

CITY OF SONOMA  
RESOLUTION NO. 87-94

RESOLUTION OF THE CITY OF SONOMA APPROVING A  
CONTRACT BETWEEN CITY OF SONOMA AND JOHN D.  
Curotto, MARGARET Curotto AND JOHN D. Curotto, JR.,  
FOR GARBAGE AND RUBBISH COLLECTION AND DISPOSAL

BE IT RESOLVED by this Council that the City of Sonoma shall contract with John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. for a ten year extension of the currently effective contract for garbage and rubbish collection and disposal as said extension is authorized under Section 7.08.030 of the Sonoma Municipal Code.

BE IT FURTHER RESOLVED, that the current contract shall be revised to reflect the recommendations of the Community Services Commission and the Environmental Advisory Commission as approved by the City Council and that such revised extended contract in the form attached to this resolution as Exhibit A is hereby approved.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the revised extended contract in the form attached hereto on behalf of the City.

The foregoing Resolution was duly adopted this 19th day of October, 1994, by the following roll call vote:

AYES: (5) Ctm. Cannard, Carter, Ramponi, Riboni, Mayor Cermak  
NOES: (0) None  
ABSENT: (0) None  
ABSTAINING: (0) None

ATTEST:

  
CITY CLERK

  
MAYOR

I hereby certify that the foregoing resolution was duly and regularly passed by the City Council of the City of Sonoma at a regular meeting thereon held October 19, 1994.

  
CITY CLERK

## EXHIBIT A

### CONTRACT

AGREEMENT made as of October 19, 1994 by and between the CITY OF SONOMA, a Municipal Corporation, hereinafter designated as City and JOHN D. CUROTTA, MARGARET CUROTTA, his wife, and JOHN D. CUROTTA, JR., designated as Contractor.

In consideration of the mutual promises herein contained, it is agreed by and between the City and Contractor as follows:

### DEFINITIONS

1. The words "garbage" and "rubbish" as used herein shall have the same meanings as given to those words and defined in Section 7.08.020 of the Sonoma Municipal Code (SMC) except the word "rubbish" as used herein shall not include recyclable material or yard waste for which there is an established collection program as provided herein. The word "Contractor" as used herein shall be synonymous with the words "City Garbage Collector" or "Collector" as used in Chapter 7.08 of said Code.

### PERIOD GRANTED

2. The City hereby gives and grants to said Contractor for a period of time beginning on the date of this agreement and extending through May 31, 2007, the exclusive contract right and privilege to collect and dispose of all garbage and rubbish accumulating in the City of Sonoma in accordance with the provisions of Chapter 7.08, SMC and to conduct curbside recycling and yard waste collection programs as provided herein, providing, however, that areas annexed to the City shall continue to be serviced by such other collector for such period of time as provided by law. The term of this contract consists of the remaining term of the contract between City and Contractor dated June 1, 1987 (which previous contract is superseded by this contract) and an additional period of 10 years as provided for in Section 7.08.030, SMC.

### OPTION

3. The City reserves the right, at its sole option, to extend or renegotiate this contract, if requested to do so by the contractor, for additional periods not to exceed ten years each as provided in Section 7.08.030, SMC.

### WAIVER OF CITY LICENSE

4. Contractor is hereby granted permission to transport garbage, rubbish, yard waste and recyclable materials over the streets of the City of Sonoma without any license, charge or fee of any kind or nature therefore except as herein provided, regardless of whether said materials are collected within or without the city limits of City.

### MONTHLY FRANCHISE PAYMENT

5. The Contractor is obligated to make franchise payments to the City of Sonoma in the amount of five percent of total collections (gross income) for garbage and rubbish collected within the City. Franchise payment shall be made on a quarterly basis not later than the fifteenth day of the month following each calendar quarter. Payment due dates shall be January 15, April 15, July 15 and October 15 of each year. It is further agreed that the Contractor shall be entitled to a credit of \$20 per month in consideration of the pick up and removal of garbage and rubbish from the City Plaza and the Casa Grande Parking Lot and \$31.00 per month in consideration of the pick up and removal of garbage and rubbish from the City's receptacles located on the streets adjacent to the City Plaza which amounts shall be deducted from the franchise payments.

### COLLECTION CHARGES

6. Contractor is hereby designated as "City Garbage Collector" of City and is authorized to collect, from any person from whom garbage and/or rubbish is collected under the provisions of this contract or of Chapter 7.08 SMC, the rates provided for in Section 7.08.070 SMC.

7. It is understood by the parties to this agreement that Contractor is converting his garbage and rubbish collection operation from a manual pickup to an automated pickup operation. Until automation is accomplished, an additional charge as established by resolution of the City Council shall be charged to customers who request pick up at other than curbside locations, except that no additional charge will be made for persons physically unable to place their trash container at the curb either before or after automation.

8. When Contractor is requested to make a special pickup of garbage or rubbish as provided in Section 7.08.080 SMC, Contractor shall make a reasonable charge for said service. In the case of a dispute between Contractor and the customer, the City Manager shall make a final determination as to the appropriate charge.

9. The maximum rates which Contractor may charge for collection of garbage and rubbish as established by resolution of the City Council and in effect as of the date of this agreement shall remain in effect until changed by further resolution of the City Council. Contractor may request changes in said maximum rates from time to time and shall present evidence supporting said requests. The City Council shall consider Contractor's requests for rate adjustments and may make such rate adjustments as it determines are justified. Rates will not be reduced unless requested or agreed to in writing by the Contractor.

### DUTIES AND CONDITIONS

10. Contractor hereby agrees to collect and remove free of charge to City all garbage and rubbish from the City Hall and other City buildings and further agrees to collect and remove all garbage and rubbish covered by this agreement at least once each calendar week; agrees to use in the collection and transportation of garbage and rubbish, modern motor trucks having water-tight bodies and to keep the outside of the truck bodies clean and to clean the inside thereof each time after dumping. Contractor shall take all suitable measures to prevent garbage and rubbish from falling on the streets of the City of Sonoma.

11. Contractor agrees to perform all of the work in collection provided for herein and in Chapter 7.08, SMC under the supervision and to the satisfaction of the City Manager or his duly authorized agent, but this provision shall not be so interpreted as to, nor is it intended to, make Contractor an employee of the City.

