/or Mixed Organic Waste delivered by Company to the PRS Facility or such Authorized Facility (including pursuant to Section 5.11(d) above), respectively, during the Comparison Year.

(ix) "Fuel Costs" means Company's actual costs for diesel and other fuels used in performing services under this Agreement during the Comparison Year.

(x) "Fuel Index" means the California No.2 Diesel Retail Sales by all Sellers (Dollars Per Gallon) published by the U. S. Energy Information Administration.

(xi) "Landfill Closure Costs" means the total amount of landfill closure fees, including any fees or charges adopted to replace or supplement such fees, paid by Company to City in accordance with Section 4 and 6.6 during the Comparison Year.

(xii) "Recycle Adjustment" means the amount, expressed as a credit or a charge in Exhibit C, that PRS pays Company for Recyclables, or the Company pays as gate fees to PRS to accept and process Recyclables at the PRS Facility, for the Comparison Year, each determined in accordance with the Recyclable Materials Agreement. "Recycle Adjustment" shall replace "Recycle Credit" in any exhibits to this Agreement.

(xiii) "Total Costs" means all of Company's costs to provide Collection services under this Agreement, including, without limitation, labor costs, vehicle and vehicle-related costs, maintenance, insurance, and transportation costs, Fuel Costs and Pass-Through Costs.

(c) Rules. For purposes of Rate adjustments pursuant to this Section 6.2 and the Calculation, the following rules shall apply.

(i) "changes in the CPI" shall be calculated as one hundred percent (100%) of the percentage increase or decrease, if any, in the CPI during the Comparison Year, using the CPI published for June of such Year as compared with the CPI published for June of the Base Year.

(ii) "changes in the Fuel Index" shall be calculated as one hundred percent (100%) of the percentage increase or decrease, if any, in the Fuel Index from June of the Base Year through June of the Comparison Year; provided, however, that, notwithstanding Section 6.2(b)(iii) above, "Base Year" for purposes of the Fuel Index Change shall mean the year ended June 30, 2010; and, provided, further, that the Fuel Index Change adjustment (i.e., Fuel Index Change multiplied by Base Fuel Cost) for any Rate Adjustment Date shall be calculated after removal of such adjustment for the prior Rate Adjustment Date.

(iii) Each adjustment element in the first part of the Calculation will be grossed up for the corresponding increase or decrease in Franchise Fees and Billing Fees (where applicable) resulting from such adjustment.

(iv) Rate adjustments for changes in Commercial Oversight Fees or Landfill Closure Costs that take effect on a date other than January 1<sup>st</sup>, as well as changes in other Pass-Through Costs, will be determined under Section 6.3 below and not under this Section 6.2.

(d) Procedure. The procedure for Rate adjustments under this Section 6.2 shall be as follows:

(i) Not later than August 15th of each year, Company shall file with the City Manager a written notice of intention to adjust each of the then current Rates effective as of January 1st of the next year in accordance with Section 6.2(a) through (c) above. Said notice shall include the Calculation, documents from which the information used to perform the Calculation was derived, and any other information and documents reasonably requested by the

City Manager to verify that the proposed Rate adjustments comply with Section 6.2(a) through (c), above.

(ii) Within sixty (60) days of the filing of the notice of intention, the City Manager shall review the notice and either confirm that the proposed Rates are within the limit of Section 6.2(a) through (c) above or establish by mutual agreement with Company any necessary changes to the proposed Rates to make such confirmation.

(iii) Not later than October 20<sup>th</sup>, the City Manager shall inform the City Council in writing of his or her determination regarding the proposed new Rates and the City Council shall be entitled to review and confirm that the proposed Rates are within the limit of Section 6.2 above or establish by mutual agreement with Company any necessary changes to the proposed Rates to make such confirmation, not later than November 20<sup>th</sup>. Any new Rates shall become effective on the following January 1<sup>st</sup>, provided that the Company and the City shall give the respective Customers that each bills written notice of the new Rates not later than December 1st.

(iv) In the event that the CPI or the Fuel Index described in Section 6.2(b) above shall be discontinued or materially modified during the term of this Agreement, the parties shall together select a replacement index and/or otherwise change Section 6.2(b) above so as to replicate, as nearly as possible, the mutual intention of the parties to rely on the results of the relevant index described in Section 6.2(b) as in effect on the date hereof.

6.3 Modification Based on Changes in Pass-Through Costs. In addition to adjustments under Section 6.2 above, each Rate shall be adjusted to reflect changes in Pass-Through Costs that are not the subject of Rate adjustments pursuant to Section 6.2 above, as follows. Using the section of the Calculation entitled "Revenue Base," each Rate shall be increased by an amount equal to the increase in applicable Pass-Through Costs, and decreased by an amount equal to the decrease in applicable Pass-Through Costs, in each case so as to cause all the Rates to compensate for such change in Pass-Through Costs as of the date such change becomes effective and either payable by or a benefit to Company, and taking into account the increase or decrease in Franchise Fees and/or Billing Fees payable in respect of such change.

6.4 Five Year Review. Once every five (5) years (beginning no later than April 2, 2021 for purposes of adjusting the Rates effective January 1, 2022), City shall conduct a review for the purpose of determining whether or not the automatic adjustments provided in Sections 6.2 and 6.5 have adequately adjusted the rates to cover the actual increase or decrease in the Company's reasonable operating costs or have exceeded those costs and whether the Rates remain fair to the ratepayer and the Company. Depending on the results of that review the City may increase or decrease the rates. City shall complete each such review and adjustment, if any, at least three months (3) prior to the beginning of such year (by September 30, 2021 in the case of the first such review), and Company shall cooperate with such review. In conducting each such review, City shall consider the following information: financial records of Company (including operating expenses and revenues and Disposal, Processing, Regulatory and other costs of Company, and Company revenues), the factors described in Section 6.5 below, and rates charged for comparable services in similar communities. Increases or decreases in the Rates pursuant to this Section 6.4 shall be subject to the notice and public hearing requirements of Proposition 218. The City may conduct such investigation as it deems necessary to perform this

review and Company shall cooperate with such investigation, which may include the City's inspection and copying of Company records and Review and/or Audit of Company's financial records by a City retained CPA, the costs of which shall be reimbursed to City from Base Revenue but treated as a pass-through cost for rate setting purposes.

6.5 Modification Based on Extraordinary Items. In addition to adjustments under Sections 6.2, 6.3 and 6.4 above, Company may request an increase in the Rates if Company's costs increase or its revenues decrease solely as the result of extraordinary circumstances beyond its control that could not have been reasonably anticipated by Company (such as a Change in Law) and if the increase in costs or decrease in revenues unavoidably adversely affects Company's opportunity to operate at a reasonable profit. Company shall have the burden of producing evidence satisfactory to City demonstrating its need for a rate increase prior to the regular Five Year Review pursuant to Section 6.4 above, including, but not limited to, reviewed or audited financial statements of Company, if requested by City. The City Council shall consider the request in good faith. Any such increase shall only be approved through the notice and hearing requirements in Proposition 218.

6.6 Billing. Company shall bill directly for all Solid Waste, Recyclables, Green Waste and Mixed Organic Waste Collection services provided herein to all Commercial and Institutional Customers, and to those Multi-Family Residential Customers assigned by City to Company for billing. Company and City shall regularly exchange billing lists to avoid double billing and to insure that Company is following the City's direction regarding its direct billing of Multi-Family Residential Customers. City shall bill all Residential Customers (except those currently billed by Company as approved by City) for all Solid Waste, Recyclables, Green Waste and Mixed Organic Waste Collection services hereunder. Each Commercial or Institutional Customer will be billed for one (1) month of service in advance upon commencement of service, and thereafter for one (1) month of service in arrears. Interest of one percent (1%) per month or the highest rate permitted under applicable law, whichever is less, shall be applied to any past due amounts from all Customers until paid in full. Amounts shall be past due if not paid within thirty (30) days of billing. Company shall have the right to refuse service to any Customer that is more than sixty (60) days delinquent on his, her or its account; provided, however, that if the City is forced to take enforcement action against a Customer who has been refused service, Company shall pay the City's costs to take such enforcement action as is necessary to protect public health and safety. Company shall pay City three percent (3%) of the amount billed by City to Residential Customers as a billing fee. City shall pay to Company all amounts billed to Residential Customers, less Billing Fees, Franchise Fees, commercial oversight fees and landfill closure costs (in accordance with Section 4 above), and a delinquency allowance equal to one-half percent (0.5%) of such billings, monthly within thirty (30) days of the end of the calendar month for which the Residential Customers are billed. When permitted by the City's accounting software, the City will reconcile the amount held by City as a delinquency allowance at the end of each calendar quarter and shall pay Company, within thirty (30) days after the end of such quarter, the portion of such amount that exceeds the actual delinquent billings for such quarter.

6.7 Proposition 218. Notwithstanding any other provision in this Agreement, in the event that the Rates or any modifications thereof are invalidated by a final non-appealable

judgment in a court action challenging them as in violation of Proposition 218, and Company's operating costs exceed its revenue for a continuous period of six months since the date of the last Rate adjustment, Company shall have the right, exercisable by written notice to City within ninety (90) days after the entry of such judgment, to terminate this Agreement effective One Hundred Twenty (120) days after City's receipt of such notice.

7. Provisions Applicable to Equipment and Personnel.

7.1 Company shall use in connection with transportation of Solid Waste modern motor dump trucks with water tight bodies, sufficient in number and capacity to efficiently perform the work required by this Agreement and to comply with all applicable legal requirements. Company shall keep the outside of the truck bodies free from dirt and filth, and shall clean the inside of the trucks in a sanitary manner on a regular basis. Suitable measures shall be taken to prevent refuse from falling into public streets or places. Company shall keep all trucks freshly painted in a uniform manner, and the firm name or logo, telephone number, and truck number of each truck shall appear in a conspicuous manner. Company shall keep all trucks in good maintenance and repair, regularly inspect same, keep accurate records of all vehicle maintenance, and replace as needed.

