



# City of Woodland

## REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR  
AND CITY COUNCIL

DATE: July 21, 2009

SUBJECT: Agreement for Waste Disposal Services at Yolo County Central Landfill

### **Report in Brief**

Yolo County has requested that the City of Woodland and other jurisdictions within the county enter into formal agreements with Yolo County to guarantee that specified amounts of solid waste from each jurisdiction be brought to the Yolo County Central Landfill (YCCL) in exchange for certain financial incentives. The County has requested either 10-year or 20-year agreements. The City Council Solid Waste Committee has reviewed a draft of the proposed agreement, discussed the concept, and supports its approval.

Staff recommends that the City Council approve the agreement between the City of Woodland and Yolo County for waste disposal services at YCCL for a 20-year period as described herein and authorize the City Manager to sign the agreement.

### **Background**

Waste Management is the exclusive franchise waste hauler for the City of Woodland. At the City's direction, Waste Management delivers all Municipal Solid Waste (MSW) collected by the company to the Yolo County Central Landfill (YCCL) for disposal. The MSW disposal fee at YCCL, commonly referred to as the "tipping fee" or "gate fee," has been \$36.00 per ton since 1993. The fee provides support for additional services and programs provided by YCCL to Yolo County jurisdictions, such as transfer of recyclable materials and free collection of household hazardous wastes, and helps support countywide outreach efforts promoting responsible waste disposal that are coordinated between YCCL staff and the solid waste programs of the in-county jurisdictions.

No formal agreements have existed between Yolo County and in-county jurisdictions to commit the waste streams from the jurisdictions to disposal at YCCL. The County would like to enter into formal agreements with Woodland, Davis, Winters, West Sacramento, and potentially the University of California, Davis, and other in-county jurisdictions to guarantee that specified amounts of solid waste from each jurisdiction be brought to the landfill in exchange for certain financial incentives. To this end, the Director of the Yolo County Planning and Public Works Department sent a letter

and draft agreement for waste disposal services to city managers for their consideration on March 30, 2009.

The letter notes that landfill efficiencies are contingent on the delivery of a sufficient volume of waste to cover the cost of operations. It states that YCCL has experienced a 10% decline in waste generated in Yolo County but that this reduction has been partially offset by recently executed contracts for waste delivered from outside Yolo County, also referred to as “imported waste.” Nevertheless, based on the trend in decreased waste volumes, at the time the letter was written, the YCCL staff was recommending an increase in the MSW tipping fee to \$40.00 per ton beginning July 1, 2009, for entities not having a waste disposal service agreement with the County. A lower, “contract-rate” tipping fee of \$37.08 was recommended for the in-county entities entering into the waste disposal service agreement with the County that would commit a waste stream to YCCL for either a 10-year or a 20-year period. The Yolo County Board of Supervisors subsequently approved these increased fees.

The main terms of the proposed agreement are as follows:

- The base tipping fee will be \$37.08, which equals the 2008/2009 rate of \$36.00, plus a 3% consumer price index (CPI) increase. The tipping fee is subject to an annual adjustment based on the CPI.
- The City will dispose of all of its non-recyclable MSW at YCCL. Allowance is made for potential future reductions resulting from recycling and diversion programs.
- Yolo County charges a “host fee” of \$5.00 per ton on imported waste (waste delivered from outside the county). For contracts with in-county entities with a 10-year term, Yolo County will share 40% of its imported waste host fees, or \$2.00 per ton, with the in-county contracting parties based on the previous year’s percentage of waste tonnage delivered to YCCL. If some jurisdictions don’t enter into the agreement with the County, their portions will revert to the County’s general fund.
- The host fee for imported waste will be increased to \$6.00 in 2014. For contracts with in-county entities with a 20-year term, the County will increase the portion allotted to the in-county contracting parties to 50%, or \$3.00 per ton.
- The County will reserve landfill space for the contracting parties for the term of the contract.

The agreement allows for termination without penalty for any reason, or no reason, by either party at any time during the term of the agreement by giving sixty days’ written notice to the other party.