12. Contractor agrees that no garbage or rubbish of any character shall be transferred by him from one vehicle to another on any street unless it shall become necessary when a loaded or partially loaded vehicle is unable to propel itself in its usual manner, except that where topography (steep grades) or other physical limitations relating to access makes it impractical to use the vehicle normally used for collection of garbage and rubbish, Contractor may use a smaller vehicle and then transfer the material collected to the larger collection vehicle. In such cases, Contractor shall take all necessary measures to prevent garbage and rubbish from falling on the street and shall immediately clean up any spilled materials.

13. Contractor agrees that he will dispose of all garbage and rubbish at a place satisfactory to the City, and until further notice, the County of Sonoma transfer station in the Sonoma Valley is designated as the place of disposal.

14. Contractor shall at all times, both before and after automation of the trash collection service, provide for the collection of trash from single 20-gallon trash containers furnished by those customers desiring to use smaller containers than those currently available for automated collection. It is understood that Contractor will provide this service at the monthly rate approved by the City Council even though service of such 20-gallon containers must be performed manually. If 20-gallon containers designed for automated trash collection become available in the future, the Contractor may furnish such containers to those customers using 20-gallon containers in order to fully automate the collection service.

#### CURBSIDE RECYCLING

15. Contractor agrees to provide a residential curbside recycling program. Recyclables to be collected by Contractor at curbside shall initially include California redemption plastic bottles and aluminum cans, glass containers and newspapers. Contractor shall show a good faith effort to expand the curbside recycling program to include additional recyclable materials consisting of but not limited to, steel cans, additional plastics, cardboard and paper products, and other aluminum products. Contractor shall conduct an annual collection of used telephone books consisting of curbside collection and at least one drop-off location. Contractor shall report to the City Council at least annually on the status and success of the curbside recycling program. Contractor shall make no additional charge to residents for operation of the curbside recycling program.

#### YARD WASTE

16. Contractor shall conduct a yard waste collection program satisfactory to the City Council. Cost of said program shall be included in the general rates charged by the Contractor for collection of garbage and rubbish or as otherwise approved by the City Council. Contractor shall report to the City Council at least annually on the status and success of the yard waste program.

## BOND

17. Contractor shall execute a surety or cash bond in the sum of \$5,000 payable to the City of Sonoma, conditioned upon his faithful compliance with this contract and with the provisions of Chapter 7.08, SMC.

## LIABILITY INSURANCE

18. Contractor agrees to indemnify and hold the City harmless from any liability incurred in connection with any work or operation performed pursuant to this contract and will furnish the City with a policy or certificate of liability insurance wherein the City is named as an additional insured. Said policy or certificate of insurance shall not be subject to cancellation or termination for any reason whatsoever until 30 days after the City has received written notice thereof. The policy or certificate of insurance shall provide the following minimum coverage:

A. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

C. Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident.

## GENERAL PROVISIONS

19. It is mutually agreed that the provisions of Chapter 7.08, SMC govern this contract and that Contractor shall at all times comply with said provisions.

20. Waiver by the City of prompt or exact performance at any one time or in any one particular shall not be deemed a waiver at any other time or in any other particular. This contract may be terminated by the City at any time for cause consisting of breach by the Contractor. The City Council of the City of Sonoma shall be the judge of what constitutes good cause for the cancellation of this contract in accordance with the provisions of this paragraph.

21. Contractor shall not assign any of his rights, privileges or interests in or to this contract or any portion thereof without first obtaining the written consent of City. In the event Contractor attempts to assign this contract or any portion thereof without the consent of City so first obtained, then this contract shall, at the option of City, immediately be null and void from and after the date of such attempted assignment.

22. Contractor shall assist the City with compliance with the source reduction and recycling mandates of AB 939 as applied to the City of Sonoma. City agrees to cooperate with Contractor in achieving said compliance.

23. Contractor shall provide clear and concise information to Sonoma residents regarding the various programs and services provided under this contract. Such information shall

include, but need not be limited to, newspaper ads and printed handout materials which shall be distributed at least annually. City agrees to cooperate with Contractor by printing information on City water bills when feasible to do so as determined by the City Manager.

24. This agreement contains the entire understanding between the parties and supersedes, as is provided in paragraph 2, the contract dated June 1, 1987 and all previous agreements regarding the collection and disposal of garbage or rubbish, whether oral or in writing. This agreement may be modified only in accordance with its terms or by a writing signed by the City and the Contractor.

25. This agreement is binding on the parties, their heirs, legal representatives, executors, administrator and legal assigns.

IN WITNESS WHEREOF, we have hereunto affixed our signatures and Seal of the City this 29th day of November, 1994.

CITY  
By: [Signature]  
MAYOR  
ATTEST: [Signature]  
CITY CLERK

CONTRACTOR  
[Signature]  
[Signature]  
[Signature]

APPROVED AS TO FORM

[Signature]  
CITY ATTORNEY

## FIRST AMENDMENT TO CONTRACT

This amendment is executed at Sonoma, California, on December 19, 2001, by and between the City of Sonoma, a municipal corporation, hereinafter designated as CITY and John D. Curotto, Margaret Curotto, his wife, and John D. Curotto, Jr., designated as CONTRACTOR.

WHEREAS, the CITY entered into a contract with CONTRACTOR on October 19, 1994; and

WHEREAS, the parties have mutually agreed to an extension of said contract.

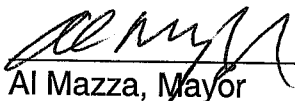
NOW THEREFORE, the CITY and the CONTRACTOR agree as follows:

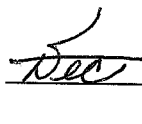
1. The original term extending through May 31, 2007, as set forth in Section 2 of the October 19, 1994 Contract is extended for an additional term of five (5) years, through May 31, 2012.