7.2 Company shall not litter premises in the process of making collections nor allow refuse to blow or fall from any vehicle used for collections. Company shall clean up any and all spills, including oil and debris on the streets, resulting from its operations. Should Company fail to promptly clean up such spills resulting from its operations after notice from City, Company shall be liable to City for all reasonable costs incurred by City in doing so.

7.3 Company shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection of Solid Waste or who are otherwise directly involved in such Collection. Company shall use its best efforts to assure that all employees present a neat appearance, conduct themselves in a courteous manner, and perform the work as quietly as possible. Company shall also designate one or more qualified employees as supervisors of field operations, who will devote a substantial portion of their time in field checking Collection operations, including responding to complaints.

7.4 City officials shall at all times have access on 24 hours' prior written notice to inspect Company's work during operations and Company's facilities for purposes of ascertaining full knowledge respecting the conduct of Company's operations.

8. Records and Reports.

8.1 Company shall keep and maintain accurate books and records in accordance with the most recently adopted Accounting Standards Codification of generally accepted accounting principles by the Financial Accounting Standards Board clearly showing its revenues and expenses in connection with the operations provided for in this Agreement. Company shall maintain records accounting by category for the tonnage of Solid Waste, Green Waste, Mixed Organic Waste and Source Separated Recyclables Collected pursuant to this Agreement on a

monthly, quarterly and annual basis.

8.2 Every three (3) months after the Effective Date through the date which applies for purposes of measuring compliance with the diversion requirements of AB 939, Company shall supply City with a written report setting forth Company's best estimate of the diversion rate as of the end of the most recent month. Company shall also supply City with such related information as City may reasonably request and as Company possesses or is required by this Agreement to possess concerning such estimate.

8.3 Every three (3) months after the Effective Date, Company shall provide City with a written financial report on the amounts billed by Company to each Multi-Family Residential, Commercial and Institutional Customer and the amounts paid by such Customer.

8.4 Not later than March 31 each year, or when otherwise requested by City, Company shall provide City with a complete customer list for all Customers with the service type, billing rate, and name and address of each Customer.

9. Hold Harmless and Insurance.

9.1 Company shall indemnify and hold harmless City, its City Council, boards, commissions, officers, agents, representatives and employees from any and all actions, claims or damages brought for or on account of injuries to or death of any person or damage to property of all kinds resulting from or arising out of the operations of Company, its officers, agents, employees or servants pursuant to this Agreement. The duty of Company to indemnify and hold harmless shall include the duty to defend as set forth in California Civil Code Section 2778.

9.2 Company shall have in effect during the term of this Agreement, workers' compensation and employer liability insurance providing full statutory coverage.

9.3 Company shall take out and maintain during the term of this Agreement liability insurance for the following types and minimum amounts:

(a) General liability, including comprehensive form, premises operations, products/completed operations, hazard, contractual insurance, broad form property damage, independent contractors and personal liability, with limits for bodily and property damage combined of \$500,000 each occurrence and \$500,000 aggregate.

(b) Automobile liability, including comprehensive form, owned, hired and non-owned, with a limit of \$1,000,000 for bodily injury and property damage combined.

(c) Excess liability, umbrella form with the same scope of coverage and exclusions as the underlying policies, with a limit for bodily injury and property damage combined of \$5,000,000 each occurrence and \$5,000,000 aggregate.

(d) Pollution and remediation liability with limits in an amount of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate insuring against loss, the cost of remediation and legal defense as a result of pollution conditions arising out of the collision, upset or overturn of Company vehicles in conjunction with this Agreement.

Insurance certificates and policy endorsements evidencing the required coverage shall be filed with City and shall be subject to approval by the City Attorney. City, its City Council, boards, commissions, officers, agents and employees shall be named as additional insureds on any such policies of insurance which shall also contain a provision that the insurance afforded thereby shall be primary. No such policy shall be cancelled or modified except upon thirty (30) days' prior written notice to City. Insurance is to be placed with admitted California insurers with an A.M. Best's rating of no less than A- for financial strength, AA for long-term credit rating and AMB-1 for short-term credit rating.

9.4 Company shall post a \$300,000 performance bond or financial instrument reasonably acceptable to the City Manager as security for Company's faithful performance of each and every term, covenant and condition of this Agreement to be performed by Company, provided that the cost of such bond or other instrument shall be included in Company's Collection Costs for rate making purposes.

#### 10. Remedies upon Default.

10.1 Company shall be deemed in default in the event Company defaults in the performance of any of the duties to be performed by it under the terms of this Agreement and fails to cure the default as further provided in this Section 10.1. City shall give Company written notice, either by mail or by personal service, setting forth the default. Company shall correct such default within thirty (30) days after receipt of such notice (within seven (7) days if City determines that the public health or safety is at risk) unless the default cannot, by its nature, be cured within said period, in which case the cure period shall be extended for such additional time as is reasonably necessary to effect a cure, provided that Company shall commence efforts to effect a cure as soon as practicable and shall diligently pursue the cure to completion.

10.2 In the event Company's default described in Section 10.1 is of a material provision of this Agreement and is not cured as set forth in Section 10.1 or if Company has committed Multiple Breaches (defined to mean three or more defaults of material provisions of this Agreement within an eighteen (18) month period, whether cured or not) ("Material Default") City shall have the following remedies:

10.2.1 Liquidated Damages. The parties acknowledge that City will incur damages as a result of a Material Default, and that such Material Default may not warrant termination of this Agreement. The parties agree 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 City as a result of a Material Default. 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. Liquidated damages shall be the City's exclusive damages remedy for any individual Material Default which does not result in termination of this Agreement by City. The amount of liquidated damages is \$1,000 for each day the Material Default continues after Company fails to cure until it is either cured or the City terminates this Agreement.

10.2.2 Franchise Termination. Without further notice and without suit or other proceedings, City may cancel and annul the rights and privileges of this Agreement upon a Material Default. In the event of termination of this Agreement for Material Default, City shall have the right forthwith to grant a franchise to another scavenger service or to take possession of trucks and other equipment of Company used to perform work under this Agreement. City shall have the right to retain possession of the trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by City for the purpose and City shall pay Company the reasonable rental value of such trucks and equipment, and keep them in good maintenance and repair, during the time the same are used by City. City shall also have access to Company's records for the purpose of billing service accounts during the period City is providing the services described in this Agreement, and shall retain all fees collected for such services.

10.2.3 Other Remedies. Upon termination of this Agreement based on a Material Default, City shall have all other remedies in law or equity for such Material Default.

10.3 If a dispute arises between City and Company regarding fees or any other term or provision of this Agreement, the parties agree to meet and confer in good faith to resolve the dispute. Either party may request to meet and confer by written notice to the other party. Alternatively, the parties may agree to participate in non-binding mediation. If the dispute is not resolved within thirty (30) days after the written request to meet and confer has been given or after the parties have agreed to non-binding mediation, the matter, other than an action seeking specific performance or other equitable relief, damages of Twenty Five Thousand Dollars (\$25,000) or less, or indemnification or insurance coverage pursuant to Section 9, shall be submitted to non-binding arbitration in accordance with Title 9 of the California Code of Civil Procedure, commencing with Section 1280, before a single neutral arbitrator ("Arbitrator") in Mendocino County. The Arbitrator shall be an attorney with at least ten (10) years' experience or a retired judge (or a person having comparable qualifications) and shall be mutually agreed upon by the parties. If the parties are unable to agree on an Arbitrator, the Arbitrator shall be appointed by the superior court in accordance with Cal. Code Civ. Proc. §1281.6. The fees and expenses of the Arbitrator shall be borne equally by the parties.



In the event such non-binding arbitration does not resolve the matter and in any other dispute that results in any court action, the parties waive any right to a jury trial and agree that any such action shall be filed in the federal or state courts in or for Mendocino County, each party hereby consents to the jurisdiction of and venue in such courts, the matter shall be governed by the internal laws of the State of California (irrespective of choice of law principles), and the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and disbursements incurred in such action from the non-prevailing party.

10.4 If Company shall at any time during the term of this Agreement or any extension thereof, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Company, or if Company shall be adjudged bankrupt or insolvent by any Court, or if a receiver or trustee in bankruptcy or a receiver of any property by Company shall be appointed in any suit or proceeding brought by or against Company, or if Company shall make an assignment for the benefit of creditors, then and in each and every such case, and provided that such proceedings, adjudication, appointment or assignment, as the case may be, continue in effect for ninety (90) days without being vacated, removed or withdrawn, this Agreement shall immediately cease and come to an end, and the rights and privileges granted shall immediately be cancelled and annulled without notice or action required on behalf of City.

10.5 Notwithstanding any other provision herein, no default, delay or failure to perform on the part of either party shall be considered a breach hereunder if such default, delay or failure to perform is due to causes beyond such party's control, including, but not limited to, riots, civil disturbances, actions or inactions of governmental authorities, epidemic, war, embargoes, severe weather, fire, earthquake, acts of God, defaults by the other party or defaults by carriers. In the event of any such default, delay or failure to perform, any dates or times by which the affected party otherwise is scheduled to perform shall be extended for a period of time equal in duration to the additional time required because of the excused default, delay or failure to perform.

## 11. Assignment.

11.1 Company shall not directly or indirectly, voluntarily or involuntarily assign, mortgage, pledge or encumber any interest in all or a part of this Agreement without the prior written consent of City. The City Council shall have the right to determine in its sole discretion whether to approve, conditionally approve or deny any request by Company for approval under this Section. Any action requiring City Council approval under this Section that occurs without such approval shall give City the right to terminate this Agreement without prior notice to Company or its successors or assigns. For purposes of this Section, any transaction involving the transfer, sale or exchange of stock which results in a change in majority control of Company from its owners as of the date hereof (excluding transfers between such owners and transfers by any such owners to revocable living trusts for the benefit of their families) shall be an assignment subject to City review and approval.

