

## RESOLUTION NO. 3200-2008

### RESOLUTION OF THE FORT BRAGG CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE AMENDMENT NO. 3 TO AGREEMENT FOR TRANSFER STATION OPERATION AND SOLID WASTE TRANSPORTATION AND DISPOSAL FOR A FUEL SURCHARGE AT THE WILLITS TRANSFER STATION

**WHEREAS**, in February and March 2000, the City of Fort Bragg, the County of Mendocino, and the City of Willits executed an agreement with Solid Waste of Willits ("Contractor") for the construction and operation of the Willits Solid Waste Transfer Station and Recycling Center, hereinafter called "SWTS"; and

**WHEREAS**, Section 1(L) of the agreement states that the "Contract Administrator" is the Mendocino County Solid Waste Division; and

**WHEREAS**, on March 27, 2008, Contractor applied to the Contract Administrator for a \$3.05 per ton fuel surcharge on the transportation increment of SWTS's Disposal Fee because of the steep climb in fuel costs to the prime transportation subcontractor, Shuster's Transportation; and

**WHEREAS**, the Contract Administrator determined that Contractor's application for a fuel surcharge was not covered under the provisions of Section 25(B), which permits the Contractor Administrator to grant SWTS fee adjustments for Uncontrollable Circumstances, therefore any surcharge application must be reviewed and approved by each Agency's governing body.

**WHEREAS**, the Mendocino County Board of Supervisors, the City of Fort Bragg and the City of Willits are the governing bodies with authority to grant a fuel surcharge increment to the Operating, Transportation and Landfill Fee.

**WHEREAS**, the request for a fuel surcharge was reviewed by the Contract Administrator, an independent consultant, and the General Manager of the Mendocino Solid Waste Management Authority and found to be reasonable and, with the institution of an annual fuel price adjustment mechanism, to be beneficial to all parties involved.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby authorize the City Manager to execute the Amendment No. 3 to BOS Agreement No. 00-040, attached to this resolution as "Exhibit A" and incorporated herein.


**The above and foregoing Resolution was introduced by Councilmember Turner, seconded by Councilmember Melo, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 25<sup>th</sup> day of August, 2008, by the following vote:**

**AYES:** Councilmembers Turner, Courtney, Gjerde, Melo, and Mayor Hammerstrom.  
**NOES:** None.  
**ABSENT:** None.

**ABSTAIN: None.**

  
\_\_\_\_\_  
**DOUG HAMMERSTROM,**  
**Mayor**

**ATTEST:**

  
\_\_\_\_\_  
**Cynthia M. VanWormer, CMC**  
**City Clerk**

## EXHIBIT A

### **AMENDMENT NO. 3 TO AGREEMENT FOR TRANSFER STATION OPERATION AND SOLID WASTE TRANSPORTATION AND DISPOSAL (BOS AGREEMENT NO. 00-040) BETWEEN THE CITIES OF FORT BRAGG AND WILLITS, THE COUNTY OF MENDOCINO AND SOLID WASTE OF WILLITS, INC., FOR A FUEL SURCHARGE AT THE WILLITS TRANSFER STATION**

This third amendment of BOS Agreement No. 00-040 is made this \_\_\_\_ day of \_\_\_\_\_, 2008 at Ukiah, California, between Solid Waste of Willits, Inc., hereinafter called "CONTRACTOR" and the City of Fort Bragg, the City of Willits and the County of Mendocino, hereinafter called "AGENCIES".

WHEREAS, in February and March 2000, CONTRACTOR and AGENCIES executed an agreement for the construction and operation of the Willits Solid Waste Transfer Station and Recycling Center, hereinafter called "SWTS"; and

WHEREAS, Section 1(L) states that the "Contractor Administrator" is the Mendocino County Solid Waste Division; and

WHEREAS, on March 27, 2008, CONTRACTOR applied to the Contractor Administrator for a \$3.05 per ton fuel surcharge on the transportation increment of SWTS's Disposal Fee because of the steep climb in fuel costs to the prime transportation subcontractor, Shuster's Transportation; and

WHEREAS, the Contract Administrator determined that CONTRACTOR's application for a fuel surcharge was not covered under the provisions of Section 25(B), which permits the Contractor Administrator to grant SWTS fee adjustments for Uncontrollable Circumstances, therefore any surcharge application must be reviewed and approved by each AGENCY governing body.