City staff, assisted by Linda Sinderson, the Deputy Director of the Yolo County Division of Integrated Waste Management, discussed the proposed agreement in concept with the City Council Solid Waste Committee in May. The committee had no objections to moving forward with an agreement. Public Works staff and the City Attorney have been coordinating with County staff and

the County Counsel on refining the draft agreement to ensure that the terms are mutually acceptable. The cities of Winters and West Sacramento have also been working with Yolo County toward finalizing terms of the agreement, and Davis staff is beginning to meet with County staff to discuss an agreement. On June 16, the Woodland City Manager sent a letter to the Director of the Yolo County Planning and Public Works Department indicating staff's intention to recommend that the City Council approve a long-term agreement for waste disposal services upon finalization of the agreement terms. West Sacramento and Winters similarly indicated their intentions to the County, and on June 30, 2009, the Board of Supervisors authorized the County Administrator to sign the waste disposal agreements with the cities. Because of the progress made toward mutual approval of the agreements by the cities and the County, the County will charge the contract rate of \$37.08 per ton for the cities' MSW through July 2009 rather than \$40.00 per ton, with the expectation that the agreements will be finalized by August.

### **Discussion**

Staff supports entering into the proposed long-term agreement for waste disposal services at YCCL for the following reasons:

- Failure to enter into the agreement would result in an increase of more than 10% in tipping fees, from \$36.00 per ton to \$40.00 per ton. This increase would likely result in a corresponding increase in Waste Management rates for Woodland residential and commercial accounts. Entering into the agreement will guarantee a lower fee increase for MSW originating in Woodland and will not trigger an increase in Waste Management rates.
- The agreement includes an annual CPI adjustment that will allow the City to properly forecast the future cost of landfill disposal and will correspond to the annual CPI adjustment that is incorporated into the City's franchise agreement with Waste Management. The agreement will therefore provide predictability and stabilization of Woodland's MSW disposal fees.
- The agreement will maintain a cooperative partnership between the City and Yolo County supporting YCCL operations that benefit the entire community.
- The share of the collected host fees returned to the City will be a new source of revenue for the City. The current estimated income for Woodland is approximately \$25,000 per year. This estimate is based on the existing volumes of contracted imported waste and Woodland's contribution to in-county disposal at YCCL.
- It is most environmentally responsible to continue to direct Woodland's waste to YCCL, which is the landfill nearest to Woodland and therefore requiring the least amount of vehicle travel for waste hauling.

Because the amount of host-fee payments beginning in 2014 would be greater for those jurisdictions that enter into a 20-year agreement than for those entering into 10-year agreements, a 20-year agreement would be more beneficial to the City. Therefore, staff recommends approval of a 20-year agreement.

### **Fiscal Impact**

Entering into the proposed agreement for waste disposal services at YCCL will result in income to the City of approximately \$25,000 per year in the form of the City's share of host-fee payments made to the County for imported waste. This amount would likely increase in 2014 with the increase in host fees.

Not entering into the proposed agreement will result in a greater increase in tipping fees for MSW, which would likely result in an increase in Waste Management rates charged to Woodland residents and businesses. While a rate increase would also provide a greater return to the City in franchise fees, it could be financially burdensome to some community members.

### **Public Contact**

Posting of the City Council agenda. The proposed agreement was also discussed in concept at several Yolo County Waste Advisory Committee meetings during the 2008/2009 fiscal year.

### **Council Committee Recommendation**

The proposed waste disposal agreement was discussed with the City Council Solid Waste Committee in May. The committee had no objections to the agreement in concept.

### **Alternative Courses of Action**

1. Approve the agreement between the City of Woodland and Yolo County for waste disposal services at YCCL for a 20-year period as described herein and authorize the City Manager to sign the agreement.
2. Authorize the City Manager to sign the agreement for waste disposal services at YCCL for a 10-year period.
3. Cease further consideration of an agreement for waste disposal services at YCCL.

**Recommendation for Action**

Staff recommends that the City Council approve Alternative No. 1.