11.2 Any written agreement between Company and an Authorized Facility for the disposal of Solid Waste generated in City entered into after the date of this Agreement shall

provide that: (a) City is a third party beneficiary with the same right as a party to enforce such agreement; (b) any assignment of such agreement shall require City approval; (c) in the event such agreement is terminated during its term or any extended term by Company or by the Authorized Facility operator based on an uncured default by Company under such agreement, such agreement may be assumed by City without change, including as to disposal rates and terms; and (d) if terminated based on an uncured default by Company, any payments due but unpaid under such agreement on the date of termination shall continue to be an obligation of Company and the obligation to make any such payments shall not be assumed by City upon its assumption of such agreement.

12. Waiver. The waiver by either party of any breach or violation of any term or condition of this Agreement or of any provision of law by the other party must be in writing signed by the party to be charged, and shall not be deemed to be a waiver of the term, condition or provision of law, or of any subsequent breach or violation of the same or any other term, condition or provision of law. The acceptance by City of any franchise fee or other fee or other monies which may become due hereunder to City shall not be deemed to be a waiver of any preceding breach or violation by Company.

13. Administration. The administration and enforcement of this Agreement shall be the responsibility of the City Manager or a designated representative of that office. This section is not intended to indicate or suggest the City Manager has the authority to grant, amend, or revoke the franchise referenced herein. Nothing contained in this Agreement shall prohibit the City Manager from seeking approval from the City Council for any decision the City Manager is authorized to make under the terms of this Agreement.

14. Independent Contractor. Company, its employees and agents, are independent contractors and not employees or agents of City.

15. Notices. Whenever a notice or document is required or permitted to be served or given hereunder, it shall be deemed given or served when received if delivered by fax or email (with acknowledgment of receipt), certified U.S. Mail, overnight courier (such as UPS or Federal Express), or 48 hours after deposit in the U.S. Mail with first class postage affixed. Any such document or notice shall be addressed as follows:

City: City Manager  
Ukiah Civic Center  
300 Seminary Avenue  
Ukiah, California 95482  
FAX: 707-463-6204  
Email: ssangiacomo@cityofukiah.com

Company: Ukiah Waste Solutions, Inc.  
Attn: David M. Carroll, President  
P. O. Box 60  
Ukiah, California 95482

FAX: 707-462-2886  
Email: dcarroll@candswaste.com

or to such other person or address as may be specified from time to time in writing by either party in accordance with this Section.

16. Amendments. This Agreement may be amended from time to time only by written agreement between the parties signed by an authorized representative of each party. Either party may at any time request that the service or other provisions in this Agreement be modified by delivering written notice of its requested modifications to the other party. Within thirty (30) days after receipt of any such request, the parties shall meet and negotiate in good faith on adopting such requested modifications, including, without limitation, any change to the Rates necessitated by such modifications, provided that nothing herein shall obligate either party to agree on any such requested modifications.

17. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the permitted successors and assigns of the parties.

18. Integration; Severability. 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. If a court finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall remain in effect. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Ukiah Waste Solutions, Inc.

By: \_\_\_\_\_  
President

City of Ukiah

By:   
City Manager

APPROVED AS TO FORM:

  
City Attorney

ATTEST:

  
City Clerk



**EXHIBIT B**  
**RECYCLABLE MATERIALS AGREEMENT**

## EXHIBIT B

### RECYCLABLE MATERIALS AGREEMENT

THIS RECYCLABLE MATERIALS AGREEMENT (the "Agreement") is entered into as of December \_\_, 2017 by and between Pacific Recycling Solutions, Inc. ("Buyer") and Ukiah Waste Solutions, Inc. ("Seller"). Seller and Buyer shall collectively be referred to herein as the "Parties."

WHEREAS, Seller is in the business of collecting and transporting solid waste and recyclable materials; and

WHEREAS, Buyer is in the business of processing and recycling recyclable materials; and

WHEREAS, depending on market conditions, Buyer wishes to purchase or accept and recycle Recyclable Materials and Seller wishes to sell or dispose of recyclable materials collected by Seller;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, Seller and Buyer hereby agree as follows:

1. Recyclable Materials. During the term of this Agreement, Buyer agrees to purchase or accept, and Seller agrees to sell or dispose of, all of the type(s) of recyclable materials identified in Exhibit A attached hereto and incorporated herein collected by Seller curbside from single-family residences within the California City of Ukiah ("Recyclable Materials"). The Recyclable Materials shall meet the standards and specifications set forth in Exhibit 1 or such other standards and specifications as shall be agreed upon in writing by Seller and Buyer.

2. Delivery. Delivery of the Recyclable Materials shall be made from Seller to Buyer's facility located at 3501 Taylor Drive, Ukiah, California, commonly known as the Materials Recycling Facility (the "MRF"), in accordance with a schedule as agreed upon in advance by Buyer and Seller.

3. Pricing; Payment. Buyer shall pay Seller or Seller shall pay Buyer the price per ton, as calculated each calendar month in accordance with Exhibit 2 attached hereto and incorporated herein, for each ton of Recyclable Materials that is received by Buyer in accordance with Section 2. The Recyclable Materials shall be weighed at Buyer's facility, as agreed by the parties, and proof of weight shall be provided to Seller and Buyer. Buyer shall, on a monthly basis, report to Seller the number of tons of Recyclable Materials received by Buyer hereunder during the preceding month and the amount due to Seller or Buyer. Buyer shall remit to Seller, or Seller shall remit to Buyer, the full amount due no later than the fifteenth (15th) day of the month following the month in which Recyclable Materials were received by Buyer. Within thirty (30) days after the end of each year of the term of this Agreement, the Parties shall conduct a true-up of the amounts paid and the amounts owed hereunder. Each late payment shall be subject to a late fee of one and one-half percent (1-1/2%) and shall bear interest at the higher of 10% per annum or the highest rate permitted by applicable law until paid in full. Buyer shall provide Seller with information and documents necessary or reasonably requested by Seller to substantiate the numbers used to perform the calculations and determine the price or gate fee paid or charged for Recyclable Materials in accordance with Exhibit 2.

4. Term; Default; Termination.

4.1 Subject to Section 9 below, the term of this Agreement shall be for a period commencing on January 1, 2018 (the "Effective Date") and ending upon the expiration or termination of Seller's Second Amended and Restated Waste Collection Agreement with the City of Ukiah of even date herewith (the "Collection Agreement"), including extensions, subject to earlier termination on the terms herein.

4.2 If at any time either Party determines or becomes aware that the other Party is in default under or has breached any of the terms of this Agreement, the non-defaulting Party shall provide written notice to the other Party as to the nature of such default. If the defaulting Party fails to make any payment due hereunder within five (5) days, and/or fails to cure any default in the performance of any other obligation under this Agreement within thirty (30) days, after receipt of such written notice, the non-defaulting Party shall have the right to terminate this Agreement upon giving written notice; provided, however, that, other than for failure to make any payment hereunder, in the event the defaulting party shows cause why it should be entitled to reasonable additional time to cure a default, the non-defaulting Party shall allow such reasonable additional time to cure.

5. Representations and Warranties. In performing this Agreement, each of the Parties shall fully comply with all applicable federal, state and local laws, ordinances, decisions, orders, rules or regulations. Each of the Parties shall, and shall cause any carrier with which it contracts to, handle and transport the Recyclable Materials in a safe and workmanlike manner and all of the Parties' driver personnel and any carrier with which the Parties contract are, and shall at all times relevant to the performance of this Agreement remain, properly licensed and otherwise fully qualified to perform the services required hereunder. By the commencement date of this Agreement and throughout the term of this Agreement and any extension thereof, each Party shall be duly licensed, permitted and authorized pursuant to all applicable federal, state and local laws to handle and transport the Recyclable Materials and each Party's facility or facilities will have been issued all licenses, permits and authorizations required by all applicable federal, state and local laws to handle Recyclable Materials.

6. Indemnification. Each Party hereto (the "Indemnitor") hereby agrees to indemnify, hold harmless and defend the other Party, and its owners, officers, directors, employees and agents (collectively, the "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including reasonable attorneys' fees (collectively, "Damages"), which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent directly or indirectly caused by, or arising from or in connection with the breach of any representations and warranties set forth in this Agreement of, the Indemnitor, or any negligent or intentional actions or omissions or willful misconduct of the Indemnitor, its employees, officers, owners, directors or agents in the performance of this Agreement or the transportation, handling or disposition of the Recyclable Materials by the Indemnitor, its employees or subcontractors. Such indemnity shall be limited to exclude Damages to the extent they arise as a result of any negligent or intentional actions or omissions or willful misconduct of the Indemnitees or their employees, officers, owners, directors or agents. If any claims indemnified against under this paragraph have the potential for coverage under any insurance, then the indemnities set forth in this Agreement shall apply only to the extent the amount of any indemnified claim exceeds all amounts collected under any insurance covering such claim. Before pursuing recovery under this indemnity, the Indemnitees shall exhaust all recovery available for such claim from insurance.

7. Insurance. Each of the Parties shall obtain and maintain during the term of this Agreement commercial general liability insurance which conforms to the industry standard for the services being performed by each hereunder and workers' compensation insurance that complies with applicable state statutory requirements.