WHEREAS, the Mendocino County Board of Supervisors, the Cities of Fort Bragg and Willits are the governing bodies of the AGENCY with authority to grant a fuel surcharge increment to the Operating, Transportation and Landfill Fee.

NOW, THEREFORE, it is agreed as follows:

Section 24 and Section 25 of the Operating Agreement shall be revised in their entirety as follows:

24. Compensation and Rate Charges. Contractor will not be entitled to any other payment by the Agencies or the public for performance of the work described in this Agreement, except as stated herein and in Section 26, Adjustment for Low Tonnage, as applicable, and Section 28, Service Fee. The rate which Contractor shall charge for receiving Solid Wastes from Licensed and Franchised Solid Waste Haulers and Large Commercial Self-Haulers at the SWTS shall be stated in and charged by dollars per Ton. The total rate for Solid Waste disposal at the SWTS shall consist of the sum of the following fees:

- A. "Operating, Transportation, and Landfill Fee" shall be the sole compensation to Contractor for the operations of the SWTS and transportation and disposal of the Solid Waste to the Landfill. The Operating, Transportation and Landfill Fee shall be set at and remain at \$61.29 per Ton until January 1, 2009, and will thereafter be subject to adjustment as set forth in Section 25. The components of the Operating, Transportation and Landfill Fee are as follows:

	<u>Per-Ton Rate</u>
Operating Costs	\$14.03
Transport Costs: non-Fuel-related	\$15.46
Disposal Costs	\$21.99
<b>Total Operating, Transportation, and Landfill Fee (excluding Transport fuel costs)</b>	<b>\$51.48</b>
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<b>Transport Fuel Costs</b>	<b>\$9.81</b>
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<b>Operating, Transportation, and Landfill Fee</b>	<b>\$61.29</b>

- B. "Construction Cost Fee" shall reimburse Contractor for the capital costs incurred in construction of the SWTS, pursuant to the terms of this Agreement. The amount of the Construction Cost Fee will be set pursuant to Section 27, Construction Costs.
- C. "MSWMA Surcharge" shall be set by the Board of Directors of the Mendocino Solid Waste Management Authority and shall be collected by Contractor and paid monthly to MSWMA to fund certain Solid Waste services to the public. The existing level of the MSWMA Surcharge is \$4.50 per Ton and may be increased or decreased at the sole discretion of MSWMA and further approved by the Agencies.
- D. "Contract Administration Fee" in the amount of \$0.25 per Ton of Solid Waste received at the SWTS. Contractor shall pay the Contract Administration Fee to the Contract Administrator on May 15<sup>th</sup> following the close of the Contract Year of each year of the Agreement. The Contract Administration Fee may be adjusted each year based on the actual cost of the Contract Administrator for administering the Agreement.

The Surcharges and Contract Administration Fee are not considered compensation for the Contractor but are collected on the behalf of the Agencies as extra charges on any Solid Waste received at the SWTS to fund certain Solid Waste services to the public and to administer this Agreement for the Agencies.

25. Operating, Transportation, and Landfill Fee Annual Adjustment.

- A. On January 1, 2009 and each January 1<sup>st</sup>, thereafter, the Operating, Transportation, and Landfill Fee (excluding Transport fuel costs) component of the rate (currently \$51.48 per ton), will be increased or decreased by a factor equal to 90% of the percentage change in the CPI during the previous calendar year, except that this CPI Adjustment will not exceed 7% in any fiscal year during this Agreement remains in effect.

On January 1, 2009 and each January 1<sup>st</sup>, thereafter, the Transport Fuel Costs component of the rate (currently \$9.81), will be increased or decreased by the percentage change in SWOW, or its subcontractor's, actual per-gallon fuel prices since the prior adjustment, based on actual fuel receipts. SWOW shall submit, and the Contract Administrator shall review, actual fuel receipts for reasonableness.

For the first adjustment effective January 1, 2009 the per-gallon fuel price used to determine the base \$9.81 transport fuel cost component was \$4.02 per gallon (including all applicable state and federal taxes). The \$4.02 per gallon was based on the average actual cost from January 2008 through June 2008. The first adjustment effective January 1, 2009

shall be based on the percentage change from \$4.02 per gallon compared to the actual average cost of fuel from July 2008 through October 2008. Thereafter, the percentage change will be based on the actual average cost of fuel from the most-recent 12-months ending October compared to the actual average fuel cost used to calculate the previous year's adjustment.

The adjusted Operating, Transportation, and Landfill Fee shall be the sum of the adjusted Operating, Transportation, and Landfill Fee (excluding Transport fuel costs) component and the adjusted Transport Fuel Costs component.