2. All other terms and conditions of said October 19, 1994 Contract shall continue in full force and effect

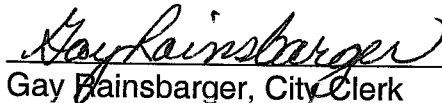
"CITY"

DATE:

  
Al Mazza, Mayor

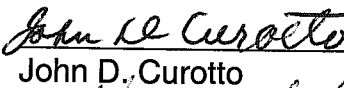
 Dec Jan. 16, 2002

Attest:

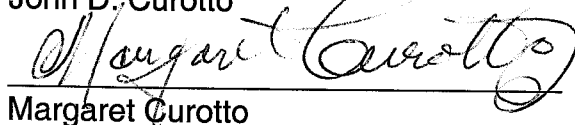
  
Gay Hainsbarger, City Clerk


"CONTRACTOR"


DATE:


  
John D. Curotto

 1-11-2002

  
Margaret Curotto

 1-11-2002

  
John D. Curotto, Jr.

 1-11-2002

## CONSENT FOR ASSIGNMENT

This Consent For Assignment is executed at Sonoma, California on November 18, 2002, between the City of Sonoma, a municipal corporation, hereinafter designated as CITY and Sonoma Garbage Collectors, a California Corporation, hereinafter designated as CONTRACTOR.

WHEREAS the CITY entered into a Contract on October 19, 1994 with John D. Curotto, Margaret Curotto, and John D. Curotto, Jr.; and

WHEREAS the CITY has received a request for assignment of said Contract; and


WHEREAS the CITY has determined that the proposed assignee, Sonoma Garbage Collectors, is fully qualified and has demonstrated the ability to fulfill all terms of the Contract.

NOW THEREFORE, The CITY and CONTRACTOR agree as follows:

1. The CITY hereby consents to assignment of the October 19, 1994, Contract for Garbage Collection, as amended, to Sonoma Garbage Collectors, a California Corporation.
2. Sonoma Garbage Collectors accepts such assignment.
3. All other terms and conditions of the October 19, 1994, Contract for Garbage Collection, as amended, remain in full force and effect.


"CITY":

Date:

  
Al Mazza, Mayor

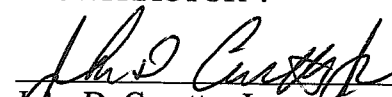
Nov. 18, 2002

Attest:

  
Gay Rainsbarger, City Clerk

"CONTRACTOR":

Date:

  
John D. Curotto, Jr.  
President  
Sonoma Garbage Collectors

11-20-02



## SECOND AMENDMENT TO CONTRACT

This second amendment to the October 19, 1994 agreement between the City of Sonoma and John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (contract assigned to Sonoma Garbage Collectors on November 20, 2002) is executed at Sonoma, California on ~~December 16, 2006~~ <sup>my Sunday</sup> ~~16, 2006~~ <sup>17</sup>.

1. Section ~~26~~ <sup>my Sunday</sup> shall be added to the above-referenced contract to read as follows:

### 26. ADDITIONAL SERVICES

Effective May 1, 2007, Contractor shall provide the following:

#### A. Community Cleanup

(1) Twice a year curbside pickup of acceptable items from residential customers without separate charge. Annually, Contractor will print and mail a flyer to residential customers setting the dates for the community cleanup collections and describing what items can be accepted at curbside and in what manner. Curbside pickups shall be conducted approximately six months apart on dates approved by the City Manager.

(2) Contractor shall staff the reuse center on Saturdays occurring during the same week as each of the two Community Cleanup events to provide a drop off point for scrap metal, appliances without Freon, bulky items such as couches, e-waste, etc.

(3) Disposal of hazardous waste is not contemplated as a part of services provided in Sections 26A(1) and 26A(2).

#### B. Trash Collection and Removal from City Parks

At no charge to the City, Contractor shall collect and remove trash from the City's receptacles located at Plaza Park and Depot Park on a twice per week basis and shall collect and remove trash from the City's receptacles located at all other City Parks on a once or twice per week basis, except for trash collection and removal caused by extraordinary circumstances or special events. The specific schedule for the twice per week collection and removal at Plaza Park and Depot Park and the schedule and frequency of collection and removal at all other City Parks shall be approved and may be modified from time-to-time in writing by the City Manager.

#### C. Garbage and Rubbish Collection and Removal from City Facilities

Contractor shall collect and remove garbage and rubbish from all City Cemeteries, Corporation Yard, Sonoma Creek Senior Housing, and Village Green II Apartment Complex at no charge to the City.

2. All other provisions of the October 19, 1994 agreement between the City of Sonoma and John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (contract assigned to Sonoma Garbage Collectors on November 20, 2002) shall remain in full force and effect.

"CITY":

Mike Fuson  
Mike Fuson, City Manager

Date:

1/16/07

Attest:

Gay Rainsbarger  
Gay Rainsbarger, City Clerk

"CONTRACTOR":

Date:

John D. Curotto, Jr.  
John D. Curotto, Jr.  
President  
Sonoma Garbage Collectors

1-3-07

Joanne J. Meroney  
Joanne J. Meroney  
Secretary  
Sonoma Garbage Collectors

1-3-07

Kevin M. Curotto  
Kevin M. Curotto  
Vice President  
Sonoma Garbage Collectors

\_\_\_\_\_

### THIRD AMENDMENT TO CONTRACT

This third amendment to the October 19, 1994 agreement between the City of Sonoma and Sonoma Garbage Collectors, Inc. (pursuant to November 20, 2002 assignment of contract) is executed at Sonoma, California on August 22, 2007.

1. The current term extending through May 31, 2012 as set forth in Paragraph 1 of the January 11, 2002 First Amendment to Contract is extended for an additional term of five (5) years, through May 31, 2017.

2. Section 9 is amended to read as follows:

A. The maximum rates which Contractor may charge for collection of garbage and rubbish as established by resolution of the City Council and in effect as of the date of this agreement shall remain in effect until changed by further resolution of the City Council.

B. In considering future rate increases, the City will use the Refuse Rate Index [RRI] methodology established by the County of Sonoma to calculate the maximum annual percentage increase in solid waste rates for which CONTRACTOR is eligible. The City will establish General Reporting Standards for CONTRACTOR consistent with the RRI methodology and reporting guidelines.

C. Not more frequently than once in any calendar year, Contractor may request changes in solid waste collection rates up to the maximum amount calculated pursuant to the RRI methodology.

D. Calculation will be factored on existing rates. Rates will not be reduced unless requested or agreed to in writing by the Contractor.