8. Assignment. This Agreement shall be binding upon the successors and assigns of the Parties hereto; provided, that no assignment of this Agreement shall be binding upon the other Party without the other Party's consent, which consent shall not be unreasonably withheld or delayed; and provided further, that no assignment shall be valid and binding which endeavors to relieve the assigning Party of any obligations to make payments hereunder which accrued prior to the date of assignment or in which the assignee does not affirmatively agree, in writing, to assume all obligations of the assignor under

this Agreement. No assignment can be made without the prior written approval of the City of Ukiah, exercising its rights in accordance with Section 11 of the Collection Agreement.

9. Force Majeure. Except for the obligation of Buyer to pay for Recyclable Materials purchased by Buyer or the obligation of Seller to pay for Recyclable Materials disposed of by Seller, the performance of this Agreement may be suspended to the extent that and for so long as either Party's obligations hereunder are delayed or hindered by a cause or causes beyond the reasonable control of such Party. Such causes shall include, but not be limited to, acts of God, landslides, lightning, forest fires, storms, floods, freezing, earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, or other similar causes.

10. General Provisions.

(a) No waiver by either Party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character. If any provision of this Agreement is declared invalid or unenforceable, then such portion shall be deemed to be severable from this Agreement and shall not affect the remainder hereof.

(b) This Agreement and all Exhibits hereto represent the entire understanding between the Parties and no representations, statements or agreements, unless agreed to by the parties in writing, shall modify, change, amend or otherwise affect the obligations undertaken in this Agreement. This Agreement supersedes, as of the Effective Date, the prior Recyclable Materials Agreement between the Parties dated October \_\_, 2011, and may only be amended by a written agreement executed by Seller and Buyer and approved by the City of Ukiah.

(c) All notices under this Agreement shall be in writing and shall be effective if delivered personally or sent by certified mail, postage prepaid, or by overnight carrier or confirmed facsimile to the addresses set forth on the signature page hereto or to such other address as either Party shall specify by written notice so given. Any notice sent by mail shall be deemed given and received three (3) business days after the date deposited in the mail. Any notice given by personal delivery or sent by overnight carrier or confirmed facsimile shall be deemed given upon receipt.

(d) The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the internal laws of the state of California, irrespective of choice of law principles, and applicable federal laws and regulations.

(e) The City of Ukiah shall be considered a third party beneficiary of this Agreement with all of the rights of a party to enforce the provisions of this Agreement.



EXECUTED and effective as of the Effective Date.

Pacific Recycling Solutions, Inc.

Ukiah Waste Solutions, Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Address for receipt of notices:

Address for receipt of notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT 1**

### **TYPES, STANDARDS & SPECIFICATIONS OF RECYCLABLE MATERIALS**

#### **Material Specifications**

During the course of operations, any changes to the material specifications for any inbound commodity will be agreed to by both Parties prior to introduction of the new commodity.

#### **Residential Materials**

Materials collected through curbside recycling include: glass bottles and jars, tin and aluminum cans, aluminum foil, plastic food and beverage containers (#1-#7) and milk and juice cartons, newspaper, OCC, magazines, junk mail, chipboard, white and office paper, and telephone books. Inbound materials may not contain more than 5% reject material.

#### **Commercial Materials**

##### **Clean Corrugated Containers**

Consists of baled or loose corrugated containers having liners of either test liner, jute or kraft.

Prohibitive materials.....1%

Total Outthrows may not exceed .....5%

##### **Mixed Office Paper**

Consists of office fiber waste including envelopes, files, file folders, white ledger, color ledger, CPO, copy paper (coated or uncoated), brochures, forms and associated staples, clips, bindings and bands.

- Prohibitives include glass, food, shredded paper, restroom waste and hospital waste.
- Total outthrows may not exceed 5%.

**EXHIBIT 2**  
**Pricing Schedule**

(a) **Monthly Calculation of Tonnage Payment.** The price per ton of Recyclables delivered by Seller to Buyer during any calendar month shall be calculated in accordance with Table 1 below.

Table 1

	Composite Market Value		Payment Due Amount / Ton
	From	To	
<b>No Payment Due</b>	<b>\$115.00</b>	<b>\$154.99</b>	<b>\$0.00</b>
<b>Payment to PRS</b>	<b>\$105.00</b>	<b>\$114.99</b>	<b>\$15.00</b>
	<b>\$95.00</b>	<b>\$104.99</b>	<b>\$25.00</b>
	<b>\$85.00</b>	<b>\$94.99</b>	<b>\$35.00</b>
	<b>\$75.00</b>	<b>\$84.99</b>	<b>\$45.00</b>
	<b>\$74.99</b>	<b>and below</b>	<b>\$55.00</b>
<b>Payment to UWS</b>	<b>\$155.00</b>	<b>\$164.99</b>	<b>\$5.00</b>
	<b>\$165.00</b>	<b>\$174.99</b>	<b>\$10.00</b>
	<b>\$175.00</b>	<b>\$184.99</b>	<b>\$15.00</b>
	<b>\$185.00</b>	<b>\$194.99</b>	<b>\$20.00</b>
	<b>\$195.00</b>	<b>and up</b>	<b>\$25.00</b>

\*CMV means weighted average "Composite Market Value" computed according to (b) below.

By way of example, using the tiers set forth in Table 1, Buyer or Seller shall pay for each ton of Recyclables delivered as follows:

Month	Year	UWS	Example CMV	PRS	UWS
		Recycle Tons		Recycle Cost	Recycle Cost
Jul	2017	225.00	\$123.41	\$0.00	\$0.00
Aug	2017	225.00	\$121.50	\$0.00	\$0.00
Sep	2017	225.00	\$157.75	(\$5.00)	(\$1,125.00)
Oct	2017	225.00	\$155.10	(\$5.00)	(\$1,125.00)
Nov	2017	225.00	\$130.50	\$0.00	\$0.00
Dec	2017	225.00	\$125.00	\$0.00	\$0.00
Jan	2018	225.00	\$119.10	\$0.00	\$0.00
Feb	2018	225.00	\$115.50	\$0.00	\$0.00
Mar	2018	225.00	\$110.25	\$15.00	\$3,375.00
Apr	2018	225.00	\$108.50	\$15.00	\$3,375.00
May	2018	225.00	\$104.00	\$25.00	\$5,625.00
Jun	2018	225.00	\$106.70	\$15.00	\$3,375.00
		<b>2017-2018 Comparison Year</b>		<b>\$13,500.00</b>	

(b) Composite Market Value (CMV).

The CMV for each calendar month during the term of the Agreement (commencing with January, 2018) shall equal the CMV calculated by the following per ton weighted profile, with each category of Commodity being multiplied by the average actual market price, for such Commodity, including any California Redemption Value, for such month, FOB at the PRS Facility. The Composition percentages and/or the commodity categories in the first two columns below shall be reviewed every three (3) months after the Effective Date (beginning January 1, 2018) and will be revised to reflect actual MRF commodity throughput.

**Composite Market Value Grid**  
**Annual Mo Average 2016 / 2017**

<b>% Composition</b>	<b>Commodity</b>	<b>Scrap Value/Ton</b>	<b>CRV Value/Ton</b>	<b>Weighted Value/Ton</b>
14.75%	OCC #11	\$152.75		\$22.53
23.07%	ONP #7	\$93.92		\$21.67
21.01%	Mixed Paper	\$93.92		\$19.73
0.53%	HDPE Color	\$239.42	\$80.00	\$1.69
0.51%	HDPE Natural	\$447.58	\$80.00	\$2.69
1.94%	PET	\$142.17	\$1,140.00	\$24.87
1.25%	#3 - #7 MRP	\$6.13		\$0.08
1.82%	Tin	\$31.42		\$0.57
24.41%	Glass 3 Mix	(\$40.00)	\$84.00	\$10.74
0.71%	Alum Cans	\$941.67	\$3,020.00	\$28.13
10.00%	Residual	(\$92.90)		(\$9.29)
<b>100.00%</b>				<b>\$123.41</b>

EXHIBIT C  
CURBSIDE RATE CALCULATION

**Ukiah Waste Solutions Curbside Rate  
Annual Adjustment Calculations  
Effective Date January 1, 2018**

<u>Comparison Year Costs</u>		Index	Increase / Decrease Allowed	
<b>TOTAL COSTS</b>	<b><u>\$3,403,987.29</u></b>			
Less: Fuel Cost	\$143,594.12	Fuel	15,847.62	
Less Disposal Fees - Garbage	\$1,017,118.77	SWS TS Gate	59,704.87	
Equipment and Labor Adjustment			229,062.73	
Less: Disposal Fees - Mixed Organic Waste	\$66,897.11	Negotiated	983.48	
Remove 10 & 20 Gallon Carts			(220,642.92)	
Add Enclosure Fee			(80,000.00)	
Less City Landfill Closure Costs	\$60,000.00	Set by City	0.00	
Less City Commercial Oversight fee	\$9,999.96	Set by City	0.00	
Collection Costs before Recycle Adjustment	<b><u>\$2,106,377.33</u></b>			
Recycle (Credit) / Charge			0.00	Amount + or -
Change in Franchise Fee & Billing Costs			76,361.64	
Collection COSTS Subject to CPI adj.	<b><u>\$2,106,377.33</u></b>	CPI Bay Area	73,301.93	
<b>Per Adjustment Summary</b>			<b><u>154,619.35</u></b>	<b>TOTAL</b>