Prepared by: Roberta Childers  
Environmental Analyst

Reviewed by: Gregor G. Meyer  
Public Works Director

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Mark G. Deven  
City Manager

Attachments: Agreement between Yolo County and the City of Woodland for Waste Disposal  
Services at the Yolo County Central Landfill

**Agreement No. 09-\_\_\_\_**

(Agreement for Waste Disposal Services at the Yolo County Central Landfill)

**THIS AGREEMENT** is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2009, by and between the County of Yolo ("County"), and City of Woodland ("City"). The County and City are referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, County owns, operates and provides waste disposal services at the Yolo County Central Landfill (hereinafter "YCCL"), a licensed Class III landfill, having a permit to accept municipal solid waste, as defined in Section 1.19 of this Agreement; and

**WHEREAS**, City is located in Yolo County and desires to dispose of at YCCL MSW generated from residential and commercial sources within the city, as acceptable to, and authorized by the County on the terms and conditions set forth herein; and

**WHEREAS**, County and City are agreeing to fees and prices based upon the desire to maintain a stable and viable landfill system; and

**WHEREAS**, County and City desire to enter into this Agreement on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, County and City agree as follows:

**AGREEMENT**

**1. DEFINITIONS**

- 1.1 Acceptable Waste is MSW from residential and commercial sources, and C&D Debris and any other waste materials acceptable at a Class III landfill as defined in Title 27, section 20260 of the California Code of Regulations as agreed by the Director in writing prior to delivery. Acceptable Waste does not include any Unacceptable Waste as defined elsewhere in this Agreement.
- 1.2 C&D Debris means Construction and Demolition Waste.
- 1.3 Commercial shall mean of, from or pertaining to non-Residential Premises where 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 which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.4 Construction and Demolition Waste includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures.
- 1.5 Contract Tipping Fees are as established in Section 5 of this Agreement.
- 1.6 Director is County's Director of the Planning and Public Works Department or his/her designee.
- 1.7 City means the City of Woodland.
- 1.8 Designated Waste is as defined by California Water Code Section 13173.

- 1.9 Future Regulations are laws or governmental regulations that are enacted after the commencement date of this Agreement.
- 1.10 Gate Tipping Fee shall be the then current tipping fees of general application as adopted by the County Board of Supervisors for the YCCL.
- 1.11 Hauler shall refer to the entity holding a franchise issued by City for the collection, transportation, and disposal of MSW.
- 1.12 Hazardous Waste is as defined by State of California under Section 66261.3 of Title 22, Division 4.5, Chapter 11, Article 1 of the California Code of Regulations (22 C.C.R. 66261.3).
- 1.13 Holidays are defined as New Year's Day, Easter Sunday, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- 1.14 Host Fee is defined as a per ton fee (\$5.00 in current contracts) on waste received from waste contracts for the importation of waste from outside Yolo County. Quarterly, the Host Fee funds are placed in a trust fund account. The Auditor-Controller's office transfers, on a quarterly basis, 60% of revenue from the Host Fee trust fund to the general fund, and the remaining 40% to cities within Yolo County and other in-county entities (Yolo County Division of Integrated Waste Management, Tribal Authority, University of California, Davis) that have waste agreements with the County for disposing of waste at YCCL. The 40% distribution of the Host Fees to these entities shall be distributed based on the total percentage of contracted in-county generated waste each entity delivers to YCCL. If an entity has not committed its waste to YCCL, its portion of the Host Fee shall also be transferred to the county general fund on a quantity basis.  
  
Commencing on July 1, 2014, the host fee will increase to \$6.00 per ton for any contract with a city or other in-county entity within Yolo County that extends to 2029. The distribution of the \$6.00 will increase to \$3.00 for cities and other qualified entities to split in the method described in the paragraph above and \$3.00 for the County general fund.
- 1.15 Household Hazardous Waste shall have the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.
- 1.16 Maximum Daily Tonnage is defined as 30% over the daily tonnage estimates provided as calculated by the City in Section 1.18 below. Any amounts above that require the Director's prior written approval.
- 1.17 Minimum Daily Tonnage is defined as 100% of the daily tonnage collected for disposal by the City's franchised hauler. Any amounts below that tonnage require the Director's prior written approval, provided that nothing in this Agreement shall be deemed to prohibit City from recycling or otherwise diverting materials from the waste stream to the greatest extent possible.
- 1.18 City's average daily tonnage is calculated using maximum of average daily totals for weekdays (and weekends, if required), as averaged by month for the preceding three years.
- 1.19 Municipal Solid Waste ("MSW") shall be as defined by the Federal EPA as "Solid Waste" under Section 243.101(y) of the Code of Federal Regulations, Title 40, Part 243 (40 C.F.R. Part 243).

