

## **RESOLUTION NO. 3846-2015**

### **RESOLUTION OF THE FORT BRAGG CITY COUNCIL APPROVING AGREEMENT WITH COLD CREEK COMPOST AND AUTHORIZING CITY MANAGER TO EXECUTE THE SAME**

**WHEREAS**, mixed organic waste from the City of Fort Bragg's curbside collection is directed to Cold Creek Compost in Potter Valley; and

**WHEREAS**, the tipping fee charged to the City's franchisee (USA Waste Management, Inc., dba Empire Waste Management) is presently \$32/ton; and

**WHEREAS**, Sonoma County's composting facility at the Central Landfill site was recently shut down and the increased demand for composting services may impact disposal availability and pricing at the Cold Creek Compost facility; and

**WHEREAS**, Cold Creek Compost has agreed to enter into a long-term contract with the City of Fort Bragg to receive all of the mixed organic waste from Empire Waste Management's curbside routes at an initial price of \$26/ton, adjusted annually by 90% of the change in the consumer price index; and

**WHEREAS**, the \$26/ton price would be a \$6/ton reduction for Empire Waste Management and that would be passed-through as a rate reduction to City curbside collection customers; and

**WHEREAS**, the proposed agreement would guarantee the City an extension of the contract for a term equal to any extension or replacement of Cold Creek Compost's lease beyond December 31, 2022; and

**WHEREAS**, based on all the evidence presented, the City Council finds as follows:

1. The City has exercised its authority to designate Cold Creek Compost as the destination for processing of mixed organic waste collected under the City's solid waste franchise contract with Empire Waste Management; and
2. Cold Creek Compost is specially trained, experienced and competent to perform the requested services; and
3. The proposed agreement would result in an immediate reduction in the disposal costs for mixed organic solid waste and the cost savings would be passed through to City curbside collection customers under the terms of the City's franchise agreement with Empire Waste Management;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Fort Bragg does hereby approve the Agreement between the City of Fort Bragg and Cold Creek Compost, Inc. for Composting Services, attached and incorporated herein as "Exhibit A."

**The above and foregoing Resolution was introduced by Councilmember Peters, seconded by Councilmember Cimolino, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 14<sup>th</sup> day of September 2015, by the**



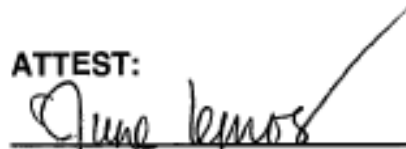
following vote:

**AYES:** Councilmembers Peters, Cimolino, Deitz, Hammerstrom, and Mayor  
Turner.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.



**DAVE TURNER,**  
**Mayor**

**ATTEST:**

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June Lemos  
City Clerk



## EXHIBIT A

8. City shall provide, either through the Franchise Contract or other means, all public information, monitoring, inspection and enforcement functions to minimize contamination of the mixed organic waste by unacceptable materials deposited by customers in collection containers.
9. Cold Creek shall compost all mixed organic waste into marketable finished compost.
10. The acceptable materials to be received in the mixed organic waste collections by City Franchisee from City residential and commercial customers are yard trimmings, food waste, food-contaminated paper, and miscellaneous paper not suitable for recycling. Cold Creek will accept other organic waste that may be delivered by the City Franchisee and the complete list of acceptable materials is: agricultural materials including, but not limited to manure and animal stall bedding, poultry mortalities, grape pomace, diatomaceous earth and culled fruit, green material including, but not limited to yard trimmings, brush, branches and stumps, wood materials including, but not limited to sawmill waste, source separated construction and demolition materials including sheetrock (nails, doorknobs, joist hangers OK), food materials including, but not limited to meat, fish, and dairy, soiled paper and waxed cardboard, fishery waste, grease trap waste, pet feces and cat litter, and liquid wastes including, but not limited to olive sludge, brewery waste, and pond sludge.
11. Any unacceptable materials delivered by City Franchisee to Cold Creek shall be disposed of by Cold Creek either by backhaul by City Franchisee to City Franchisees' own solid waste disposal facilities or by disposal by Cold Creek at any solid waste disposal site, with the disposal fees billed to City Franchisee. If a load is determined by Cold Creek upon initial inspection to be excessively contaminated to the extent that the cost of removing contaminants exceeds the value of the organic material, or to exceed the CalRecycle standard of no more than 1% contamination by weight, Cold Creek may reject the load at Cold Creek's sole discretion.
12. City Franchisee's deliveries of organic waste to Cold Creek shall be weighed at Cold Creek's truck scale to determine the net weight delivered. City Franchisee shall deliver in trucks with the capability to discharge their own load. Cold Creek may inspect each load prior to unloading.
13. Cold Creek shall initially charge City Franchisee \$26.00 per ton for mixed organic waste, adjusted up or down on each subsequent January 1 by a percentage factor equal to 0.9 of the change of the All Urban Consumers Consumer Price Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 - 1984 = 100, not seasonally adjusted, compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor, and its value twelve months before.
14. Cold Creek will invoice City Franchisee weekly with payments due in 30 days. Any payments due from City Franchisee and not made within 30 days of receipt of the invoice shall incur additionally a 1.5% per month late charge. Failure of City Franchisee to pay charges due to Cold Creek within 90 days of invoicing shall constitute good cause for Cold Creek, at Cold Creek's sole discretion, to refuse additional deliveries. City shall incur no obligation to pay Cold Creek for charges, costs or penalties incurred by City Franchisee unless City consents in writing to pay such charges.