3. Section 26 D. is hereby added to read as follows:

D. Customer Information

(1) Not less frequently than twice each calendar year, Contractor shall print and mail to each customer a flyer providing information about recycling programs that are available to customers. Flyers may include educational material about sustainable practices for residents and businesses with respect to solid waste and information about solid waste collection. One of the two flyers required by this section can be incorporated as part of the advisory flyer required in Section 26 A.

(2) Prior to distribution to customers, Contractor shall obtain written approval from the City Manager of the content and design of the flyers.

4. All other terms and conditions of said October 19, 1994 Contract as amended, shall continue in full force and effect.

5. Contractor will incorporate the use of of B-20 Biodiesel Blend to the maximum extent possible.

"CITY"

DATE:

Mike Fuson  
Mike Fuson, City Manager

9/12/07

Attest:

DATE:

Gay Rainsbarger  
Gay Rainsbarger, City Clerk

9/12/07

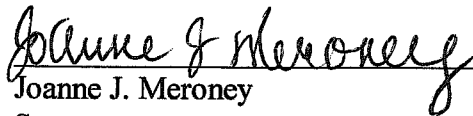
"CONTRACTOR"

DATE:

John D. Curotto, Jr.  
John D. Curotto, Jr., President

9-11-07

"CONTRACTOR":


  
\_\_\_\_\_  
Joanne J. Meroney

Secretary

Sonoma Garbage Collectors

Date:

11-20-2002

  
\_\_\_\_\_  
John M. Curotto

Vice President

Sonoma Garbage Collectors

11-20-2002

**CITY OF SONOMA**

RESOLUTION NO. 47 - 2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONOMA FIXING  
GARBAGE RATES (SONOMA GARBAGE COLLECTORS)

WHEREAS, pursuant to Section 7.08.030A of the Sonoma Municipal Code, the City of Sonoma adopted Resolution Number 87-94 approving a contract with John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (Sonoma Garbage Collectors) for the exclusive right to collect and remove garbage and rubbish within the city; and

WHEREAS, certain costs are a result of the collection and disposal process and are therefore eligible to be recovered through a fair rate of return, and

WHEREAS, the City and Contractor agree to determine rate increase and fair rate of return using a modified Refuse Rate Index [RRI] methodology designed specifically for adjusting collection rates based on published indices that are applicable to the actual costs incurred by a refuse hauler, and

WHEREAS, the maximum rates which Sonoma Garbage Collectors may charge for its services must be approved and established by resolution of the City Council of the City of Sonoma; and

WHEREAS, the 2010-11 percentage determined by the RRI be borne by the ratepayers through an increase of 5.03% of the current rate schedule effective December 1, 2010 in order to effectuate a revenue neutral financial position, and

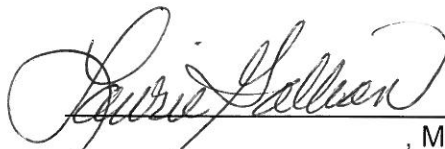
WHEREAS, certain other modifications are included with the Refuse Rate increase include the deviation to delivery site of refuse material on a not to exceed limit of 50% to reduce tipping fee costs which shall be placed in reserve for vehicle replacement and the implementation of a pilot program for food waste collection for commercial establishments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Sonoma hereby fixes the maximum rates to be charged for the collection of garbage and rubbish as shown on Exhibit "A" attached hereto, incorporated herein by reference, and made a part hereof.

BE IT FURTHER RESOLVED, that the Contractor shall be allowed to redirect 50% of the waste stream to an alternative collection site and Contractor may initiate a pilot program for a one-year period for food waste collection from commercial establishments on a voluntary basis at no additional charge.

The foregoing Resolution was duly adopted this 1st day of December 2010, by the following roll call vote:

AYES: Sanders, Rouse, Brown, Barbose, Gallian  
NOES: None  
ABSENT: None

  
\_\_\_\_\_, MAYOR  
ATTEST:

  
\_\_\_\_\_  
GAY JOHANN, CITY CLERK

**Effective December 1, 2010**

**Monthly Rates for Weekly Curbside Pick-up**

| <b>Service Level</b>  | <b>Adopted Rates<br/>effective December 1, 2010<br/>(5.03% increase)</b> |
|---|--|
| <b>Rate for refuse collection once each week</b>                      |  |
| 20 gallon can   | 6.97   |
| 32 gallon can   | 11.43  |
| 64 gallon can   | 24.81  |
| 90 gallon can   | 38.07  |
| 2 cubic yard bin  | 143.51   |
| 3 cubic yard bin  | 215.08   |
| 4 cubic yard bin  | 287.02   |
| <b>Rate each pickup for refuse bins on a variable pickup schedule</b> |  |
| Each 2 cy bin   | 33.27  |
| Each 3 cy bin   | 49.91  |
| Each 4 cy bin   | 66.55  |
| <b>Debris Box</b>   |  |
| Debris Box 20 yd (includes 2 tons of waste)                           | 374.13   |
| Debris Box 30 yd (includes 3 tons of waste)                           | 502.48   |

An additional charge of \$10 per month for each bin will be applied to bin service.

Waste in debris boxes above the included quantity will be charged at the prevailing waste disposal rate.

**CITY OF SONOMA**

**RESOLUTION NO. 10 - 2012**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SONOMA APPROVING REFUSE RATE ADJUSTMENTS  
AND FOURTH AMENDMENT TO FRANCHISE AGREEMENT**

WHEREAS, the City of Sonoma has a franchise agreement with Sonoma Garbage Collectors, Inc., to perform solid waste collection services in the City of Sonoma; and

WHEREAS, pursuant to said agreement, Sonoma Garbage Collectors, Inc. ("SGC") is entitled to seek certain adjustments in the rates it charges its customers for such services; and

WHEREAS, it is in the best interests of the City that said agreement be amended in certain respects; and

WHEREAS, SGC has made application for adjustments in the rates it charges to its customers to become effective January 1, 2012; and

WHEREAS, based on the financial data submitted by SGC, the increased services SGC is agreeable to providing, and other considerations appropriately factored into analyzing SGC's rate adjustment application, rate adjustments are justified:

NOW, THEREFORE, the City Council of the City of Sonoma resolves as follows:

For the reasons specified in the staff report (and attachments) submitted to the City Council at its meeting on January 18, 2012, pertinent to SGC's request for refuse rate adjustments, effective January 1, 2012, the rates that SGC charges its residential customers may be increased 4.5% and the rates SGC charges its commercial customers may be increased 7.55%. The rates for the various services provided by SGC as approved herein are set forth in **Exhibit A** incorporated herein by this reference.