- 1.120 Residential shall mean of, from, or pertaining to single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.
- 1.21 Unacceptable Waste is Hazardous Waste and any waste that is designated as unacceptable under the County's Solid Waste Facility Permit for the YCCL.

## **2. TERM**

- A. This Agreement shall commence on July 1, 2009 and shall end on June 30, 2029 unless sooner terminated as hereinafter provided.
- B. Should either Party fail to substantially perform its obligations in accordance with this Agreement, the other Party may notify the defaulting Party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty-day period (or such longer period as is specified in the notice or agreed to by the Parties), the Party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. Neither Party waives the right to recover damages against the other for breach of this Agreement.
- C. This Agreement may be terminated without penalty for any reason, or no reason, by either Party at any time during its term, by giving sixty (60) days' written notice to the other Party. Any such termination shall be effective on July 1 of the following fiscal year, provided it is given at least sixty (60) days in advance thereof.

## **3. NOTICE**

Any notice, demand, request, consent, or approval that either Party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be deemed received either when personally delivered or three days after mailed by certified or registered U.S. Mail, postage prepaid, or the day after deposit with a nationally recognized overnight courier service, addressed as follows:

### **TO COUNTY:**

Dept. of Planning and Public Works  
County of Yolo  
44090 County Road 28H  
Woodland, CA 95776  
Attn: Linda Sinderson, Deputy Director

### **TO CITY:**

City of Woodland  
300 First Street  
Woodland, CA 95695  
Attn: Greg Meyer, Public Works Director

Either Party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other Party, which shall be effective upon receipt.

#### 4. SCOPE OF SERVICES

4.1 Commencement of Services. Services under this Agreement shall commence upon the date on which each of the following have occurred:

- A. City's delivery to County of confirmation of set up by Hauler of a Landfill Account using the forms designated by the Director; and
- B. Each party provides the other party with the evidence of insurance required by this Agreement.

4.2 Acceptance of Waste and Landfill Practices.

- A. City shall cause Hauler to deliver Acceptable Waste from within City's incorporated limits in Yolo County, except as otherwise provided herein.
- B. County shall accept, transfer, place, compact and cover Acceptable Waste as authorized by the County at YCCL according to the State of California Minimum Standards for landfill and transfer station operations, the County's standard solid waste landfill practices, and the terms and conditions of the Solid Waste Facility Permits issued by the local enforcement agency for YCCL, so as to achieve maximum diversion credit for Acceptable Waste delivered to YCCL.
- C. County shall provide City with quarterly reports showing the tonnage of all Acceptable Waste delivered to the YCCL by City for purposes of reporting the City's diversion of waste pursuant to the requirements of AB 939 (Public Resources Code §§ 40000 *et seq.*). County agrees to use its best efforts in assisting the City by providing information in its possession needed for the preparation of compliance documents required pursuant to AB 939. Said information shall be provided by County in a format consistent with California Integrated Waste Management Board guidelines. County shall maintain books and records of all financial transactions made pursuant to this Agreement. Such records shall be made available to the City at any time during business hours upon reasonable demand.
- D. In addition to County's obligations under subsection C, above, County shall provide City with quarterly reports showing the tonnage of all Acceptable Waste delivered to YCCL which is subject to payment of a host fee pursuant to this Agreement. County shall maintain books and records of all such deliveries of Acceptable Waste to YCCL, and such records shall be made available to the City at any time during business hours upon reasonable demand.

4.3 Rejection of Waste.

- A. City shall not deliver, and shall not permit Hauler to deliver, any waste required to be disposed of in a Class I landfill as defined in Title 23, section 2531 of the California Code of Regulations or a Class II landfill as defined in Title 27, section 20250 of the California Code of Regulations, and County may reject any such waste;
- B. County may also reject (i) any waste delivered by City or Hauler in excess of the Maximum Daily Tonnage set forth above; the County shall use reasonable efforts to reject all waste exceeding the Maximum Daily Tonnage at the gate; (ii) any Designated Waste; (iii) any other waste as determined to be rejected by the Director in his/her sole discretion.
- C. City shall be solely responsible to County for all costs associated with the cleanup and removal of any and all rejected waste associated with A and B

above due to the acts or omissions of City, its employees and/or agents, including but not limited to any Hauler holding a City franchise, provided that City shall not be responsible for cleanup or removal costs of waste rejected under B(iii) above unless the acceptance of such waste would have been inconsistent with this Agreement or would have violated applicable state or federal law or regulation. To the extent that County rejects waste under B(iii) above and the acceptance of such waste would not have been inconsistent with this Agreement and would not have violated any applicable state or federal law or regulation, County shall pay for City to dispose of such waste at another facility.