The following examples illustrate how the annual adjustment should be calculated

Example adjustment calculation effective January 1, 2009:

Where: A = Current Operating, Transportation, and Landfill Fee (excluding Transport fuel costs) Component = \$51.48 per ton

B = Current Transport Fuel Cost Component = \$9.81

C = 90% of the percentage change in the in the CPI during the previous calendar year (not to exceed 7%) = 3.0%

D = Average actual price per gallon (July 2008 through October 2008) = \$4.50

E = Average actual price per gallon used to calculate the previous adjustment = \$4.02

Adjusted Operating, Transportation, and Landfill Fee (excluding Transport fuel costs) Component =  $(A + (A \times C)) =$   
 $(\$51.48 + (\$51.48 \times .03)) = \$53.02$

Adjusted Transport Fuel Cost Component =  $(B + ((B \times ((D - E) / E))) =$   
 $(\$9.81 + (\$9.81 \times ((\$4.50 - \$4.02) / \$4.02))) = \$10.98$

Example adjustment calculation effective January 1, 2010:

Where: A = Current Operating, Transportation, and Landfill Fee (excluding Transport fuel costs) Component = \$53.02 per ton

B = Current Transport Fuel Cost Component = \$10.98

C = 90% of the percentage change in the in the CPI during the previous calendar year (not to exceed 7%) = 3.0%

D = Average actual price per gallon (November 2008 through October 2008) = \$4.70

E = Average actual price per gallon used to calculate the previous adjustment = \$4.50

Adjusted Operating, Transportation, and Landfill Fee (excluding Transport fuel costs) Component =  $(A + (A \times C)) =$   
 $(\$53.02 + (\$53.02 \times .03)) = \$54.61$

Adjusted Transport Fuel Cost Component =  $(B + ((B \times ((D - E) / E))) =$   
 $(\$10.98 + (\$10.98 \times ((\$4.70 - \$4.50) / \$4.50))) = \$11.67$

- B. At Contractor's request, the Contract Administrator may make a new rate determination whenever additional requirements are imposed by the Contract Administrator, whenever a Change in Law occurs, or when requirements are imposed by the City of Willits under the Contractor's conditional use permit have increased Contractor's expense of operating hereunder and the increase in Contractor's expense has been fully

documented by Contractor and documentation has been provided to Contract Administrator. In this case the 7% maximum described in this Section, will not apply. Documentation, satisfactory to Agencies, will be provided to the Agencies upon request.

- C. Contractor may request a fee adjustment, if necessary to pay operating costs as a result of Uncontrollable Circumstances, beyond the normal variation in circumstances of transfer station operations and Solid Waste transportation and disposal, provided that such additional costs are beyond the control of Contractor and not due in whole or part to negligence by Contractor. Any such fee increase shall first be approved by the Contract Administrator, whose approval shall not be unreasonable withheld, and shall have a duration not to exceed the period during which the Uncontrollable Circumstances directly affect Contractor's operating costs.
- D. If during the term of this Agreement, Contractor's cost for the disposal of Solid Waste decreases because of a change in Landfill or disposal facility or Potrero Hills Landfill meets the new Landfill rate of a new proposed agreement, then the Operating, Transportation, and Landfill Fee portion of the rate shall be adjusted to correspond to any changes in transportation and disposal costs of Contractor caused by a change in landfill or disposal facility.

All other terms and conditions of BOS Agreement No. 00-040 remain in effect.

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CONTRACTOR:

\_\_\_\_\_  
Gerald Ward, President  
Solid Wastes of Willits, Inc.

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

AGENCIES:

City of Fort Bragg

Attest:

\_\_\_\_\_  
Linda Ruffing,  
City Manager

\_\_\_\_\_  
Cynthia VanWormer, City Clerk

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

City of Willits

Attest:

\_\_\_\_\_  
Bob Christofferson,  
Acting City Manager

\_\_\_\_\_  
Marilyn Harden,  
City Clerk

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

County of Mendocino

Attest:

\_\_\_\_\_  
Jim Wattenburger,  
Chair, Board of Supervisors

\_\_\_\_\_  
Kristi Furman,  
Clerk of the Board

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

APPROVED AS TO FORM:

\_\_\_\_\_  
James Lance,  
Willits City Attorney

\_\_\_\_\_  
Jeanine B. Nadel,  
Mendocino County Counsel

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

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

Michael Gogna,  
Fort Bragg City Attorney

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