

**AMENDMENT TO AGREEMENT  
FOR FERNDALE AND FORTUNA AREAS OF THE COUNTY OF HUMBOLDT**

This is an amendment to the Franchise Agreement (the "Agreement") entered into on October 14, 2008, and to amendments thereto previously executed by and between the County of Humboldt (COUNTY) and Eel River Disposal and Resource Recovery, Inc. (CONTRACTOR). The effective date of this Amendment is July 1, 2011.

**RECITALS**

WHEREAS, COUNTY and CONTRACTOR have entered into an Agreement for the handling and disposal of solid waste;

WHEREAS, November 9, 2010, the Board adopted Ordinance No. 2490 amending Section 521-9(a) Audits, Payments and Credits of Solid Waste franchises to specify the method of calculating adjusted gross receipts for franchise fee collection;

WHEREAS, the parties have agreed to amend certain provisions of the agreement to provide for the aforementioned ordinance change and to memorialize certain other agreements between them regarding the franchise fee and recycling percentage.

NOW, THEREFORE, IT IS AGREED as follows:

1. Section 2 of the Agreement, entitled Term of Franchise is deleted in its entirety and amended to read as follows:

Unless earlier terminated pursuant to this Agreement, the term of this Agreement shall begin on October 16, 2008 and terminate on June 30, 2018. The term may be further extended until June 30, 2023, by mutual written agreement, provided that COUNTY determines that CONTRACTOR is providing service consistent with all requirements of this Agreement and all amendments hereto. COUNTY shall provide sixty (60) days notice to CONTRACTOR of the COUNTY'S determination that CONTRACTOR has or has not provided services consistent with the Agreement and any amendment thereto.

2. Section 8(B), entitled Hazardous Substance Indemnification is deleted in its entirety and amended to read as follows:

CONTRACTOR shall indemnify, defend with counsel selected by COUNTY, protect and hold harmless the COUNTY and its officers, directors, employees, volunteers, and agents, and member agencies, its officers, directors, employees, volunteers, and agents, (collectively, indemnitee) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (Collectively, Damages) or any kind

whatsoever paid, incurred or suffered by, or asserted against, indemnitee arising from or attributable to the acts or omissions of CONTRACTOR, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this agreement, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remediation, response, closure, postclosure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, and/or construction and street debris, or other waste collected under this Agreement. This indemnity afforded indemnitee, shall only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitee, indemnitee delivery of material to CONTRACTOR which does not conform to the descriptions of Solid Waste under this Agreement and as provided below. The forgoing indemnity is intended to operate as an agreement in recognition of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC 9607(e) and California Health and Safety Code 25364, to defend, protect, hold harmless, and indemnify the COUNTY from liability. This provision is in addition to all other provisions in this Agreement and is intended to survive the end of the Term of this Agreement. Nothing in this paragraph shall prevent CONTRACTOR from seeking indemnification or contribution from persons or entities other than indemnitee, for any liabilities incurred by CONTRACTOR, or the indemnitee.

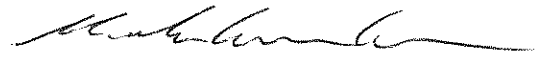
3. Section 10, entitled Payment of Franchise is deleted in its entirety and amended to read as follows:
  - A. **Establishment of Franchise Fee.** The parties acknowledge that certain solid waste management, recycling and associated services are provided by COUNTY in connection with this Agreement, which are part of a comprehensive program of activities designed to effectuate the purpose of this Agreement and the California Integrated Waste Management Act. To reimburse COUNTY for the costs of such services, including COUNTY's costs incurred in administering this Agreement, and in consideration of the exclusive franchise granted to CONTRACTOR by this Agreement, CONTRACTOR shall pay to COUNTY a Franchise Fee equal to a percentage of Adjusted Gross Receipts, which percentage is currently nine percent (9%). "Adjusted Gross Receipts" with respect to a particular period means Gross Receipts for such period less recycling revenues. COUNTY shall give CONTRACTOR at least 90 days written notice of its intent to revise the Adjusted Gross Receipts calculation. Unless otherwise agreed by CONTRACTOR, no change in the Adjusted Gross Receipts calculation shall take effect until the effective date of the Maximum Service Rate adjustment with respect to such change.
  - B. **Payment of Franchise Fee.** The Franchise Fee shall be due and payable monthly, with payment for each calendar month due on the 15th day of the following month. Payments made later than the 25th day shall be subject to a ten percent (10%) penalty on the amount overdue. Failure to remit the delinquent amount, on or before a thirty (30) day period following the date the first amount due becomes delinquent, will result in a second penalty equal to ten percent (10%) of the amount overdue in addition to any other amounts due, including the penalty first imposed.

**C. Verification of Gross Receipts.** CONTRACTOR shall keep records of the gross receipts obtained in the exercise of the franchise. CONTRACTOR shall, no later than April 1<sup>st</sup> of each year, submit a declaration under penalty of perjury, stating the amount of gross receipts received during the previous year. The COUNTY shall have the right to audit and examine records of the gross receipts or the CONTRACTOR may elect to hire an independent Certified Public Accountant approved by the COUNTY Auditor-Controller to perform a review of the gross receipts using an agreed upon procedure conforming to audit standards if required. In the event that such audit procedure concludes that underpayment by CONTRACTOR to COUNTY of two percent (2%) or more has occurred, CONTRACTOR shall, in addition to paying the delinquent amount and the penalty provided in Subsection B above, reimburse COUNTY for any costs incurred in performing the audit. In the event that such audit finds no evidence of payment not made as required, COUNTY shall reimburse CONTRACTOR in an amount equal to the COUNTY's cost to have performed the audit itself. In the event that such audit finds evidence of payment not made as required, but less than 2% of the amount due, CONTRACTOR and COUNTY shall share equally the cost incurred by COUNTY to perform the audit.

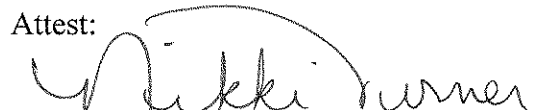
4. Except as modified herein or by prior amendments, the October 14, 2008, Agreement shall remain in full force and effect. In the event of a conflict between the provisions of this amendment and the original agreement, or any amendments thereto previously executed, the provisions of this amendment shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date set forth above.

**COUNTY OF HUMBOLDT**

  
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Chair, County Board of Supervisors

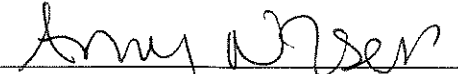
Attest:

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

APPROVED AS TO FORM:

INSURANCE certificates reviewed and  
APPROVED:

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

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

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

BY: Harry A. Hardin 

TITLE: President

BY: Harry A. Hardin 

TITLE: Secretary