BE IT FURTHER RESOLVED that the Fourth Amendment to Contract, a true and correct copy of which is attached hereto as **Exhibit B**, is approved and the City Manager is authorized to execute same on behalf of the City.

ADOPTED this 22nd day of February 2012, by the following vote:

|         |   |
|---------|---|
| AYES:   | Barbose, Rouse, Brown, Gallian, Sanders |
| NOES:   | None                                    |
| ABSENT: | None                                    |

  
Joanne Sanders, Mayor

ATTEST:

  
Gay Johann, City Clerk



**Exhibit "A"**

**Effective January 1, 2012**

**Monthly Rates for Weekly Curbside Pick-up**

| <b>Service Level</b>  | <b>Adopted Rates<br/>effective January 2012</b> |
|---|---|
| <b>Residential</b>  |   |
| <b>Rate for refuse collection once each week</b>                      |   |
| 20 gallon can   | 7.29  |
| 32 gallon can   | 11.95   |
| 64 gallon can   | 25.94   |
| 90 gallon can   | 39.80   |
| <b>Commercial</b>   |   |
| <b>Rate for bin collection once each week</b>                         |   |
| 2 cubic yard bin  | 154.35  |
| 3 cubic yard bin  | 231.32  |
| 4 cubic yard bin  | 308.69  |
| <b>Rate each pickup for refuse bins on a variable pickup schedule</b> |   |
| Each 2 cy bin   | 35.78   |
| Each 3 cy bin   | 53.68   |
| Each 4 cy bin   | 71.57   |
| <b>Debris Box</b>   |   |
| Debris Box 20 yd (includes 2 tons of waste)                           | 402.38  |
| Debris Box 30 yd (includes 3 tons of waste)                           | 540.42  |

An additional charge of \$10 per month for each bin will be applied to bin service. Bin service includes curbside collection of food scraps and green waste, up to two additional containers (32, 64, or 94 gal.) provided. Waste in debris boxes above the included quantity will be charged at the prevailing Sonoma County waste disposal rate.

## **FOURTH AMENDMENT TO CONTRACT**

This fourth amendment is executed at Sonoma, California on January 18, 2012, by and between the City of Sonoma, a municipal corporation, ("City") and Sonoma Garbage Collectors, a California corporation, ("Contractor").

### **RECITALS**

WHEREAS, City entered into a contract on October 19, 1994 with John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (Sonoma Garbage Collectors) for the exclusive right to collect and remove garbage and rubbish within the City. Said contract has been amended three times (collectively, the October 19, 1994, agreement and its three amendments shall be referred to as the "Contract"); and

WHEREAS, on November 18, 2002, the City consented to an assignment of the Contract from John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (Sonoma Garbage Collectors) to Sonoma Garbage Collectors, a California corporation; and

WHEREAS, Section 13 of the Contract provides that Contractor shall dispose of all garbage and rubbish Contractor collects in the City at the County of Sonoma transfer station in the Sonoma Valley; and

WHEREAS, by Resolution No. 47-2010, City acknowledged that Contractor intended to redirect up to fifty percent (50%) of the garbage and rubbish waste stream Contractor collects in City ("City's waste stream") to an alternative collection site other than the County of Sonoma transfer station. Contractor has informed the City that this alternative collection site will be located outside of Sonoma County and shall not be a disposal site owned and/or operated by the County of Sonoma ("Non-Sonoma County Waste Facility"); and

WHEREAS, City is a member of the Sonoma County Waste Management Agency, a joint powers agency comprised of the nine incorporated cities in Sonoma County and the County of Sonoma, ("Agency"); and

WHEREAS, funding for the Agency is partially derived from a surcharge ("Agency surcharge fee") on the tip fee charged for the disposal of garbage and rubbish at the County of Sonoma transfer station; and

WHEREAS, as a result of Resolution No. 47-2010, and Contractor's redirection of up to fifty percent (50%) of the City's waste stream to a collection site outside of Sonoma County, Agency will not be paid Agency surcharge fees that Agency would have received had Contractor deposited all of the City's waste stream at the County of Sonoma transfer station; and

WHEREAS, in order to reimburse Agency for the monies it will not be paid as a result of Contractor's redirection of the City's waste stream as acknowledged by Resolution No. 47-2010, City and Agency entered into an Agency Surcharge Agreement ("Surcharge Agreement") through which the City agreed to pay the Agency an amount equal to the number of tons of City's waste stream Contractor delivers to a Non-Sonoma County Waste Facility multiplied by the then current per-ton Agency surcharge fee, plus the Agency's legal fees incurred in drafting, negotiating and implementing said Surcharge Agreement. A copy of the Agency Surcharge Agreement is attached hereto as Exhibit A and made a part hereof; and

WHEREAS, Contractor has agreed to reimburse City for any amounts it must pay the Agency pursuant to the Surcharge Agreement; and

WHEREAS, Contractor initiated a pilot program for a one year period for food scraps collection from commercial establishments located in the City on a voluntary basis and at no additional charge to the City or the participating commercial establishments.