- 4.4 County's Right to Deny Access. County shall have the right to immediately deny access to the landfill to any employee or subcontractor of City (including Hauler) who fails in County's reasonable judgment to meet standards of conduct customary in the solid waste landfill industry, and in the event County exercises such right, County shall provide written notification thereof to the City as soon after the denial as is reasonable, but in no event more than five (5) days.
- 4.5 No Waste Delivery to Closed Landfill. Notwithstanding Section 4.2(A) or any other provision of this Agreement to the contrary, neither City nor Hauler or any other person shall be liable for sending or delivering MSW to any facility other than YCCL during periods when YCCL is not operating, not accepting waste, or does not hold all permits and approvals required to operate and accept MSW.
- 4.6 Household Hazardous Waste. County shall, while this Agreement remains in effect, continue providing Household Hazardous Waste collection at YCCL at no additional charge to City customers, as well as home collection of Household Hazardous Waste from disabled City residents and homebound elderly City residents at a reasonable cost to the same extent such services are being provided as of the effective date of this Agreement. The additional costs for home collection shall not be charged to individual customers receiving such services, but shall instead be incorporated into the Contract Tipping Fee increase during the annual CPI adjustment.
- 4.7 Continuation of Other Services. In addition to its obligations under Section 4.7, County shall, while this Agreement remains in effect, continue providing substantially similar services to those provided at YCCL as of the effective date of this Agreement without additional direct charge on any day YCCL is open to the public. Notwithstanding the foregoing, if the rate of usage or the markets or the cost of providing of any of these services changes significantly during the term of this Agreement, County may in its sole discretion charge a reasonable fee for some or all of the services that experience a significant increase in usage or cost, or if there is no available market for the discarded materials, which fee shall not exceed the cost of providing and administering such services. Before imposing any such charge, County shall consult with the Countywide Waste Advisory Committee on the proposed charge.

## **5. WASTE TIPPING FEES, INVOICING AND PAYMENTS**

5.1 **Disposal Fees.** City shall require Hauler to pay County the Contract Tipping Fees for the disposal of Acceptable Waste pursuant to this Agreement as provided by in this Section 5. City shall have no obligation to pay such fees, and shall not be liable or otherwise responsible for Hauler's failure to timely pay such fees. The fees set forth in this Section only apply if at least the Minimum Daily Tonnage is delivered to the Landfill, provided that City shall be deemed to be delivering the Minimum Daily Tonnage notwithstanding participation by City and/or its waste franchisee in diversion and recycling programs to divert waste from the Landfill. Otherwise, standard Gate Tipping Fees shall apply.

- A. City shall require Hauler to pay the County the Contract Tipping Fees for Acceptable Waste delivered by City or Hauler to YCCL for the initial year of this Agreement as follows:
  - (1) All residential and commercial MSW: - \$37.08
  - (2) Other Acceptable Waste: the current gate rate as set forth in the fee schedule included in Attachment A of this Agreement, incorporated herein by this reference.
- B. If any Federal, State or Local regulatory fee or charge is imposed, increased or decreased, County shall (i) notify City of such new, increased or decreased fee or charge promptly upon learning thereof, (ii) shall calculate increases or decreases in the Contract Tipping Fees set forth above in light of such new, increased or decreased fee(s) or charge(s); and (iii) notify City of the increased or decreased Contract Tipping Fees applicable to this Agreement in writing at least sixty (60) days in advance.
- C. If County determines that any Future Regulation necessitates an increase in the Contract Tipping Fees applicable to this Agreement or any new fees pursuant to Sections 4.7 or 4.8, the following shall apply:
  - (1) County will notify City of such Future Regulation promptly upon learning of it and determining that it necessitates an increase in the Contract Tipping Fees applicable to this Agreement or any new fees;
  - (2) County will calculate the increases in the Contract Tipping Fees or the amounts of any new fees that County believes are necessitated by such Future Regulation, and notify City of such increases not less than sixty (60) days before the effective date thereof.