<u>Revenue base</u>	Residential	Commercial	Roll Off	Commercial & RO Revenue
	0.00%	88.28%	11.72%	100.00%
	\$908,340.46	\$2,248,776.27	\$298,631.76	\$2,547,408.03
<b>2017 Comparison Year Revenue</b>	<b>\$908,340.46</b>	<b>\$2,248,776.27</b>	<b>\$298,631.76</b>	<b>\$2,547,408.03</b>
Fuel Cost	\$0.00	\$13,989.81	\$1,857.81	\$15,847.62
Disposal Fees - MOW	\$0.00	\$868.19	\$115.29	\$983.48
Equipment and Labor Adjustment	\$0.00	\$202,209.79	\$26,852.94	\$229,062.73
Add Enclosure Fee	\$0.00	(\$70,621.63)	(\$9,378.37)	(\$80,000.00)
Remove 10 & 20 Gallon Carts	\$0.00	(\$194,777.03)	(\$25,865.89)	(\$220,642.92)
Landfill closure cost	\$0.00	\$0.00	\$0.00	\$0.00
Commercial Oversight fee	\$0.00	\$0.00	\$0.00	\$0.00
Other Regulatory & Governmental Costs	\$0.00	\$0.00	\$0.00	\$0.00
Disposal Fees - Garbage	\$0.00	\$52,705.89	\$6,999.18	\$59,704.87
CPI adjustment	\$0.00	\$64,708.77	\$8,593.16	\$73,301.93
Recycle (Credit) / Charge	\$0.00	\$0.00	\$0.00	\$0.00
Total before franchise and billing fees	\$908,340.46	\$2,317,859.86	\$307,805.88	\$2,625,665.74
Franchise & Billing Fees	\$0.00	\$67,409.79	\$8,951.85	\$76,361.64
Adjusted revenue	<b><u>\$908,340.46</u></b>	<b><u>\$2,385,269.65</u></b>	<b><u>\$316,757.73</u></b>	<b><u>\$2,702,027.38</u></b>
Revenue Adjustment	<b><u>\$0.00</u></b>	<b><u>\$136,493.38</u></b>	<b><u>\$18,125.97</u></b>	<b><u>\$154,619.35</u></b>

<b>Rate adjustment as a percent</b>	<b>6.07%</b>
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**Ukiah Waste Solutions Curbside Rate  
Annual Adjustment Calculations  
Effective Date January 1, 2018**

**Fuel - June to June (EIA Petroleum & Other Liquids)**

See Fuel Cost Adjustment Worksheet

**CPI Bay Area - June to June (Index)**

June 2016	June 2017	Index Increase (Decrease)
266.041	275.304	9.263
<b>CPI % Change</b>		<b>3.48%</b>

**Transfer Station Fee (Disposal Fees - Garbage) Jan to Jan**

January 2016	January 2017	Increase (Decrease)
\$92.90	\$98.35	\$5.45
<b>Transfer Station Fee % Change</b>		<b>5.87%</b>

**Mixed Organic Waste Disposal Fee (Disposal - Green Waste) Jan to Jan**

	June 2016	June 2017	Increase (Decrease)
PRS 90% CPI Jun to Jun	241.018	244.955	3.937
CCC 90% CPI Jun to Jun	0	0	0
	\$41.51	\$42.12	1.47%
<b>Disposal Fee - Green Waste % Change</b>			<b>1.47%</b>

**Landfill Closure Costs Jan to Jan**

January 2016	January 2017	Increase (Decrease)
\$60,000.00	\$60,000.00	\$0.00
<b>Landfill Closure Costs % Change</b>		<b>0.00%</b>

**Commercial Oversight Fee Jan to Jan**

January 2016	January 2017	Increase (Decrease)
\$10,000.00	\$10,000.00	\$0.00
<b>Commercial Oversight Fee % Change</b>		<b>0.00%</b>

**Recycle (Credit) / Charge June to June**

	Amount Received	Amount Paid	Adj Amount
June 2017	\$0.00	\$0.00	\$0.00
		<b>Recycle Credit</b>	<b>\$0.00</b>

To E16 Above

<b>City Franchise Fee</b>	<b>15%</b>	<b>City Billing Fee - Residential Customers</b>	<b>3%</b>
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**EXHIBIT D**  
**FIRST AMENDED AND RESTATED AGREEMENT FOR RECEIPT OF WOOD WASTE,**  
**GREEN WASTE AND MIXED ORGANIC WASTE**



## **EXHIBIT D**

### **FIRST AMENDED AND RESTATED AGREEMENT FOR RECEIPT OF WOOD WASTE, GREEN WASTE AND MIXED ORGANIC WASTE**

THIS FIRST AMENDED AND RESTATED AGREEMENT FOR RECEIPT OF WOOD WASTE, GREEN WASTE AND MIXED ORGANIC WASTE (the "Agreement") is entered into as of October \_\_, 2015 ("Effective Date") by and between Pacific Recycling Solutions, Inc., a California corporation ("PRS"), Ukiah Waste Solutions, Inc., a California corporation ("UWS"), and Solid Wastes Systems, Inc., a California corporation ("SWS"), with reference to the following:

A. PRS owns and operates a green waste and wood waste processing facility located at 4260 North State Street and 3501 Taylor Drive and 3515 Taylor Drive, Ukiah, California (the "Facility").

B. The Facility is permitted to receive Green Waste and Wood Waste and currently accepts and processes such materials received from SWS and UWS in accordance with that certain Agreement for Receipt of Wood and Green Waste dated December 12, 2011 (the "Prior Agreement") which provides for disposal of approximately 10,000 tons, but without limit subject to the Facility's permitted capacity, annually of Materials (as defined below) at the Facility.

C. SWS is party with the City of Ukiah (the "City") to that certain First Amended and Restated Transfer Station Agreement of even date herewith for the operation of the Ukiah Valley Transfer Station for the receipt, collection, transportation and disposal of municipal, commercial and industrial solid waste (the "TS Agreement"), and UWS is party with the City to that certain First Amended and Restated Waste Collection Agreement of even date herewith for the collection and disposal of solid waste (the "Collection Agreement"), which agreements have been amended and restated to allow for the recycling of Food Waste and Mixed Organic Waste.

D. Prior to receiving Food Waste or Mixed Organic Waste, the Facility must be fully permitted to receive, commingle, store and handle Food Waste and Mixed Organic Waste.

E. The parties wish to amend and restate the Prior Agreement on the terms herein effective as of the Effective Date, so that this Agreement shall supersede the Prior Agreement as of the Effective Date, when the Prior Agreement shall cease to have any effect (except for periods prior to the Effective Date).

In consideration of the aforementioned recitals and upon the terms and conditions herein set forth, the parties hereto agree as follows:

**1. Definitions:** The following terms shall have the respective meanings set forth below:

"Green Waste" shall mean green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces and other types of organic yard waste, provided that dead trees and branches may not exceed six (6) inches in diameter or four (4) feet in length.

"Food Waste" shall mean food scraps, paper tissues, paper napkins and towels, coffee grounds and filters, pizza boxes, food soiled paper plates and cups, and miscellaneous paper not suitable for recycling that is discarded (as from a Commercial or Residential Property kitchen).

"Mixed Organic Waste" shall mean Green Waste and Food Waste.

"Wood Waste" shall mean unpainted and untreated lumber and boards.

"Materials" shall mean Green Waste, Wood Waste, Food Waste and Mixed Organic Waste.

"Process" shall mean handle, grind or chip and recycle (including by composting or anaerobic digestion) Materials.

"CCC Agreement" shall mean the Agreement for Mixed Organic Waste Services between PRS and Cold Creek Compost, Inc. ("CCC") dated September 15, 2015, a true and correct copy of which is attached hereto as Exhibit 1.

**2. Agreement to Accept Materials:** PRS agrees to accept and Process all Materials received at SWS's transfer station or collected by UWS, as provided for under the TS Agreement, the Collection Agreement, and the CCC Agreement and delivered by SWS or UWS to the Facility, on the terms herein; provided, however, that PRS shall not accept Food Waste or Mixed Organic Waste until it has been fully permitted to receive, commingle, store and handle such Materials. PRS shall receive and process all such Materials in strict compliance with its permits.

**3. Processing Rates:** As consideration for the receipt and proper Processing by PRS of the Materials delivered by SWS and UWS, SWS and UWS shall each pay PRS the following fees: (a) Thirty Dollars (\$30.00) per ton for Green Waste and/or Wood Waste received by PRS at the Facility from SWS and UWS, respectively (the "GW Processing Rate"); and (b) Thirty Dollars (\$30.00) per ton for Food Waste and/or Mixed Organic Waste received by PRS at the Facility from SWS and UWS, respectively (the "MOW Processing Rate"). The GW Processing Rate and the MOW Processing Rate shall each be adjusted pursuant to Paragraph 4 herein. Fees shall be paid by SWS and UWS within thirty (30) days of receipt from PRS of a written invoice detailing the amount of Materials received by PRS for each month.

**4. Adjustment of Processing Rates:**

a. **Adjustment based on CPI:** PRS shall have the right, commencing on January 1, 2016 and annually thereafter, to increase or decrease the GW Processing Rate and/or the MOW Processing Rate by a percentage equal to the applicable percentage increase or decrease, if any, in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-1984=100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), for the preceding year, using the Index published for the month nearest the beginning and the month nearest the end of such year. The "applicable percentage" shall be 100% for the GW Processing Rate, and 90% for the MOW Processing Rate. If PRS forgoes the application of a CPI adjustment in any year, that adjustment will be treated as a zero increase (decrease) in subsequent years, and shall not be retroactively recouped.

b. **Adjustment for Government Taxes:** Notwithstanding any other provision herein, to the extent any government having jurisdiction over the Facility should impose any fee or tax ("Government Tax") on the Facility associated with the Processing of Materials, the GW Processing Rate and/or the MOW Processing Rate, as the case may be, shall be increased by the amount of such Government Tax, either at the per ton rate of such Tax or if such Tax is not assessed on a per ton basis, in the proportion that the total tonnage of relevant Materials PRS reasonably projects to accept from SWS and UWS during the period for which the Government Tax will pertain compared with other users of the Facility. On each adjustment of the GW Processing Rate and/or the MOW Processing Rate, PRS shall deliver to SWS and UWS written notice stating the adjusted GW Processing Rate and/or MOW Processing Rate.

