

EXHIBIT K
FORM OF AGENCY AGREEMENT

[See attached]

DRAFT

AGREEMENT BETWEEN [NEW LANDFILL OWNER] AND THE SONOMA COUNTY WASTE MANAGEMENT AGENCY FOR AGENCY FEES AND PROGRAMS

This Agreement is made as of _____, 2008 (the "Effective Date") by and between [New Landfill Owner] ("Owner"), and the Sonoma County Waste Management Agency, a joint powers agency ("Agency").

RECITALS

A. WHEREAS, Owner is the owner of the real property consisting of approximately 372 acres located at 500 Mecham Road, Cotati and commonly known as the Sonoma County Central Landfill ("the Landfill").

B. WHEREAS, Agency is responsible for the administration of solid waste diversion programs, including without limitation, the wood and yard debris diversion programs ("the Wood and Yard Debris Program") which serve the residents of Sonoma County.

C. WHEREAS, the Wood and Yard Debris Program is currently being conducted at the Landfill pursuant to that certain three party agreement between the County of Sonoma, Agency and Sonoma Compost Company, as amended, dated as of September 28, 1999 ("the Compost Agreement").

D. WHEREAS, the County of Sonoma assigned its rights and obligations under the Compost Agreement to Owner.

E. WHEREAS, the Compost Agreement expires on November 25, 2010 at which time the Wood and Yard Debris Program will be moved off of the Landfill.

F. WHEREAS, Agency currently sets a fee which is charged on a per ton basis and applied to the tons of solid waste that are deposited at the Central Landfill and the following four transfer stations: Sonoma, Healdsburg, Guerneville and Annapolis ("the Transfer Stations").

G. WHEREAS, the fee ("the Agency Fee"), which is currently set at \$5.40 per ton, is used to support the following Agency programs: (i) the household hazardous waste program; (ii) the education program; and (iii) planning. The Agency Fee does not cover the Wood and Yard Debris Program.

H. WHEREAS, Owner and Agency desire to enter into an agreement to set forth the parties respective rights and obligations with regard to the Agency Fee and the Wood and Yard Debris Program.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. *Definitions.* The following terms when used in this Agreement with initial letters capitalized have the meanings set forth below:

Adjustment Date. "Adjustment Date" means each anniversary of the Agency's fiscal year (i.e., July 1).

City. "City" means any one of the following cities located in the County of Sonoma: Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, Sonoma and the Town of Windsor.

Committed City. "Committed City" means a City that has committed its waste in the manner described in Section 6.17(b) of the Divestiture Purchase and Sale Agreement. "Committed Cities" shall be the plural of Committed City.

County-Controlled Waste. "County-Controlled Waste" means Waste from the unincorporated portions of the County of Sonoma that is collected and hauled by haulers franchised or licensed by the County, as such franchises or licenses may be amended by the County from time to time. County-Controlled Waste excludes (i) Source Separated green waste, Source Separated wood waste and other Source Separated recyclables (e.g., 100% recyclable, except for minor residual amounts); (ii) Self-Haul Waste; and (iii) Waste collected, hauled, delivered or disposed of by or on behalf of the Cities.

CPI. "CPI" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, "All Items" for All Urban Consumers in the San Francisco-Oakland-San Jose metropolitan area (1982-1984=100). If the CPI index is no longer in effect, the successor index that replaces the CPI index will be utilized for purposes of this Agreement.

CPI Factor. "CPI Factor" means the increase, if any in the CPI during the preceding year. The CPI factor shall be determined pursuant to a ratio, the denominator of which is the CPI for the last calendar month immediately preceding the prior Adjustment Date and the numerator of which is the CPI for the calendar month immediately preceding the then current Adjustment Date, except that for purposes of the first Adjustment Date, the denominator shall be the CPI for the last calendar month immediately preceding the Effective Date and the numerator of which is the CPI for the calendar month immediately preceding the first Adjustment Date.