5.2 Host Fee Payments.

- A. At the end of each quarter, County will calculate the amount of Host Fee payment to City based on the total Host Fee payments to the County and the relative amount of MSW deliveries in tons made by City's franchised haulers to YCCL.
- B. County will pay City within sixty (60) days of the end of each quarter for waste deliveries made by City's franchised haulers to YCCL and will mail each payment to City.

5.3 Contract Tipping Fees for Delinquent Disposal Account. If Hauler's disposal account is past due for more than thirty (30) days after the due date, County may immediately place City and Hauler's account on a cash basis and the Contract Tipping Fees shall be the the Gate Tipping Fee until City and Hauler's account is current and no longer delinquent.

5.4 CPI Adjustment.

- A. *CPI; Base Year CPI.* When used herein, "CPI" shall be 100% of the "Northern California All Urban Consumers" Consumer Price Index – All Urban Consumers, San Francisco – Oakland – San Jose, CA, All items (1982- 84=100). "Base Year" shall refer to (CPI) value for April 2009.
- B. *First CPI Adjustment.* Effective July 1, 2010, the Contract Tipping Fees shall be adjusted by an amount equal to 100% of the increase (or decrease if applicable) in the CPI value from the Base Year to April 2010.

- C. *Subsequent Annual CPI Adjustments.* Effective July 1, 2011 and each July 1 thereafter, the previous year's Contract Tipping Fees shall be adjusted by an amount equal to 100% of the increase (or decrease if applicable) in the CPI value from the Base Year to April of the current year period.
- D. *Not to Exceed the Lesser of the Gate Tipping Fee or Three Percent.* If an annual CPI adjustment would result in: (i) the Contract Tipping Fees exceeding the Gate Tipping Fee, or (ii) an increase in the Contract Tipping Fees in excess of three percent, adjustment of the Contract Tipping Fees as provided in this Section shall be made to not exceed the lesser of the Gate Tipping Fee or a three percent increase in the Contract Tipping Fees.

#### 5.5 Vehicle Tare Weights.

- A. Before the effective date of this Agreement, City shall require Hauler to provide County with a report listing each vehicle to be used to deliver waste to the YCCL and providing vehicle tare weight information as requested by the Director, including but not limited to the hauler name, tare weight, vehicle identification number, and date tare weight was determined.
- B. Prior to the commencement of deliveries, City shall require Hauler to bring to the YCCL each vehicle to be used to deliver waste to the YCCL and allow County to weigh and determine the unloaded ("tare") weight of each such vehicle.
- C. If new vehicles are placed into service and if any significant repairs to existing Vehicles are made, City shall require Hauler to promptly bring such vehicles to the YCCL before commencing any deliveries with those vehicles and allow County to weigh such vehicles and determine the tare weight of each vehicle.
- D. Upon County's written request at least every year, and more frequently if the Director determines there is reasonable suspicion that any tare weight(s) is/are not accurate, City shall bring to the YCCL each vehicle used to deliver waste to the YCCL and allow County to re-weigh and revise tare weights for all vehicles.

#### 5.6 Monthly Invoicing.

- A. County will invoice Hauler each month for waste deliveries made by Hauler on behalf of City to YCCL and for any other applicable charges (e.g., shortfall payments), and will mail and/or email each invoice to Hauler.
- B. City shall require Hauler to pay County within thirty (30) days of County's transmittal of the monthly invoice.

### 6. **APPLICABLE LAW**

- A. In the performance of the services required by this Agreement, and operation of YCCL, City and County shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws, and City shall require Hauler to so comply. This Agreement is also subject to any additional restrictions or conditions that may be imposed upon the County by the Federal or State government.
- B. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California. City hereby waives any venue or removal rights it might have under State or Federal law.

## 7. LICENSES AND PERMITS

The Parties shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Yolo and all other appropriate governmental agencies, including any certification and credentials required by County, as applicable. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by the other Party pursuant to Section 2.