c. **Five year review:** During calendar year 2016 only, the parties and the City shall review the per ton MOW Processing Rate to determine what increase to that rate is warranted, effective as

of January 1, 2017, to cover the costs incurred by PRS to accommodate the processing of MOW (the "New Program"), including, but not limited to, the capital costs of improvements to the PRS Facility, operational costs, transportation costs, and other costs (not included under Section 4.d) required to accommodate the New Program and shall allow for a reasonable profit to PRS. During calendar year 2016 and every five years thereafter, the parties and the City shall review the GW Processing Rate to determine to what extent, if any, changes in 1) the market value for Green Waste and Wood Waste, 2) attendant costs including, but not limited to, changes in processing, transfer and transportation costs, and 3) the gate fee charged by CCC, pursuant to the CCC Agreement, or any successor processing site agreement, warrant an adjustment in the GW Processing Rate to account for changes in such costs, and the income produced from processed green waste and wood waste. If receiving, transfer and processing costs have become substantially more or less and/or the income produced from processed material has substantially increased or decreased during the five year period since the Effective Date or during the five year period since the last rate review, the GW Processing Rate shall be adjusted to account for these changes starting on January 1, 2017, and every five (5) years thereafter based upon such five year review process, provided that no such adjustment shall reduce the GW Processing rate to less than Thirty Dollars (\$30.00) per ton.

d. **CCC Agreement Adjustments:** In addition to adjustments under subparagraphs a., b. and c. above, any change in the gate fee charged by CCC pursuant to the CCC Agreement for Local Annual Tonnage (as defined in the CCC Agreement), or by any City-approved successor processing site for similar Materials under its agreement with PRS, that are not in either case the subject of adjustments pursuant to subparagraphs a., b. or c. above, shall be treated as an immediate pass through adjustment to the MOW Processing Rate effective as of the date of such change. For example, effective January 1, 2017 and in addition to any adjustments under subparagraphs a., b. and c. above for the period from the Effective Date through January 1, 2017, the MOW Processing Rate will be increased by Ten Dollars (\$10.00) per ton by virtue of the Ten Dollar (\$10.00) per ton increase in the gate fee charged PRS by CCC for Local Annual Tonnage under the CCC Agreement effective on such date.

5. **Term of Agreement:** This Agreement shall expire as to each of SWS and UWS on the expiration of the TS Agreement or the Collection Agreement, respectively, including extensions, subject to earlier termination, as follows. PRS, on the one hand, and either of SWS or UWS, on the other, shall be entitled to terminate this Agreement in the event of the other party's material breach hereof unless such breach is cured within thirty (30) days after written notice thereof. This Agreement shall terminate automatically as to any party in the event of such party's insolvency, bankruptcy, assignment for the benefit of creditors or other debt reorganization unless, in the case of bankruptcy, the petition is removed or withdrawn within thirty (30) days.

6. **Type of Waste:** PRS shall only accept, and SWS and UWS shall only be entitled to provide, Materials not containing any prohibited substances or hazardous waste. PRS shall be entitled to inspect the Materials and reject and/or return to SWS or UWS any Materials that are not in conformance with the standards set forth herein. Notice of rejection of non-conforming Materials shall be given in writing prior to the close of business on the day PRS receives such non-conforming Materials at the Facility. Failure to provide written notice in accordance with the terms of the preceding sentence shall forfeit PRS's right to reject such non-conforming Materials. SWS or UWS, as the case may be, shall bear all costs associated with inspecting, testing and rejecting any non-conforming Materials. Each party agrees to comply with all laws applicable to such party in the performance of its duties hereunder.

7. **Amount of Waste to be Delivered:** SWS and UWS shall deliver an aggregate minimum of 30 tons per day and an aggregate maximum of 75 tons per day of Materials to the Facility.

8. **Time of Delivery:** SWS and UWS shall be entitled to deliver Materials to the Facility six (6) days a week, Monday thru Saturday during normal operating hours.

9. **Attorney's Fees:** If any litigation is commenced between PRS and SWS or PRS and UWS to collect any sums due under this Agreement, or concerning any provisions of this Agreement, the

prevailing party in such litigation shall be entitled, in addition to such other relief deemed appropriate by the court, to reasonable attorney's fees and expenses incurred in connection with such litigation.

**10. Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of SWS, UWS and PRS.

**11. Confidentiality:** No party shall disclose the GW Processing Rate or the MOW Processing Rate to any person except with the express written permission of the other parties, which permission shall not be unreasonably withheld. Without limiting the generality of the foregoing, PRS shall agree to allow SWS or UWS to disclose such Processing Rates as may be reasonably requested or required by the City under the TS Agreement or the Collection Agreement.

**12. Counterparts:** This Agreement may be executed in counterparts, and shall be effective when fully executed by all of the parties. The parties agree to accept signatures transmitted by facsimile.

**13. Third Party Beneficiaries:** The City of Ukiah shall be deemed a third party beneficiary of this Agreement with all of the rights of a party to enforce the terms of this Agreement.

**14. Assignment:** No assignment of this Agreement can be made without the prior written approval of the City and may be assumable by the City, exercising its rights under Section 11 of each of the Waste Collection Agreement or the TS Agreement.

IN WITNESS WHEREOF, this Agreement is entered into as of the date first set forth above.

PACIFIC RECYCLING SOLUTIONS, INC.

By: 

SOLID WASTES SYSTEMS, INC.

By: 

UKIAH WASTE SOLUTIONS, INC.

By: 

**EXHIBIT 1**

**CCC AGREEMENT**

**EXHIBIT 1**  
**AGREEMENT FOR MIXED ORGANIC WASTE SERVICES**

This Agreement is made and entered into as of the latest date of execution between Pacific Recycling Solutions, Inc. (hereinafter, "PRS"), a California corporation whose main office is located in Ukiah, CA, and Cold Creek Compost, Inc. (hereinafter, "Cold Creek"), a California corporation, who shall collectively be referred to as the "Parties."

**RECITALS**

**WHEREAS**, PRS operates facilities at 4260 North State Street, Ukiah, California and/or 3515 Taylor Drive, Ukiah, California (the "PRS Facilities") where it processes organic materials collected by its Affiliates (as defined below); and

**WHEREAS**, Cold Creek operates a fully-permitted industrial compost facility at 6000 East Side Potter Valley Road, Ukiah, California (the "Site") which has capacity sufficient to perform its obligations hereunder and is subject to a valid ground lease on the Site which expires December 31, 2022; and

**WHEREAS**, PRS and Cold Creek wish to enter into this Agreement on the terms and conditions herein; and

**NOW, THEREFORE**, the Parties agree to the terms and conditions set forth herein.

**1. DEFINITIONS**

**1.1 "Mixed Organic Waste"** shall mean Green Material, Food Material, paper tissues, paper napkins and towels, coffee grounds and filters, pizza boxes, food soiled paper plates and cups, and miscellaneous paper not suitable for recycling collected at the curb from residential and commercial customers by the City Franchisee.

**1.2 "Additional Mixed Organic Waste"** shall mean the following:

**1.2.1** Agricultural Materials including, but not limited to, manure and animal bedding, poultry mortalities, grape pomace, diatomaceous earth and culled fruit;

**1.2.2** Green Material including, but not limited to, yard trimmings, brush, branches, and stumps;

**1.2.3** Wood Waste including, but not limited to, sawmill waste, source separated construction and demolition material including sheetrock (which material may contain nails, doorknobs, joist hangers);

**1.2.4 Food Materials** including, but not limited to, meat, fish, and dairy, soiled paper and waxed cardboard, fishery waste, grease trap waste, liquid wastes, including, but not limited to, wine lees, olive sludge, brewery waste and pond sludge.

**1.3 "Agricultural Materials"** has the meaning provided in Title 14 of the California Code of Regulations ("CCR") Section 17852(5).

**1.4 "Green Material"** has the meaning provided in 14 CCR §17852(21).

**1.5 "Wood Waste"** has the meaning provided in 14 CCR §17852(42).

**1.6 "Residual Waste"** shall mean any material that is not included in the definitions of Sections 1.1 through 1.5 above, and that cannot be used by Cold Creek in the ordinary course of business.

**1.7 "Contaminated Load"** shall mean the inclusion of material or liquids in a load in such quantities that one of the following occurs:

**1.7.1** The load is spoiled to the extent that the entire load is unusable by Cold Creek in the ordinary course of business as determined solely by Cold Creek.

**1.7.2** The cost of removing the contaminants exceeds the value of the organic material, as determined solely by Cold Creek.

**1.7.3** The Residual Waste exceeds the CalRecycle standard of more than 1.0 percent by weight or by such standard as is the current standard for contamination established by California Integrated Waste Management Board (CIWMB) or successor agency.

**1.8 "Compensation"** shall mean those fees described in Section 6 below due Cold Creek by PRS for Cold Creek's acceptance and processing of material described in Sections 1.1 through 1.5 above.

**1.9 "Local Annual Tonnage"** shall mean the aggregate of all material described in Section 1.1 above that is generated within the city limits of the City of Ukiah (the "City"), collected at the curb from residential and commercial customers by the City Franchisee and delivered by PRS or its Affiliates to the Site in any calendar year.

**1.10 "Other Annual Tonnage"** shall mean any material described in Sections 1.1 through 1.5 above that is generated outside of the city limits of the City, and any material described in Sections 1.2 through 1.5 above that is generated within the city limits of the City, and in each case delivered to the Site by PRS or its Affiliates in any calendar year, but excluding Sonoma Organic Material (as defined below).

**1.11 "City Franchisee"** shall mean Ukiah Waste Solutions, Inc., a California corporation and an Affiliate of PRS.

**1.12 "Affiliate"** shall mean any entity at least 50% of the voting power of which is owned by the stockholders of PRS.