NOW, THEREFORE, City and Contractor agree as follows:

Section 1. Section 13 of the Contract is amended to read as follows:

Contractor agrees that he will dispose of all garbage and rubbish at a place satisfactory to the City, and until further notice, the County of Sonoma transfer station in the Sonoma Valley is designated as the place of disposal. *Notwithstanding the foregoing, however, for the period covered by Section 27 of this Contract, Contractor retains the right to, in the exercise of its sole discretion, divert up to fifty percent (50%) of the garbage and rubbish Contractor collects in City to a place of disposal other than the County of Sonoma transfer station in the Sonoma Valley. This place of disposal may be located outside of Sonoma County and shall be referred to as the "Non-Sonoma County Waste Facility".*

Section 2. Section 26.E is added to the Contract to read as follows:

Commencing on January 1, 2011, and continuing through January 1, 2012, Contractor initiated and conducted a pilot program collecting food scraps from commercial establishments located in the downtown area of the City on a voluntary basis and at no additional charge to the City or the participating commercial establishments. Without cost to the City or the participating commercial establishments, among other things, the Contractor provided collection bins or containers for each participant, established pick up schedules, cooperated with the affected establishments in implementing the program, collected the bins or containers, advertised the availability and details of the program to each commercial establishment located in the affected area, and disposed of the food scraps through a composting program consistent with the terms of the Contract. Commencing on January 2, 2012 and continuing until terminated by mutual agreement of the parties hereto, Contractor shall continue offering said food scrap collection program

to all commercial establishments located within the City's corporate boundaries desirous of participating in it. At the end of each quarter during which this program is in effect, Contractor shall submit to the City a written report briefly describing the program, the number and identity of the establishments participating in it, whether the program has met the Contractor's and the City's' objectives, what steps the Contractor is intending to implement to improve the program, and any other information that, in his/her reasonable judgment, the City Manager deems necessary.

Section 3. Section 27 shall be added to the Contract to read as follows:

27. AGENCY SURCHARGE AGREEMENT BETWEEN CITY AND SONOMA COUNTY WASTE MANAGEMENT AGENCY ("AGENCY")
  - A. Contractor hereby agrees to reimburse City for all of the costs, fees and charges the City is obligated to pay the Agency in accordance with the Surcharge Agreement.
  - B. By the 15<sup>th</sup> day of each month, Contractor shall report to City in writing, in the form and manner required by City, the amount of garbage and rubbish Contractor deposited during the preceding month at the County of Sonoma transfer station in the Sonoma Valley and the amount of garbage and rubbish Contractor deposited during the preceding month at Out of County Waste Facilities. In said report, the Contractor shall specify the address and location of each Out of County Waste Facility utilized during the preceding month. The City may require the Contractor to verify the information the Contractor discloses in these monthly reports and, if so, the Contractor, at its sole cost, shall provide that verification to the City in the manner and by the date specified by the City.
  - C. When City receives a monthly invoice from Agency of the amount City is required to pay Agency pursuant to the Surcharge Agreement, City shall promptly mail, fax, e-mail or personally deliver a copy of the invoice to Contractor.
  - D. Contractor shall pay to City the full amount of the invoice within five (5) calendar days of the date the City mailed, faxed, e-mailed or personally delivered the Agency invoice to the Contractor.
  - E. The parties shall, in good faith, attempt to resolve any dispute arising out of the parties' performance under this Section 27 by mediation prior to commencing litigation, using the procedures set forth in Section 14 of the Surcharge Agreement. The parties shall

mutually agree upon the mediator and shall divide the costs of medication equally.

- F. Any failure by Contractor to comply with the terms and conditions of this Section 27 shall be deemed by City to be a breach of the Contract and City may terminate the Contract in accordance with Section 20 of the Contract.
- G. The terms of this Section 27 shall be effective from December 1, 2010 and continue until November 30, 2012 ("Effective Period") unless the Agency Surcharge Agreement is (i) extended by the City and Agency in which case the Effective Period shall likewise be extended or (ii) terminated before the end of the Effective Period by either the City or Agency in accordance with Section 4 of the Agency Surcharge Agreement, in which case this Section 27 shall automatically be terminated at the same time.

Section 4. Section 28 shall be added to the Contract to read as follows:

#### HAZARDOUS WASTE INDEMNIFICATION

Contractor shall indemnify, defend with counsel selected by City, protect and hold harmless City, its officers, agents and employees (collectively, "Indemnitees") from and against all claims, damages (including special, consequential, natural resources and punitive damages), injuries, costs (including any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) (collectively, "Damages"), of any kind whatsoever paid, incurred or suffered by, or asserted against, Indemnitees, arising from, or attributable to the acts or omissions of Contractor or its officers, directors, employees or agents, whether or not negligent or otherwise culpable, in connection with, related to, or attributable to: (i) any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste, Hazardous Materials, Hazardous Substances or Toxic Materials or Substances (collectively, "Hazardous Waste") (as those terms may be defined in any law, regulation or code) at any place where Contractor transports, processes, stores or disposes of solid waste, garbage, recyclables, green waste or rubbish collected under this Agreement and/or (ii) Hazardous Waste relating in any way to Contractor's performance of this Agreement. This indemnity afforded Indemnitees shall only be limited to exclude coverage for intentional wrongful acts and active negligence of Indemnitees. The foregoing indemnity is intended to operate as an agreement pursuant to section 107(e) of CERCLA, 42 U.S.C. § 9607(e), and California Health & Safety Code § 25364, to defend, protect, hold harmless and indemnify City from liability. The foregoing indemnity shall not apply to Damages arising out of the operation of waste facilities owned or operated by the County of Sonoma to which Contractor transports

garbage and rubbish generated in the City. This provision shall survive the termination of this Agreement.

Section 5. Section 29 shall be added to the Contract to read as follows:

#### EXAMINATION OF RECORDS

A. Contractor shall maintain a proper set of books and records in accordance with generally accepted accounting principles, accurately reflecting the business done by it under this Agreement.

B. Contractor shall maintain all records relating to the services provided hereunder, including customer lists, billing records, maps, AB 939 records, and written customer complaints, for the full term of this Agreement, and for an additional period of not less than three (3) years, or for any longer period required by law. City or its agent(s) shall have the right, upon ten (10) business days' advance notice, to inspect all maps, AB 939 records, Contractor's books and records, written customer complaints, and other like materials of Contractor that reasonably relate to Contractor's compliance with the provisions of this Agreement. Such records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Sonoma. Contractor shall further maintain and make available to City records as to number of customers, total and by type, route maps, service records, tonnage disposal and collection records and other materials and operating statistics in such manner and in such detail as City may require.

C. Should any examination or audit of Contractor's records reveal an underpayment of any fee required under this Agreement, the amount of such underpayment shall become due and payable to City not later than thirty (30) days after written notice of such underpayment is sent to Contractor by City.