Divestiture Purchase and Sale Agreement. "Divestiture Purchase and Sale Agreement" means that certain Purchase and Sale Agreement dated as of _____, 2008, by and between the County of Sonoma and Owner.

Facility. "Facility" means one of the Landfill or Transfer Stations. "Facilities" means the Landfill and Transfer Stations.

LIBOR. "LIBOR" means the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Reuters Screen LIBOR01 Page at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

Self-Haul Waste. "Self-Haul Waste" means all Waste that is delivered to the Facilities other than County-Controlled Waste and Waste from the Cities delivered by haulers licensed or franchised by such Cities.

Solid Waste Permits. "Solid Waste Permits" means those certain Solid Waste Facility Permits Number 49-AA-0001 issued on September 5, 2005 with respect to the Landfill and Central Transfer Station; Number 49-AA-0364 issued on January 17, 2007 with respect to the Annapolis Transfer Station; Number 49-AA-0139 issued on July 24, 2007 with respect to the Guerneville Transfer Station; Number 49-AA-0245 issued on June 21, 2006 with respect to the Healdsburg Transfer Station; and Number 49-AA-0144 issued on February 23, 2007 with respect to the Sonoma Transfer Station.

Source Separated. "Source Separated" means discarded materials separated from the owner's mixed solid waste at the owner's premises with the intention of diversion for a beneficial use. Such materials include, but are not limited to, wood, metal, glass, plastic, cardboard, office paper and yard debris. For purposes of this definition, "owner" means the individual resident or commercial business generating the discarded materials.

Ton and Tonnage. "Ton" and "Tonnage" means a "short ton" of 2,000 pounds.

Waste. "Waste" means any and all putrescible and nonputrescible solid waste materials, whether solid, semi-solid or liquid, of any size, characteristic, shape or volume, including all materials allowed under the Solid Waste Permits and including County-Controlled Waste, Self-Haul Waste and Waste from the Cities. Solid Waste expressly excludes all items referenced on Exhibit A attached hereto and made a part hereof.

2. *Term.* The term of this Agreement shall commence on the date Owner acquires title to the Landfill and Transfer Stations pursuant to the Divestiture Purchase and Sale Agreement and shall terminate on February 10, 2017 ("Expiration Date"). Agency shall have the right to terminate this Agreement prior to the Expiration Date by providing Owner with at least sixty (60) days advance written notice.

3. *Wood and Yard Debris Program.* Agency shall provide Owner with the current Agency fee schedule for all Source Separated wood waste and yard debris fees delivered to the Landfill ("Wood/Yard Debris Fees"). The current fee schedule is attached hereto as Exhibit B. Owner agrees to separately collect, and account for, all Wood/Yard Debris Fees collected at the Landfill during the period that the Wood and Yard Debris Program is conducted at the Landfill pursuant to the Compost Agreement. The Wood/Yard Debris Fees shall be transmitted to the Agency in accordance with Section 5 below. Agency reserves the right to adjust such fees for the Wood and Yard Debris Program, provided Agency gives Owner at least ninety (90) days prior written notice of any such adjustment. The parties acknowledge that any Source Separated wood waste or yard debris delivered to the Transfer Stations shall not be subject to this Agreement.

4. *Agency Fee.*

4.1 *Collection of Agency Fee.* Owner agrees to separately collect, and account for, the Agency Fee on all Self Haul Waste. Agency Fees shall be transmitted by Owner to Agency in accordance with Section 5 below. In addition, to the extent any Committed City directs Owner to collect the Agency Fee on the Committed City's franchised waste, Owner agrees to collect such fees and transmit them to Agency in accordance with Section 5 below.

4.2 *Changes to Agency Fee.* Agency may increase or decrease the Agency Fee applied to the Self Haul Waste in the manner described below.

4.2.1 *Increases to Agency Fee based on CPI Adjustments.* Commencing on July 1, 2009, the Agency Fee for the Self Haul Waste may be adjusted based on the CPI Factor. Should Agency desire to increase the Agency Fee based on the CPI Factor, Agency shall notify Owner in writing no later than April 1st of any proposed adjustment. Such adjustments may be made on a cumulative basis. For example, should Agency not adjust the Agency Fee by the full amount of the CPI Factor, Agency may rollover the unadjusted amount into future years.