**1.13 "City"** shall mean the City of Ukiah, California.

**1.14 "Sonoma Organic Material"** shall mean any material described in Sections 1.1 through 1.5 above that is generated in Sonoma County and delivered to the Site by PRS or its Affiliates in any calendar year.

**1.15 "Change in Law"** means the enactment, adoption, promulgation, issuance, modification, or written adoption or change in administrative or judicial interpretation on or after the Effective Date of, any law, regulation, rule, order, judgment, decree, permit, approval or other requirement of any governmental agency having jurisdiction over this Agreement or a Party's performance hereunder.

## **2. TERM**

**2.1** The Term of this Agreement shall commence on November 1, 2015, subject to the receipt by PRS of all government approvals and permits necessary for PRS to receive, commingle, store and handle any or all of the materials described in Sections 1.1 through 1.5 above at the PRS Facilities and approval of a Mixed Organic Waste Recycling Program by the City Council of the City of Ukiah (the "Effective Date"), and continue through December 31, 2022, unless extended pursuant to Section 2.2 below, terminated early pursuant to Section 9.1.2 or 9.1.3 below, or amended by mutual agreement in writing by the Parties.

**2.2** Cold Creek grants to PRS options to extend this Agreement under the same terms and conditions for up to nine (9) individual consecutive one (1) year periods, each consecutive option period at PRS's sole discretion. Such Agreement extension options are contingent upon a reasonable determination by



PRS and the City that Cold Creek has obtained an extension or replacement of the Lease for such periods, or control of a substitute fully-permitted site of equal functionality for such periods and under such terms and conditions that permit Cold Creek to perform its obligations under this Agreement. Upon the exercise by PRS of any option to extend this Agreement, the initial Term described in 2.1 above, plus any extension under this paragraph together shall become the Term.

**2.3** Nothing in this Agreement limits PRS's right to pursue any disposal alternatives at the end of the Term subject to City approval.

### **3. SERVICES PROVIDED BY COLD CREEK**

**3.1** Cold Creek warrants that the Site is fully permitted and has capacity sufficient to perform its obligations hereunder, and that Cold Creek controls the Site through a valid ground lease.

**3.2** Cold Creek shall process all Mixed Organic Waste, Additional Mixed Organic Waste, Agricultural Materials, Wood Waste and Green Material received from PRS or its Affiliates in a way that promotes maximum landfill diversion and shall comply with all applicable laws pertaining to the operation of the Site, including, but not limited to, closure and post closure obligations and any financial assurances. Upon request, Cold Creek agrees to provide PRS with copies of any regulatory inspection reports on its operation within a reasonable amount of time.

**3.3** Cold Creek shall maintain all-weather access to the Site for tractor-trailer configured vehicles during regular business hours as provided in Section 3.4 below.

**3.4** The Site shall be open for deliveries Monday through Friday, 7 a.m. to 3:30 p.m., and Saturday from 7 a.m. to 1 p.m., excluding the following holidays: Christmas, New Year's Day, Labor Day, Memorial Day, July 4<sup>th</sup>, and Thanksgiving Day, except that the Site will open on Labor Day, Memorial Day, and July 4<sup>th</sup> if requested by PRS where notice is given not less than seven (7) days in advance to receive PRS delivery. Such notice may be in the form of an email, phone call or other informal means; however notice shall not be deemed effective until PRS receives an acknowledgement of receipt by Cold Creek by any of the above mentioned forms.

**3.5** Cold Creek will provide an adequate, unencumbered tipping area at the Site to assure timely offloading of materials from PRS and its Affiliates' vehicles.

#### **4. SERVICES PROVIDED BY PRS**

**4.1** City Franchisee will provide a public education program educating its customers on the specific requirements of its Mixed Organic Waste program, and use its best efforts in the monitoring, inspection and enforcement procedures to minimize contamination of the Mixed Organic Waste collection.

**4.2** Commencing on the first day of the Term, PRS will deliver all Local Annual Tonnage to the Site, subject only to PRS's receiving approval from the City for such flow direction to Cold Creek.

**4.3** Commencing on the first day of the Term, PRS and/or its Affiliates may deliver, in their sole discretion, any or all Other Annual Tonnage and any or all Sonoma Organic Material to the Site, subject to PRS's having received approval where needed for such flow direction to Cold Creek from the jurisdiction holding such authority.

**4.4** PRS, at its sole discretion, may either combine Mixed Organic Waste materials with Additional Mixed Organic Waste materials and deliver them together to the Site, or deliver Mixed Organic Waste, Additional Organic Waste, Agricultural Materials, Food Materials, Wood Waste or Green Material separately.

**4.5** All materials delivered to the Site described in Sections 4.2 and 4.3 will be billed under payment terms as set forth in Section 6 below.

**4.6** PRS's deliveries of Mixed Organic Waste, Additional Mixed Organic Waste, Agricultural Materials, Food Materials, Wood Waste and Green Material to the Site shall be weighed at the Site's truck scale to determine net weight delivered. PRS agrees to deliver all material in trucks with capabilities to discharge its own load. Cold Creek may inspect each load prior to and immediately after unloading and at its discretion may reject any load pursuant to Section 5 below.

#### **5. CONTAMINATED LOADS**

**5.1** If a load is determined by Cold Creek pursuant to Section 4.6 above to be a Contaminated Load, but only as defined in Section 1.7 above, Cold Creek at its sole discretion may reject the load ("Rejected Load").

**5.2** Upon the rejection of a load by Cold Creek, Cold Creek will immediately notify PRS and hold PRS's truck and driver, if instructed to do so by PRS, to allow PRS's management to inspect such load. PRS will have the right to either remove the contamination from the load at Cold Creek's site or dispose of the Rejected Load by backhaul at PRS's sole expense.

**5.3** The cost of disposing of Residual Waste contained in a non-Contaminated Load shall be borne solely by Cold Creek.

**5.4** In no circumstances shall the materials described in Sections 1.1 through 1.5 above that are not a Contaminated Load be considered unacceptable material.

## **6. FEES**

**6.1** PRS shall pay Cold Creek for Local Annual Tonnage delivered to the Site by PRS and its Affiliates, as follows:

**6.1.1** \$16.00 per ton commencing on the Effective Date and continuing through December 31, 2016.

**6.1.2** \$26.00 per ton commencing January 1, 2017 and continuing through December 31, 2018.

**6.1.3** The per-ton fee for Local Annual Tonnage will be adjusted up or down on January 1 of each year, starting January 1, 2019, by a percentage factor equal to 0.9 (90%) of the change in the value in the twelve months before the most recent November 1 of the All Urban Consumers Consumer Price 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 index.

**6.2** PRS shall pay Cold Creek \$26.00 per ton for Other Annual Tonnage delivered to the Site by PRS and its Affiliates commencing on the Effective Date and continuing through December 31, 2018. The per-ton fee for Other Annual Tonnage will be adjusted up or down on January 1 of each year, starting January 1, 2019, by a percentage factor equal to 0.9 (90%) of the change in the value in the twelve months before the most recent November 1 of the All Urban Consumers Consumer Price 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 index.

**6.3** PRS shall pay Cold Creek \$32.00 per ton for Sonoma Organic Materials delivered to the Site by PRS and its Affiliates commencing on the Effective Date and continuing through December 31, 2018. The per-ton fee for Sonoma Organic Materials will be adjusted up or down on January 1 of each year, starting January 1, 2019, by a percentage factor equal to 0.9 (90%) of the change in the value in the twelve months before the most recent November 1 of the All Urban Consumers Consumer Price 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 index.

**6.4** Cold Creek will invoice PRS monthly with payments due in 30 days. Any payments due from PRS and not made within 30 days of receipt of the invoice shall incur additionally a 1.5% per month late charge, or the maximum rate allowed by law, whichever is less.

**6.5** Fees due to Cold Creek from PRS described in this Section for services herein shall constitute the total of all Compensation due to Cold Creek by PRS under this Agreement.

## **7. COLD CREEK LEASE**

**7.1** The Site is the subject to a valid ground lease (the Lease) between Cold Creek and Lessors, the term of which is currently set to expire on December 31, 2022. A copy of the Lease is attached hereto as Exhibit A.

**7.2** During the Term of this Agreement, Cold Creek shall notify PRS in writing, with a copy to the City Manager of the City, of any material change in the terms of the Lease within seven (7) days of Cold Creek becoming aware of such material change. A copy of a modified Lease (redacted to remove economic terms) or a memorandum of lease signed by Cold Creek and the landlord and setting forth the major non-economic terms of the modified lease, will accompany that notice, and will be added to Exhibit A of the Agreement by the Parties. Notice and delivery of a modified Lease under this Section shall be made by either USPS certified mail or by any national delivery service that provides proof of delivery.

## **8. INSURANCE AND INDEMNIFICATION**

**8.1.** Comprehensive General Liability-Cold Creek. Cold Creek 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. Cold Creek shall also obtain and maintain in full force and effect throughout the entire term of this Agreement a pollution legal liability 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, and with tail coverage extending for at least five (5) years after the expiration or termination of the term of this Agreement. Said insurance shall protect PRS and its Affiliates, and the City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage, including claims for injury, damage and remediation of alleged environmental contamination which may arise from operations performed pursuant to this Agreement, whether such operations are by Cold Creek itself, or by its agents, employees or subcontractors. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with PRS. Endorsements are required to be made a part of all of the following insurance policies required by this Section:

**8.1.1** "PRS and its Affiliates, the City, and its and their employees, agents, and officers, acting within the scope of their employment related to the services provided under this Agreement, are hereby added as insured's as respects liability arising out of activities performed by or on behalf of Cold Creek."

**8.1.2** "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to PRS and the City 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 PRS and the City."