## 8. INDEMNIFICATION

A. With the exception of matters falling within subsections B and C, below, City shall indemnify, defend, and hold harmless County, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, to the extent arising out of or resulting from City's breach of this Agreement or any willful or negligent acts or omissions of City, its employees and/or agents.

B. With the exception of matters falling within subsection A, above, County shall indemnify, defend, and hold harmless City, its officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, to the extent arising out of or resulting from County's breach of this Agreement or any willful or negligent acts or omissions of County, its employees and/or agents.

C. With the exception of matters falling within subsection A, above, including but not limited to any willful or negligent disposal of hazardous waste at the landfill by City or its employees and/or agents, County shall also indemnify, defend, and hold harmless City, its officers, directors, agents, employees and volunteers from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, arising from: (i) the City's activity as an "arranger" (for purposes of and as such term is defined under the the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA", 42 U.S.C. §§ 9601 *et seq.* or comparable state statutes); and (ii) property damage or injury to any person caused by MSW disposal pursuant to this Agreement. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. The Parties agree that this provision constitutes an indemnity under CERCLA to the extent of the specific provisions of this Section. This Section shall survive the expiration of the Term of this Agreement.

## 9. INSURANCE

A. During the term of this Agreement, County and City shall at all times maintain, at their respective expense, the following coverages and requirements, provided that City may require Hauler to furnish such insurance coverage in lieu of City providing such insurance. The commercial general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable). Insurance coverage shall be with limits not less than the following:
  - a. **Commercial General Liability** – \$1,000,000/occurrence
  - b. **Automobile Liability** – \$1,000,000/occurrence bodily injury and \$500,000/occurrence property damages (include coverage for Hired and Non-owned vehicles)
  - c. **Excess /Umbrella Liability** – \$3,000,000 per occurrence
  - d. **Pollution Liability** – \$3,000,000 per occurrence

- e. **Workers' Compensation – Statutory Limits/Employers' Liability** - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)
2. The County, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation coverage provided by the City or Hauler. The City, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers' compensation coverage provided by the County. (Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.)
3. Said policies shall remain in force through the life of this Agreement and, with the exception of pollution liability coverage, shall be payable on a "per occurrence" basis unless the County Risk Manager or City Risk Manager specifically consents in writing to a "claims made" basis for policies to be provided by the other party. For all "claims made" coverage, in the event that the City or County changes insurance carriers City or County shall purchase "tail" coverage covering the term of this Agreement and not less than three years thereafter if the Retroactive Date of the replacement claims made policy has been advanced. City and County further agree that tail coverage will be purchased upon the termination of this Agreement for a period of not less than three (3) years commencing with the termination date of this Agreement. Proof of such "tail" coverage shall be required at any time that the City or County changes to a new carrier or upon termination of this Agreement prior to receipt of any payments due.

Upon City's or County's request, the County or City agrees to provide a "claim polling letter" signed by the Director, County Risk Manager or other County designee for the County, or Public Works Director, City Risk Manager, or other City designee for the City, stating whether he/she is then presently aware of any pending claim or incident caused by the City or County for which the County or City intends to seek indemnification from the other party.

4. The City and County shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County's Risk Manager and City's Risk Manager reserve the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
5. Any deductibles or self-insured retentions in excess of twenty-five thousand dollars (\$25,000) must be declared to and are subject to the approval of the County Risk Manager and City Risk Manager.
6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Director or City's Public Works Director (ten (10) days for delinquent insurance premium payments).
7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-:VII, unless otherwise approved by the County Risk Manager or City Risk Manager.