4.2.2 *Decreases to Agency Fee.* Agency may decrease or eliminate the Agency Fee at anytime provided Agency gives Owner at least ninety (90) days prior written notice of the change.

4.3 *Agency's Reservation of Regulatory Powers.* Notwithstanding anything stated in this Agreement, Owner hereby understands and acknowledges that Agency reserves its rights to adopt future regulations that impose new or increased fees on Waste for Agency programs. Agency further reserves its right to fund the programs covered by the Agency Fee or other programs through a different funding mechanism.

4.4 *Operation of Agency Programs.* Owner shall have the option at anytime to make a proposal to Agency to operate some or all of the programs covered by the Agency Fee or other Agency programs.

5. *Remittance of Fees.* The Agency Fees and the Wood/Yard Debris Fees shall be paid monthly to Agency on or before the 10th day of each month for the immediately preceding month. In addition to Agency's other rights and remedies in the event of a failure of the Owner to pay the fees required hereunder, outstanding amounts of such fees not paid when due shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points until paid from the date due until fully paid, which interest shall accrue on the outstanding balance of such fees on a monthly basis.

6. *Reporting and Audit Rights*

6.1 *Transaction Records.* Owner shall keep accurate and detailed books of account and records in accordance with generally acceptable accounting principles consistently applied (the "**Transaction Records**") regarding any and all transactions conducted involving all Waste, broken out in the following manner: (i) Self Haul Waste, (ii) County-Controlled Waste; (iii) Waste delivered by a Committed City (for each City); and (iv) Waste delivered by an uncommitted City. In addition, Transaction Records shall be kept for any and all transactions conducted involving Wood/Yard Debris Fees at the Landfill. The Transaction Records shall include all records, receipts, journals, ledgers and documents reasonably necessary to enable Agency or its auditors or accountants to perform a complete and accurate audit of all fees due under this Agreement. Owner shall retain the Transaction Records for a period of five (5) years after the end of the calendar year covering such Transaction Records. Copies of all Transaction Records shall be kept at the Landfill or such other location as is approved by Agency in its reasonable discretion. Agency shall be entitled at all times during regular business hours to access, review and copy the Transaction Records.

6.2 *Reporting Requirements.* Concurrently with the monthly payment of the fees required hereunder, Owner shall deliver to Agency a report setting forth:

- (1) Each Agency Fee separately and Owner's calculation thereof;
- (2) Each Wood/Yard Debris Fee and Owner's calculation thereof;
- (3) Tons of Waste (broken down by the categories of Waste described under Section 6.1 above) delivered to the Landfill for disposal during the preceding calendar month, which must be accompanied by the weight records and disposal tickets for such month as well as any voided disposal tickets during such month;
- (4) Tons of Waste (broken down by the categories of Waste described under Section 6.1 above) delivered to each of the Transfer Stations during the preceding calendar month, the customer, the Ton of Self Haul Waste delivered by such customer, and the rates paid by such customer on a per ton basis for delivering such Waste.

6.3 *Audits.* Agency, upon not less than five (5) business days' prior notice to Owner, may cause an audit to be made of the Agency Fees and/or the Wood/Yard Debris Fees