**8.2** Cold Creek, and its successors and assigns, agree to indemnify, hold harmless and defend PRS and its Affiliates, the City, and its and their officers, agents and employees from and against any and all losses, damages, costs, charges, expenses, suits, actions, claims for injury, damage, judgments, liabilities, and attorney fees directly or indirectly, resulting from the delivery and processing of all Mixed Organic Waste, Additional Mixed Organic Waste, Agricultural Materials, Food Materials, Wood Waste and Green Material delivered to the Site by PRS or its Affiliates, arising out of/or related to Cold Creek's leasehold, operation, remediation, closure or post closure of the Site.

**8.3** Comprehensive General Liability-PRS. PRS shall name Cold Creek as an additional insured under its General Liability and Pollution insurance policy, which PRS will keep in force during the Term of the Agreement, to the extent of coverage and limits as described in Section 8.1 above.

**8.4** PRS, and its successors and assigns, agree to indemnify, hold harmless and defend Cold Creek, and its officers, agents and employees from and against any and all losses, damages, costs, charges, expenses,

suits, actions, claims for injury, damage, judgments, liabilities, and attorney fees directly or indirectly, resulting from all Mixed Organic Waste, Additional Mixed Organic Waste, Agricultural Materials, Food Materials, Wood Waste and Green Material delivered to the Site by PRS or its Affiliates.

## **9. DEFAULT**

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

**9.1.1** A party to this Agreement has: (1) failed to comply with one or more of the terms or conditions of this Agreement, or future amendment(s) to this Agreement, or (2) failed to comply with any material federal, state or local laws, ordinances, rules or regulations pertaining to the activity, or (3) when the Site's activity has been determined to be a nuisance or detrimental to the public health, safety or welfare by a body of competent authority.

**9.1.2** If Cold Creek does not perform the services for a period in excess of seven (7) days, this Agreement may be terminated by PRS. Cold Creek shall not be in default of this Agreement if Cold Creek commences such action required to cure the particular breach within seven (7) calendar days after such notice, and it continues such performance diligently until completed.

**9.1.3** If PRS does not perform the services for a period in excess of seven (7) days, this Agreement may be terminated by Cold Creek. PRS shall not be in default of this Agreement if PRS commences such action required to cure the particular breach within seven (7) calendar days after such notice, and it continues such performance diligently until completed.

**9.1.4** If Cold Creek 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 Cold Creek or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of Cold Creek for any part of Cold Creek's operating assets or any substantial part of Cold Creek's property, or shall make any general assignment for the benefit of Cold Creek's creditors, or shall fail generally to pay Cold Creek's debts as they become due or shall take any action in furtherance of any of the foregoing;

**9.1.5** A court having jurisdiction shall enter a decree or order for relief in respect of Cold Creek, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Cold Creek 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 Cold Creek or for any part of Cold Creek's operating equipment or assets, or orders the winding up or liquidation of the affairs of Cold Creek;

**9.1.6** If PRS 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, trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of PRS for any part of PRS's operating assets or any substantial part of PRS's property, or shall make any general assignment for the benefit of PRS's creditors, or shall fail generally to pay PRS's debts as they become due or shall take any action in furtherance of any of the foregoing;

**9.1.7** A court having jurisdiction shall enter a decree or order for relief in respect of PRS, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or PRS 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 PRS or for any part of PRS's operating equipment or assets, or orders the winding up or liquidation of the affairs of PRS;

**9.1.8** A seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on the operating equipment of a party to this Agreement, including without limitation, vehicles, maintenance facilities, office facilities, or any part thereof of such proportion as to substantially impair the party's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within 48 hours excluding weekends and holidays.

**9.2** Upon an "Event of Default" by either party, the non-defaulting party may suspend, amend, or terminate this Agreement.

## **10. THIRD PARTY BENEFICIARIES**

**10.1** The Parties acknowledge and declare that the City is and will be a Third Party beneficiary of this Agreement, included without limitation, with the same rights as the Parties to enforce the terms of this Agreement.

**10.2** The Parties agree that PRS's rights under this Agreement can be assigned or assumed by the City, at the City's sole option, without per ton fee adjustments to the City or its assignee, upon an Event of Default by PRS. Upon such an Event of Default, any payments then due to Cold Creek by PRS shall

continue to be the obligation of PRS and such payment obligation shall not be transferred to the City upon the assumption or assignment of such rights.

## **11. ASSIGNMENT**

**11.1** Except as provided in Sections 10.2 and 11.2, neither Party shall sell, assign or otherwise transfer, by operation of law or otherwise, its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other, which shall not be unreasonably withheld or delayed.

**11.2** Consent is not required for an assignment of this Agreement in connection with a sale or other disposition of substantially all the assets of the assigning Party's business.

**11.3** This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of each of the Parties hereto.

## **12. INDEPENDENT CONTRACTOR**

Each Party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its employees, agents and their conduct of operations. Neither Party, nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative or employee of the other Party.

## **13. MUTUAL RELEASE**

**13.1** Each Party, on behalf of itself and its affiliates (including, in the case of PRS, its Affiliates), officers, directors, insurers, attorneys, employees, agents, predecessors, successors and assigns, hereby releases and agrees to hold harmless the other Party and the other Party's affiliates (including, in the case of PRS, its Affiliates), officers, directors, insurers, attorneys, employees, agents, predecessors, successors and assigns from and against any and all claims, damages, actions, causes of action, costs and expenses (including attorney's fees), at law or in equity, known or unknown, of every type whatsoever existing as of, or hereafter arising out of or in connection with events through the Effective Date, whether resulting from the delivery by PRS and its Affiliates of materials to the Site under the conditions stated in such Affiliates' agreements with the City or otherwise, excluding any claim for breach of the release in this Section 13.



**13.2** Each Party acknowledges Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

and hereby waives any rights or benefits such Party may have under such Section or any other similar provision of law to the maximum extent permitted by law.

**13.3** Each Party hereby represents and warrants that such Party is the sole owner of, and has not assigned to any other person or entity all or any part of, any of the claims released by such Party pursuant to the release in this Section 13. Each Party further agrees never to bring any action or proceeding on any claim that such Party has released hereunder.

#### **14. ENTIRE AGREEMENT**

This Agreement represents the entire understanding and agreement between the Parties hereto relating to the processing and disposal of the materials described herein and supersedes any and all prior agreements, whether written or oral, that may exist between the Parties regarding same and supersedes any and all terms and conditions which may exist in any form with any party regarding PRS's disposal of such materials at the Site.

#### **15. SEVERABILITY**

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

#### **16. NOTICES**

All Notices by the Parties will be given at the address listed below after the signature line. Such addresses may be changed by advising the other Party in writing, using either USPS Certified Mail, or any national delivery service that provides proof of service.

#### **17. GENERAL PROVISIONS**

Either Party shall be relieved of its obligations hereunder for the duration of a Force Majeure or a Change in Law, if, as a result of a Force Majeure or a Change in Law, such party is unable to perform. A

Force Majeure shall include only events outside of the Party's control and which are either Acts of God or the unforeseeable.

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

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


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

This Agreement and amendments and supplemental agreements hereto may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands on the day and year indicated:

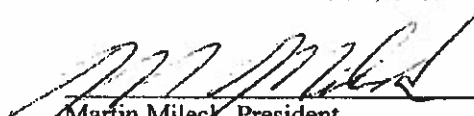
PACIFIC RECYCLING SOLUTIONS, INC.

Date: 9/15/15

  
David M. Carroll, President  
Pacific Recycling Solutions, Inc.  
3515 Taylor Drive  
Ukiah, California 95482

COLD CREEK COMPOST, INC.

Date: 9/14/15

  
Martin Mileck, President  
Cold Creek Compost, Inc.  
6000 Potter Valley Road  
Ukiah, California 95482

**EXHIBIT E  
INITIAL SERVICE RATES**

The current rate chart is attached. Commercial Green Waste and/or Mixed Organic Waste collection is charged at the same rates as Commercial Solid Waste. The chart will need to be expanded to clarify that for Single Family Residences, the Solid Waste rate includes Recyclables, Green Waste and/or Mixed Organic Waste, and that for Multi-Family Residences and Commercial Solid Waste, Recyclables and Green Waste and/or Mixed Organic Waste collection are all billed at the cart rates listed.

Rates to collect and dispose of sludge will be competitive with current rates.

Insert replacement/additional cart/container fees.

Insert all Special Charges.

Effective Date January 1, 2018

**SUMMARY OF RATE ADJUSTMENT FOR STANDARD SERVICES**

<b>Service Level</b>	<b>YEAR 2018</b>	<b>New 2018 Rate</b>
<b><u>Curbside Service</u></b>		
No Service Minimum Charge		\$ 10.00
10 gallon can rate		N/A
20 gallon can rate		17.12
32 gallon can rate		18.63
68 gallon can rate		44.03
95 gallon can rate		62.02
Other combinations - rate per gallon		0.73
1 yard bin rate		131.80
1.5 yard bin rate		155.74
2 yard bin rate		207.67
3 yard bin rate		311.48
4 yard bin rate		415.31
6 yard bin rate		622.97
<b><u>Packout Service</u></b>		
32 gallon can rate		24.40
68 gallon can rate		57.31
95 gallon can rate		82.79
Other combinations - rate per gallon		0.89
<b><u>Remote Area Service</u></b>		
Add to the Packout Service rate.		8.14
In areas with limited access, an additional fee is charged to fund the costs of special equipment and special handling necessary to provide garbage pickup services. This fee is in addition to the "Packout Service" fee listed in this schedule.		
<b><u>Commercial / Multi-Family Service</u></b>		
10 gallon can rate*		20.68
20 gallon can rate*		20.68
32 gallon can rate		20.68
68 gallon can rate		48.87
95 gallon can rate		68.87
1 yard bin rate		131.80
1.5 yard bin rate		155.74
2 yard bin rate		207.67
3 yard bin rate		311.48
4 yard bin rate		415.31
6 yard bin rate		622.97