EXHIBIT A

**AGREEMENT BETWEEN THE CITY OF FORT BRAGG  
AND COLD CREEK COMPOST, INC. FOR COMPOSTING SERVICES**

This Agreement is made and entered into as of the latest date of execution between the City of Fort Bragg (hereinafter, "City"), and Cold Creek Compost, Inc. (hereinafter, "Cold Creek"), a California Corporation, who shall collectively be referred to as the "Parties."

**WHEREAS**, the City desires to contract with Cold Creek for services specified herein; and

**WHEREAS**, Cold Creek is specially trained, experienced and competent to perform such services;  
and

**WHEREAS**, the parties desire to set forth the terms and conditions under which said services shall be furnished.

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

1. The term of this Agreement shall be October 1, 2015 through December 31, 2022, unless amended in writing by the Parties, or if extended by City pursuant to Section 3 below.
2. Cold Creek warrants and represents that it operates a fully-permitted industrial compost facility at 6000 Potter Valley Road, Ukiah, CA 95482, which has capacity sufficient to perform its obligations hereunder and is subject to a valid ground lease on the facility which expires December 31, 2022. Any event pertaining to the potential interruption, termination, extension, or replacement of Cold Creek's ground lease shall be disclosed by Cold Creek in writing to the City within 14 days of Cold Creek gaining knowledge of such event.
3. Should Cold Creek obtain an extension or replacement of its ground lease beyond December 31, 2022, City shall have the option, at City's sole discretion, to extend the term of this Agreement for all or part of the term of Cold Creek's extended or replaced ground lease.
4. Cold Creek shall maintain all-weather access to its facility for tractor-trailer configured vehicles.
5. City provides for a mixed organic waste collection program under its exclusive City Solid Waste Franchise Contract (hereinafter, "Franchise Contract").
6. The current City franchisee for the Franchise Contract is USA Waste of California, Inc. dba Empire Waste Management, who, together with any future replacement franchisee or contractor, shall be referred to hereinafter as "City Franchisee."
7. City has exercised its authority to designate Cold Creek as the destination for processing of mixed organic waste collected under the Franchise Contract, and Cold Creek agrees to accept this mixed organic waste under the terms and conditions set forth herein. The designation by City of Cold Creek as destination shall continue in effect for the duration of this Agreement, provided that Cold Creek performs its obligations stated herein.

EXHIBIT A

ATTEST:

By: \_\_\_\_\_  
June Lemos, Acting City Clerk

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

Approved as to Form:

By: \_\_\_\_\_  
Samantha Zutler, City Attorney

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

**COLD CREEK COMPOST, INC.**  
Cold Creek Compost Inc.  
6000 Potter Valley Road  
Ukiah, CA 95482

\_\_\_\_\_  
Martin Mileck, President

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

EXHIBIT A

15. Cold Creek shall be open for deliveries Monday through Friday, 7 a.m. to 3:30 p.m., and Saturday from 7 a.m. to 1 p.m., excluding the following holidays: Christmas, New Year's Day, Labor Day, Memorial Day, 4th of July, Thanksgiving Day.
16. Cold Creek, its heirs and assigns, agrees to indemnify, hold harmless and defend City and City Franchisee, their officers, agents and employees from and against any/or all losses, damages, costs, charges, expenses, suits, actions, claims, judgments, liabilities, and attorney fees directly or indirectly, resulting from delivery and processing of acceptable mixed organic waste delivered to Cold Creek by City Franchisee, arising out of/or related to Cold Creek's leasehold, operation, remediation, closure or post closure of Cold Creek's facility.
17. Cold Creek shall comply with all applicable laws pertaining to the operation of its compost facility including closure and post closure obligations and any financial assurances. Upon request, Cold Creek shall provide City with copies of any regulatory inspection reports on its operation.
18. Cold Creek shall maintain general liability insurance in an amount not less than \$2,000,000 aggregate, \$1,000,000 per occurrence, naming City and City Franchisee as additional insured.
19. Either Party shall be relieved of its obligations hereunder for the duration of a Force Majeure or a Change in Law, if, as a result of a Force Majeure or a Change in Law, such party is unable to perform. A Force Majeure shall include only events outside of the Party's control and which are either Acts of God or the unforeseeable.
20. Cold Creek acknowledges and declares that the City Franchisee is and will be the Third Party beneficiaries of this Agreement.
21. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties to this Agreement.
22. The Parties stipulate and agree that any litigation relating to the enforcement or interpretation of this Agreement, arising out of either Parties' performance or relating in any way to the work, shall be brought in Superior Court in Mendocino City.
23. This Agreement and amendments and supplemental agreements hereto may be executed in counterparts.

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

**CITY OF FORT BRAGG**  
416 N. Franklin Street  
Fort Bragg, CA 95437

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

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