and all of the Transaction Records necessary (in Agency's sole judgment) to audit such fees. Owner will make all such books and records available to Agency and its consultants for such audit at the office located at the Landfill or such other location as is approved by Agency in its reasonable discretion. Owner shall cooperate with Agency in connection with such audit and shall make available to Agency and its consultants performing the audit personnel who are knowledgeable about the operations at the Landfill and Transfer Stations and the Transaction Records. If the audit discloses an underpayment of the Agency Fees or the Wood/Yard Debris Fees, Owner shall immediately pay to Agency the amount of the underpayment, with interest on the underpaid amount at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points from the date such underpayment was originally due until such amount is fully paid, which interest shall accrue on the outstanding balance of the Agency Fees and the Wood/Yard Debris Fees, as applicable, on a monthly basis. If the audit discloses an underreporting of the Agency Fees or the Wood/Yard Debris Fees in excess of 2% over the time period covering such audit, then Owner shall also immediately pay to Agency all costs and expenses associated with the audit (including Agency's estimated costs of staff time and all consultant fees and expenses) and with collecting the underpayment, including auditing costs and attorneys' fees and costs. If the audit discloses an overpayment of Agency Fees or Wood/Yard Debris Fees, Owner shall be entitled to a credit against the next payment of Agency Fees or Wood/Yard Debris Fees, as applicable, due to Agency, as applicable.

6.4 *Timing of Audits.* Audits may be conducted once each calendar year, in the sole discretion of Agency, or at such other time as Agency, acting reasonably, believes that there has been an underpayment of Agency Fees or Wood/Yard Debris Fees.

7. *Defaults and Remedies.*

7.1 *Event of Default.* The occurrence of any of the following shall constitute an Event of Default under this Agreement:

7.1.1 *Failure to Make Payments.* Owner's failure to pay when due any fees required to be paid under this Agreement if the failure continues for thirty (30) days after written notice of the failure from Agency to Owner; or

7.1.2 *Failure to Perform Non-Monetary Obligations.* Owner's failure to perform any other obligation under this Agreement if, for thirty (30) days after written notice of the failure from Agency to Owner, Owner fails to commence to perform such obligation and such default continues for thirty (30) days after such written notice unless within that time period Owner has promptly commenced and continues diligent efforts to remedy the default, in which event Owner shall have such additional time as is necessary, but not more than sixty (60) days after Agency gives Owner notice of the default. Notwithstanding the foregoing, if Owner fails to cure the default because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes, except financial, beyond the reasonable control of Owner (hereinafter referred to as "Force Majeure Events"),

then Owner's requirement to cure such default shall be delayed for the period that the Force Majeure Events prevented Owner from complying with the terms of this Agreement.

7.2 Remedies.

7.2.1 *Specific Performance.* Owner agrees that its breach of this Agreement with regard to the Wood and Yard Debris Program will cause irreparable harm to Agency and in the that event, in addition to other remedies provided by applicable law, Agency will be entitled to immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement.

7.2.2 *Cumulative Rights and Remedies.* No right or remedy set forth in this Agreement is intended by the parties to be exclusive; each shall be cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity.

8. *Notices.* Any notice, tender or delivery to be given hereunder by either party to the other shall be in writing and shall be effected by personal delivery, by certified mail, postage prepaid, return receipt requested or by recognized overnight courier. Notices, tender or delivery shall be delivered and/or addressed to the respective addresses of the parties set forth below, but each party may change its address by written notice in accordance with this Section:

AGENCY: Sonoma County Waste Management Agency
Attention: Agency Director
2300 County Center Dr., Suite B 100
Santa Rosa, CA 95403
(707) 565-3687
Fax: (707) 565-3701

OWNER: _____

9. Miscellaneous.

9.1 *No Waiver of Breach.* The waiver by either party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

9.2 *Construction.* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

9.3 *Consent.* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

9.4 *No Third Party Beneficiaries.* Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

9.5 *Applicable Law and Forum.* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. To the extent allowed by law, the parties agree that any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the forum nearest to the city of Santa Rosa, in the County of Sonoma.

9.6 *Captions.* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

9.7 *Merger.* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

9.8 *Time of Essence.* Time is specifically deemed to be of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

AGENCY: SONOMA COUNTY WASTE
MANAGEMENT AGENCY

By: _____
Chair

APPROVED AS TO FORM
FOR AGENCY:

Janet E. Coleson
Agency Counsel

OWNER: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
[EXCLUSIONS FROM THE DEFINITION OF WASTE]

EXHIBIT B
[2008 SCHEDULE OF WOOD AND YARD DEBRIS FEES]