8. The policies shall cover all activities of City or County, and its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
  9. [We will need to run this change past the County Risk Manager for approval.]The City and County shall respectively waive all rights of subrogation against the other party and, its officers, employees, agents and volunteers.
- B. Prior to commencing services pursuant to this Agreement, City shall furnish the Director, and County shall furnish City's Public Works Director, with original endorsements reflecting coverage required by this Agreement, whether such coverage is being furnished by City or by Hauler. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager and City Risk Manager before work commences.
- Upon Director's request, City shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications, or shall require Hauler to do so. Upon City's Public Works Director's request, County shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- C. During the term of this Agreement, City shall furnish the Director, and County shall furnish City's Public Works Director, with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement, or shall require Hauler to do so. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon Director's request, City shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications, or shall require Hauler to do so. Upon City's Public Works Director's request, County shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

## **10. DISPUTES**

Any dispute arising under this Agreement shall be decided by the County Administrative Officer who shall put his or her decision in writing and mail a copy thereof to the address for the notice to City. The decision of the County Administrative Officer shall be final unless, within thirty (30) days from the date such copy is mailed to City, City appeals the decision in writing to the County Board of Supervisors. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting City's position. In connection with any appeal proceeding under this Section, City shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the County Board of Supervisors. The County Board of Supervisors shall consider the City's appeal at a regular Board meeting held within thirty (30) days of the Board's receipt of the City's request, unless the City consents in writing to a different timetable. At the conclusion thereof, the County Board of Supervisors shall determine whether to uphold, modify or reverse the County Administrative Officer's decision. A failure by the County Board of Supervisors to timely consider the City's appeal shall constitute a decision to grant the appeal in full.

Pending a final decision of the dispute, City shall proceed diligently with the performance of this Agreement and in accordance with the County Administrative Officer's decision. The decision of the County Board of Supervisors on the appeal shall be final for purposes of exhaustion of administrative remedies. Thereafter, County and or City may pursue judicial remedies available in law or in equity, and any court hearing an action to interpret or enforce this Agreement shall consider the matter de novo, without regard to any decision reached or issued by the County Administrative Officer or County Board of Supervisors.

#### **11. CONFLICT OF INTEREST**

- A. City and County shall respectively comply with the laws and regulations of the State of California and County and City regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.
- B. City and County respectively covenant that they presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of City's and County's respective obligations and responsibilities hereunder. City and County further covenant that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until City and County completes performance of the services required of it under this Agreement.

#### **12. SUBCONTRACTS, ASSIGNMENT**

The services and obligations provided to and/or required of City and County under this Agreement are not assignable in whole or in part, except as otherwise provided herein.

#### **13. AMENDMENT**

This Agreement may be amended only by written instrument signed by the County and City; provided, however, that the Parties agree to amend this Agreement as necessary to reflect any changes to State, Federal or local laws and regulations.

#### **14. WAIVER**

The waiver by either Party or any of its officers, agents or employees or the failure of either Party or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement by that Party.

#### **15. SUCCESSORS**

This Agreement shall bind the successors and assign of County and City in the same manner as if they were expressly named.

#### **16. AUTHORIZED REPRESENTATIVE**

The person executing this Agreement on behalf of either Party affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of that Party and to bind that Party to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of a Party and that Party understand that the other Party is relying on this representation in entering into this Agreement.

## 17. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

## 18. ADDITIONAL PROVISIONS

- A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should a Party choose to excuse any given failure of the other Party to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document.

All conditions, covenants and obligations continue to apply no matter how often a Party may choose to excuse the failure of the other Party to perform them.

- B. Except where specifically stated otherwise in this document, the promises in this document benefit the County and City only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or nonperformance of this Agreement, nor do the Parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

## 19. RELATED AGREEMENTS

If the County enters into a similar agreement with another municipality with terms that differ materially from those set forth herein, it will provide that agreement to the City for review. At the City's sole option, it may require the County to amend this Agreement to include any provisions from the other agreement that it deems more favorable to its interests than those herein. The County will then enter into an amendment at the earliest reasonable opportunity.

## 20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and City and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any Party to this Agreement.

## 21. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both Parties.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**CITY OF** \_\_\_\_\_

**COUNTY OF YOLO**

By: \_\_\_\_\_  
[Insert Name & Title]:

By: \_\_\_\_\_  
Mike McGowan, Chair  
Yolo County Board of Supervisors

Date: \_\_\_\_\_

Attest:

Date: \_\_\_\_\_

Attest: Ana Morales, Clerk  
Yolo County Board of Supervisors

By: \_\_\_\_\_  
Deputy (Seal)

Approved as to Form:  
Robyn Truitt Drivon, County Counsel

By: \_\_\_\_\_  
Philip J. Pogledich, Deputy

Attachment A