D. Should any examination or audit of Contractor's records reveal an underpayment or under-reporting to City of more than three percent (3%) of the correct amount owed or the correct amount being reported, respectively, Contractor shall reimburse City for the entire cost of City's audit or examination within thirty (30) days of demand therefor, and, with respect to the situation where the audit reveals an underpayment to the City, in addition to paying the amount of the underpayment as provided above, Contractor shall also reimburse City for the entire cost of City's audit or examination within thirty (30) days of demand therefor, and said cost shall not be recoverable through rate setting. Notwithstanding the foregoing, in the event said examination or audit reveals an underpayment to the City of \$2,000 or less, then Contractor shall pay to the City two times the amount of the underpayment, plus 50% of the cost of the City's audit or examination, which said sums Contractor shall pay to the City within thirty (30) days of demand therefor, and said payments shall not be recoverable through rate setting. Should any examination or audit of Contractor's records reveal an overpayment by Contractor of any fee required under this Agreement, the amount of such overpayment shall be credited against the next quarterly installment of the

Franchise Fee, or, if this Agreement has terminated, shall be promptly refunded to Contractor.

E. (1) The information required by this Section 29 shall pertain to Contractor's operations covered and regulated by this Agreement, and nothing contained herein shall require Contractor to provide City with information pertaining to Contractor's operations that are not regulated by City, except in conformance with this Section 29.

(2) City or its agents may examine Contractor's books, records and financial statements pertaining to operations not regulated by City for the sole purpose of gathering information necessary to allow City to ascertain whether income, expenses, assets and liabilities are reasonable or reasonably and consistently allocated among operations regulated by City and those not regulated by City. Contractor shall obtain City's written approval prior to any substantial change of its method of segregating its financial records between City-regulated and non-City-regulated operations.

(3) Without limiting Section 29.H., information gained from examination of records pertaining to operations not regulated by City shall be treated by City and its agents as confidential information, and Contractor may require City and its agents to execute a confidentiality agreement as a condition for receipt of such information.

(4) For review of books and other financial records necessary to verify Contractor's income, expense, assets and liabilities, "agent" means an independent Certified Public Accountant, public accountancy firm or designated City employee. For all other information or records, including the results of financial verification, "agency" means any consultant designated by City or City employees.

F. Nothing in this Section 29 shall prevent City from allowing public access to City records as required by the California Government Code, and in the event any dispute arises as to legally required public access to information provided by Contractor under the terms of this Agreement, City shall in its discretion provide public access to said information according to law, or tender the defense of any claims made against City concerning said information to Contractor. Prior to releasing any information pursuant to this Section 29.F, City shall make a good-faith effort to notify Contractor of the intended release.

G. Upon reasonable notice or as otherwise agreed herein, and at those times designated by City, Contractor shall supply to City lists of the names of all customers of Contractor who are provided any service by Contractor within the Franchise Area. At the same or other time, City may request and Contractor shall provide information specifying each customer's address, type of service provided to each customer, the number and type of authorized solid waste, garbage and/or rubbish containers used by or provided to each customer, whether and which customers are believed to be violating this Agreement, any mandatory subscription ordinance, or any other provision of the law that City, in its

sound discretion, reasonably requires to monitor implementation of this Agreement or discharge City's responsibilities under the law.

H. City shall treat all information concerning Contractor or Contractor's operations or customers to which it has access under this Section 29, or which it receives as part of the rate-making process ("Contractor Information") in accordance with the California Public Records Act (Government Code §§ 6250 et seq.) (for the purposes of this Section 29.H, the "Act"). To the extent permitted by law, including any available exemptions under the Act that have been determined by the City within its reasonable discretion, City shall keep all Contractor Information strictly confidential and shall not disclose any Contractor Information to any person requesting the information.

Section 6. Section 30 shall be added to the Contract to read as follows:

#### GENERAL INDEMNIFICATION

A. Contractor shall defend, with counsel reasonably acceptable to City, and indemnify City from and against, any and all liabilities, costs, claims and damages that are caused by Contractor's failure to comply (i) with applicable federal, state and local laws, statutes, ordinances, codes, rules and regulations, and the orders and decrees of all courts or administrative bodies or tribunals in any manner in effect during the term of this Agreement and affecting the performance of this Agreement, as they may from time to time be amended, including without limitation CERCLA, 42 U.S.C. §§ 9601, et seq., the RCRA, 42 U.S.C. §§ 6901, et seq., the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California and the County of Sonoma or (ii) with any other section of this Agreement.

B. Contractor shall protect, defend with counsel reasonably acceptable to City, indemnify and hold harmless City and its officers, employees and agents from and against, any and all losses, liabilities, fines, penalties, claims, damages, or judgments, including attorney's fees (collectively "losses"), arising out of or resulting in any way from (i) Contractor's exercise of the franchise, or (ii) City's grant of the franchise to Contractor, or (iii) any services provided by Contractor pursuant to the terms of this Agreement. The obligations of Contractor in the foregoing sentence shall not apply to losses that are due to the sole negligence or willful misconduct of City or its officers, employees, agents or contractors, or to Contractor taking or not taking action at the direction of City, over the written objection of Contractor. For purposes of this Section 30.B, Contractor shall not be considered a "contractor" of City.

C. In addition, Contractor shall release and defend, with counsel reasonably acceptable to City, indemnify and hold City harmless from and against, any and all litigation and claims, damages and liabilities arising therefrom, brought to enforce or to challenge this Agreement and/or Contractor's exclusive rights granted hereunder, including any alleged violation by City and/or Contractor of any federal, state or municipal law, statute or constitutional provision, or other cause. Notwithstanding the foregoing, Contractor's obligations under this Section 30.C extend only to actions brought against or by persons or entities not parties to this Agreement.



D. Without limiting Section 30.A and in addition thereto, Contractor shall defend, with counsel reasonably acceptable to City, indemnify and hold City harmless from and against, any and all fines, penalties and assessments levied against or threatened to be levied against City for City's failure to meet the requirements of AB 939, its amendments or any successor legislation or all rules and regulations promulgated thereunder if said failure is caused by Contractor, or its failure to comply with this Agreement or Contractor's failure to comply with applicable laws, rules or regulations, including failing to timely supply to City the reports and information required by City in order to comply with AB 939.

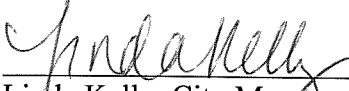
E. Notwithstanding anything stated to the contrary by Section 30.D, the obligations of Contractor to indemnify City under Section 30.D shall be subject to the provisions of Public Resources Code section 40059.1, as it may be amended or modified. It is the intent of the parties that this paragraph be construed to not be inconsistent with state law and be construed in a manner that this indemnification obligation be applied to the fullest extent permitted by law.

F. This Section 30 shall survive termination of this Agreement.

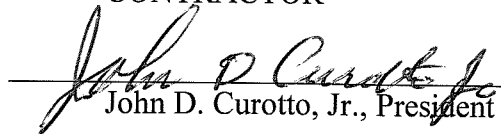
Section 7. All other terms and conditions of the Contract not expressly amended herein shall continue in full force and effect.

Section 8. The Recitals are incorporated into this Agreement.

CITY OF SONOMA

  
Linda Kelly, City Manager

CONTRACTOR

  
John D. Curotto, Jr., President

ATTEST:

  
Gay Johann, City Clerk

APPROVED AS TO FORM

  
City Attorney

## AGENCY SURCHARGE AGREEMENT

THIS AGENCY SURCHARGE AGREEMENT ("Agreement") is entered into and is effective as of December 1, 2010 ("Effective Date"), by and between the City of Sonoma, a municipal corporation ("City") and Sonoma County Waste Management Agency, a joint powers agency of the nine incorporated cities in Sonoma County and the County of Sonoma ("Agency"), (collectively, the "Parties"). The members of the Agency shall be referred to herein as the "Members".

WHEREAS, City pays its share of Agency's funding through a surcharge on the tip fee charged on solid waste collected in the City and disposed of in or through the Sonoma County waste disposal system; and

WHEREAS, City has arranged to permit up to fifty percent (50%) of the solid waste collected in City to be disposed of outside of Sonoma County and without passing through the Sonoma County waste disposal system for a period of two (2) years from the Effective Date of this Agreement; and

WHEREAS, the Agency's surcharge will no longer be collected on this up to 50 % portion of the solid waste collected in City during this two year period; and

WHEREAS, City desires to pay directly to Agency an amount equal to the amount of surcharge that would have been collected on this up to 50% portion of the solid waste collected in City and disposed outside of the Sonoma County waste disposal system.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Agency shall provide the same services to City as the other Agency Members receive and as City normally receives.
2. **Compensation.** City shall compensate Agency as provided in this section. The monthly compensation under this Agreement shall be calculated by applying the Agency tipping fee surcharge rate on the actual tonnages of solid waste collected in City and disposed of by City's franchised waste hauler, Sonoma Garbage Collectors, outside of the Sonoma County waste disposal system. The amount of solid waste disposed outside of the Sonoma County waste disposal system each month shall be reported to Agency for invoicing purposes by the 20th of the succeeding month. The Agency's current approved rate of \$5.95 per ton will be used for calculating invoices until such time as the rate is modified by Agency. Any tipping fee surcharge rate modification shall automatically be effective under the terms of this Agreement when such modification is effective in Sonoma County and obligatory on all the Members. Agency shall submit monthly invoices to City and City shall pay Agency the invoiced amount within thirty (30) days of receipt of the invoice.

City agrees to reimburse Agency, upon presentation of invoice, for legal expenses incurred in the drafting and implementation of this Agreement.

In the event that the City's franchise agreement with Sonoma Garbage Collectors ("SGC") grants to the City the right to audit or inspect SGC's books and records pertaining to the amounts of solid waste collected and disposed of by SGC, then, upon notice from the Agency to the City, the City shall inspect SGC's books and records only for the purpose of determining the amount of solid waste SGC has collected and disposed of and the location of said disposition, and within sixty (60) days after the City's receipt of the Agency's notice, the City shall deliver to the Agency an accounting of same and any records the City was able to obtain from SGC verifying said accounting. Any costs that the City incurs in conducting said audit through the retention of persons other than City employees shall be reimbursed to the City by Agency within thirty (30) days of the Agency's receipt of the City's invoice, provided that Agency agreed in advance and in writing to the retention of persons other than City employees.

In the alternative, upon notice from the Agency to the City, Agency staff shall inspect SGC's books and records only for the purpose of determining the amount of solid waste SGC has collected and disposed of and the location of said disposition. Any such review of SGC's books and records by Agency staff shall take place at City offices. City shall be responsible for ensuring SGC delivers the applicable books and records, or true and correct copies thereof, to City offices at the requested date and time.

3. **Term.** The term of this Agreement commences on the Effective Date, and terminates on November 30, 2012, unless sooner terminated in accordance with Section 4.

4. **Termination.** City or Agency may terminate this Agreement without cause upon ninety (90) days' written notice to the non-terminating party. City or Agency may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by either Party or either Party's bankruptcy or insolvency. In the event of early termination of this Agreement by City, Agency shall be entitled to payment for the Agency surcharge on solid waste disposed outside of the Sonoma County waste disposal system to the date of termination.

5. **Assignment/Transfer.** No assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of both Parties.

6. **Compliance With All Laws.** The Parties shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to the performance of the obligations created by this Agreement.

7. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective upon delivery if delivery is confirmed by the delivery service; or
- (iv) facsimile or electronic transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile or electronic transmission shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

City: City of Sonoma, City Clerk  
1 The Plaza  
Sonoma, California 95476  
Telephone: (707) 938-3681  
Facsimile: (707) 938-8775  
Email: Gjohann@sonomacity.org

Agency: Sonoma County Waste Management Agency  
Executive Director  
2300 County Center Drive, #B100  
Santa Rosa, CA 95403  
Telephone: 707-565-3788  
Facsimile: 707-565-3701  
Email: hmikus@sonoma-county.org

8. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.

9. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and the Parties agree that, notwithstanding Civil Code section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.

10. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California. Any action arising from or brought in connection with this Agreement shall be verified in a court of competent jurisdiction in the County of Sonoma, State of California.

11. **Non-Waiver.** Either Party's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.

12. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

13. **No Third Party Beneficiaries.** The Parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party.

14. **Mediation.** The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.

15. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

16. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

IN WITNESS WHEREOF, the parties hereto have executed this document the day, month and year first above written.

CITY OF SONOMA

SONOMA COUNTY WASTE  
MANAGEMENT AGENCY

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Chair

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Agency Counsel

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney