

***FINAL REPORT OF THE
2014-2015 COLUSA COUNTY GRAND JURY***

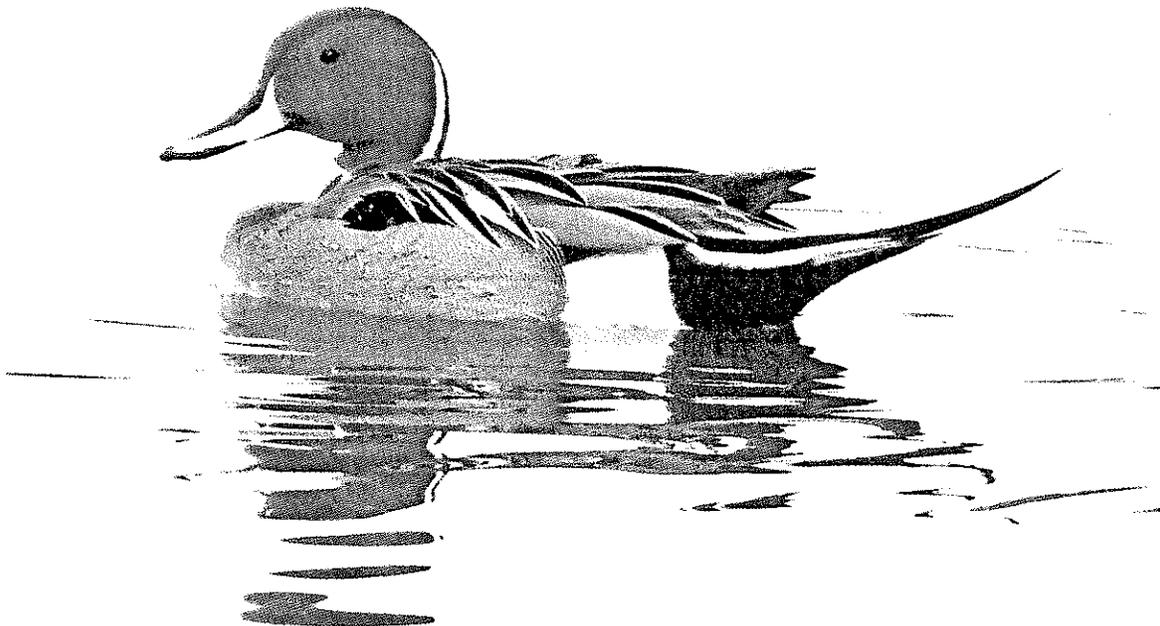


Photo Provided By: Sue Graue Photography

**Honorable Jeffery A. Thompson
Presiding Judge**

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Introduction

Colusa County Grand Jury

The U.S. Constitution Fifth Amendment and the California Constitution call for Grand Juries. The Grand Jury is a part of the judicial branch of government. Consisting of nineteen (19) citizens, it is an arm of the court, yet an entirely independent body. The Presiding Judge of the Superior Court, the District Attorney, the County Counsel, and the State Attorney General act as its advisors.

The Colusa County Grand Jury is a volunteer, fact-finding body that has the potential to make constructive changes and suggest meaningful solutions to a wide range of local government problems. It is composed of nineteen (19) members elected by ballot from a pool of volunteers and nominees of the court. An attempt is made to impanel a jury that represents a diversity of men and women from various socioeconomic, ethnic, age and educational backgrounds and geographical areas of the county.

Duties

The primary function of the Grand Jury is the examination of statutorily designated aspects of city government, county government, special districts, redevelopment agencies, local agency formation commissions, housing authorities, joint powers agencies, and non-profit agencies established by or operated on behalf of a public entity. In general, the Grand Jury is assigned the task of assuring honest, efficient government in the best interest of the citizens of Colusa County.

The Grand Jury is also authorized, but not limited to:

- Inquire into any charges of willful misconduct in office by public officials or employees.
- Inquire into conditions of jails and detention centers.
- Inspect and audit books, records, and financial expenditures of all agencies and departments under their jurisdiction, including special districts and non-profit organizations, to insure that public funds are properly accounted for and legally spent.

Members of the Grand Jury are sworn to secrecy and most of the jury's work is conducted in closed session. All testimony and deliberations are confidential. Breach of confidentiality is a misdemeanor punishable under the penal code.

Grand Jurors may act only through the Grand Jury as a body. Individually, they have no official standing, power, or authority. A Grand Juror may take no official action without prior approval and authorization of a majority of the Grand Jury. The foreperson is the only official spokesman for the Grand Jury.

The Grand Jury has three (3) ways to exercise its power:

1. Reports: Written reports evaluating the actions of governmental agencies with recommendations for improvement, when no crime is charged.
2. Indictments: Formal written complaints charging a person with a crime.
3. Accusations: Formal written complaints accusing a governmental employee or officer of misconduct. These are similar to indictments except that conviction would result in removal of the public officer from office rather than criminal penalties.

Colusa County Grand Jury

Honorable Jeffrey A. Thompson, Presiding Judge
Superior Court of California, County of Colusa
532 Oak Street
Colusa, CA 95932

Dear Judge Thompson:

In accordance with the requirements of California Penal Code Section 933(a), I respectfully submit to you the Final Report of the 2014-2015 Colusa County Grand Jury.

On behalf of the Grand Jury, I offer thanks to the elected officials, department heads, employees and citizens of Colusa County who gave of their valuable time and knowledge to assist us in the investigations which we undertook.

To my fellow Grand Jurors, I am extremely grateful for your diligence and hard work and for the exceptional support which you have provided to me as Foreman.

There are four Grand Jurors who have volunteered to serve on the 2015-2016 Grand Jury. I congratulate them and wish them great success.

It is my hope that the citizens of Colusa County will derive benefit from the efforts of this Grand Jury and perhaps be encouraged to become involved in the affairs of their local government.

Sincerely,

A handwritten signature in black ink that reads "Kenneth P. Woods". The signature is written in a cursive, flowing style.

Kenneth P. Woods, Foreman
2014-2015 Colusa County Grand Jury

2014-2015 Colusa County Grand Jury

Kenneth Woods – Foreperson
Valerie Strain – Foreperson Pro Tem
Cynthia Ciemny – Secretary
Julie Lazarus – Assistant Secretary

Ann Beebe
Charles Butts
Gretchen Carrere
Mike Cerney
Marilyn Davison
Jeannette Dennis
Francis Elliot
Renee Green
Cynthia Hackett
Timothy Maclaughlin
Cassie Manzara
Salvation Murphy
Chuck O'Donnell
Gerald Schumacher
John Zwald

-Grand Jury Oath-

I do solemnly swear that I will support the Constitution of the United States and the State of California, and all laws made pursuant to and in conformity therewith, will diligently inquire into, and true presentment make, of all public offenses against the people of this State, committed or triable within this county of which the Grand Jury shall have or obtain legal evidence. Further, I will not disclose any evidence brought before the Grand Jury, nor anything which I or any other Grand Juror may say, not the manner in which I or any other Grand Juror may have voted on any matter before the Grand Jury. I will keep the charge that will be given to me by the court.

(Penal Code §911)

Penal Code §933(a) – Final Report-

Each Grand Jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to the county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

County Committee Reports

Colusa County Board of Supervisors

Summary

The results of inquiries by the Colusa County Grand Jury into the activities of the Colusa County Board of Supervisors (Board) indicate that its authorities are exercised in a responsible manner, consistent with the general welfare of the citizens of Colusa County. However, there are five matters which warrant inclusion in this report: (1) Safety deficiencies; (2) Supervisors' salaries; (3) Hiring of a County Administrative Officer; (4) Welfare fraud; and (5) Water/Drought.

Background

A basic function of a California Civil Grand Jury is "to act as the public's watchdog by investigating and reporting upon the affairs of local government." (McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170.)

The institution having primary responsibility for governing the public affairs of Colusa County is the Colusa County Board of Supervisors (Board). The Board is established by state law and has legislative, executive and quasi-judicial responsibilities and authorities.

An investigation by this Grand Jury into the Board's conduct of the county's business is entirely consistent with the basic purpose of a California Civil Grand Jury.

Approach

Interviews were conducted with all five of the Colusa County Supervisors, individually, and with the Interim County Administrative Officer (CAO) and other elected officials and staff. Documents examined included minutes of the meetings of the Colusa County Board of Supervisors.

Narrative

Safety Deficiencies

In the 2013/2014 Report of the Colusa County Grand Jury, certain weaknesses impacting the safety of county personnel were disclosed. Details of the security weaknesses were not specified in that report, as doing so was judged to possibly increase the risk to county personnel.

During the interviews with the county supervisors and other elected officials and staff, jurors inquired as to what progress had been made toward ameliorating the safety issues previously raised.

Responses to those inquiries indicated that although the necessary funding for addressing the safety concerns is available, and that initial steps have been taken, no actual corrective action has occurred.

Supervisors' Salaries

On October 22, 2013, the Colusa County Board of Supervisors approved County Ordinance 758, increasing their annual salaries to \$59,000 and indexing those salaries to thirty-three percent of the salary of a Colusa County Superior Court Judge. According to one supervisor, the increased salaries fall into the low/medium range of salaries paid to supervisors in surrounding counties and are felt to be commensurate with the time required for performance of their duties. Supervisors' estimates of their hours worked each week ranged from a low of fifteen hours to a high of seventy hours.

As Colusa County is a California General Law County, the Board has the authority, subject to referendum, to set the salaries for its supervisor members.

Hiring of a County Administrative Officer (CAO)

In 2013 the Board approved an ordinance authorizing the hiring of a County Administrative Officer to assume many of the day-to-day responsibilities of county governance, allowing consolidation of some staff duties, providing an interface with department heads and staff and freeing the individual Board members to deal with higher-level policy matters.

The CAO position is presently filled by an Interim CAO, with the present title of Interim Clerk to the Board of Supervisors/Risk/Safety Manager. The Interim CAO is currently expected to leave his position in September of 2015.

The Board is presently seeking a permanent replacement for the Interim CAO.

Welfare Fraud

The Colusa County Department of Health and Human Services is the largest county department. One county supervisor has expressed concern regarding the apparent high level of welfare fraud within Colusa County. In response to this problem, an investigator has been hired by the county to ferret out instances of welfare fraud in order to reduce the burden placed upon county taxpayers by this abuse.

Water/Drought

All five supervisors expressed concern about the ongoing drought and its impact upon water supplies and the local economy.

Construction of the Sites Reservoir would provide some long-term relief to the water shortage. There are \$2.7 billion of grant funds available for this project. Colusa County, in conjunction with Glenn County, must apply for these funds by 2016.

Another approach is the development of a county plan for the use and conservation of ground water. Significant depletion of the ground water table is a possibility as more sub-surface water is pumped to replace the surface water lost to the drought.

Findings

F1 Safety Deficiencies:

The safety issues identified in the 2013/2014 Grand Jury Report have not been resolved.

F2. Supervisors' Salaries:

The Colusa County Board of Supervisors acted in accordance with their legal authority in setting their salaries.

F3. Hiring of a County Administrative Officer (CAO):

Interviews with the Interim CAO and the county supervisors indicate that anticipated benefits mentioned in the 2013/2014 Grand Jury Report are beginning to materialize. Hiring of a permanent CAO should help to solidify those benefits.

F4. Welfare Fraud:

The hiring of an investigator to reduce the stated high level of welfare program abuse in Colusa County is an appropriate approach for reducing, but not eliminating, the problem.

F5. Water/Drought:

The ongoing drought is the most serious problem presently facing Colusa County. The county is heavily dependent upon agriculture to provide jobs and income. Without water, there will be no agriculture.

Although their options are limited, the Board appears to be working diligently to pursue such remedies as are available.

Recommendations

R1. That the Board, in collaboration with appropriate county department heads and other elected county officials, expeditiously work to implement the plan developed to address the identified safety issues.

R2. No recommendation.

R3. That the Board proceed apace to recruit and hire a permanent CAO.

R4a. That the Board continue to utilize the services of an investigator to reduce the level of welfare program abuse.

R4b. That the Board undertake an investigation to determine the underlying causes for the stated high level of welfare program abuse.

R5a. That the Board, in conjunction with other California and Federal agencies, continue working to obtain grant funding for the Sites Reservoir.

R5b. That the Board, in conjunction with other agencies and impacted businesses and individuals, work to develop a comprehensive plan for ground water usage and conservation, with appropriate consideration given to all stakeholders, including households, businesses and agriculture.

Response Required

California Penal Code Sections 933© and 933.05 require a response to the findings and recommendations made in this final report. Responses shall be delivered to the Presiding Judge of the Superior Court within the required specified timelines. The following is the affected agency:

The Colusa County Board of Supervisors (Response required within 90 days)

Safe Haven Drop-in Center

Summary

The 2014-2015 Grand Jury received a citizen's complaint dated June 1, 2014, regarding the operation of the Safe Haven Drop-in Center.

In response to the citizen's complaint the Grand Jury voted to open an investigation, the details of which are presented in this report.

It should be noted this has been the third year in which the Grand Jury has looked into the center.

Background

The Safe Haven Drop-in Center was established in March 2008 as the Colusa County Behavioral Health (CCBH) Department drop-in center. The center is funded with the California Mental Health Services Act (MHSA) Proposition 63 monies. The concept behind the center is to provide an opportunity for individuals to take responsibility for their mental health and promote independent living skills. The center is a project designed to provide a safe, judgment free, supportive environment that will help integrate clients into the community with an increased ability to function independently.

In Colusa County, the Safe Haven Drop-In Center has experienced substantial growth. Utilization has gone from five participants to over thirty active members each day. The center is designed as a non-judgmental and safe place for people to share and learn skills to assist them in handling mental health challenges. The facility provides valuable services such as a clothing closet, laundry facility and meals for visitors. The center also puts on events in the community to create awareness and get rid of stigma surrounding mental health.

Approach

Interviews were conducted with past and current members of the Safe Haven Drop-in Center and with the MHSA Coordinator. Jurors conducted two surprise visits to the Safe Haven Drop-in Center.

Narrative

The Safe Haven Drop-in Center is peer-driven. Policies and activities are determined and implemented by the clients who use the facility. Some oversight is provided by an on-site Peer Support Specialist and the MHSA coordinator. There are also Workforce, Education and Training (W.E.T.) volunteers. The W.E.T. volunteers are paid through a county stipend fund.

At the center the clients, or members, can visit with each other, have peer group meetings, watch television and cook and share meals.

The center appears to be clean and well organized, with a very comfortable atmosphere.

The center does appear to operate in accordance with its established purpose, that is, to serve the needs of local residents who have emotional and/or mental health challenges.

The Grand Jury's investigation was conducted in a manner that was sensitive to the circumstances of many of the center's clients.

Findings

F1. Subsequent to the 2014 death of the MHSA Coordinator, supervision and oversight of the Safe Haven Drop-in Center has diminished.

F2. W.E.T. volunteers have not gone through proper background checks.

F3. Some clients are possibly under the influence of illegal drugs while present at the center.

F4. Some current or previous clients have been ostracized or made to feel unwelcome at the center.

Recommendation

R1. That the Colusa County Behavioral Health Department (CCBH) take a stronger role in the oversight of the Safe Haven Drop-in Center.

R2. That all W.E.T volunteers undergo standard finger printing and FBI background checks prior to being paid stipend compensation.

R3a. That the CCBH maintain a list of the W.E.T volunteers and the outcomes of their background checks.

R3b. That the CCBH investigate any claims of illegal drug use and take appropriate action to curtail such activity.

R4. That the CCBH reach out to past clients, who may have been made to feel unwelcome, and encourage their return to the center.

Response Required

California Penal Code Sections 933© and 933.05 require a response to the findings and recommendations made in this final report. Responses shall be delivered to the Presiding Judge of the Superior Court within the required specified timelines. The following is the affected agency:

Director, The Colusa County Behavioral Health Department (Response required within 60 days)

Colusa County Office of Education and the Education Village

Summary

A comprehensive report regarding the Colusa County Office of Education (CCOE) and the Education Village was prepared and submitted by the 2013-2014 Colusa County Grand Jury. The report included numerous findings and recommendations regarding the operations and finances of the CCOE and the Education Village. The 2014-2015 Colusa County Grand Jury voted to follow up on the 2013-2014 report to determine the extent to which the identified concerns have been addressed.

The 2014-2015 Grand Jury primarily focused on the following issues: (1) Lack of trust and cooperation between the CCOE and the four county school districts; (2) Lack of parity in compensation between special education staff and other districts' staff; (3) Termination of the CCOE as the Administrative Unit of the Colusa County Special Education Local Planning Area (SELPA); (4) A proposal to establish a charter school at the Education Village; (5) The overall financial health of the Education Village; and (6) Accounting for the \$2.3 million in CCOE reserve funds.

Background

A basic function of a California Civil Grand Jury is "to act as the public's watchdog by investigating and reporting upon the affairs of local government." (McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170.)

Approach

Interviews were conducted with the former Colusa County Superintendent of Schools and the newly elected Superintendent of Schools. Documents examined included the CCOE response to the 2013-2014 grand jury report, the 2013-14 unrestricted reserves/2015-16 estimated unrestricted reserves, budgeted and actual estimated reserves for Fund 01 and Fund 17, and the CCOE total operational overview and plan 2015-2018.

Narrative

Lack of trust and cooperation between the Colusa County Office of Education and the Colusa County School districts

The CCOE and the Colusa County School districts must communicate with each other, collaborate on decision making, and share certain costs of operation in order for the county school system to succeed. During the time of the previous county superintendent, trust and cooperation between the CCOE and the four school districts became nonexistent. Thus, cost sharing diminished and the CCOE was forced to make cuts to the services it provides.

The new county superintendent has offered a financial plan to stabilize and appropriately divide costs so that necessary operations can continue. The school districts have accepted this plan.

Lack of parity in compensation and termination of CCOE as Administrative Unit for the Colusa County SELPA

A memorandum was issued on January 10, 2014 from Kay Spurgeon, Colusa County Superintendent of Schools, to the Colusa County Office of Education Special Education Staff. The subject of the memorandum was the termination of responsibilities for the Colusa County Office of Education as the

Administrative Unit for the (SELPA) in Colusa County. It stated that the county office could not sustain the program if the districts did not pay for all excess costs.

The excess costs incurred came from the maintenance of the Education Village and salary raises given to special education staff. The school districts felt left out of the decisions which led to these monetary increases and, therefore, would not agree to covering these expenses from their own budgets. There was also an ongoing parity issue between the CCOE staff and the school districts' staffs that had not been resolved.

In order to keep the SELPA operating within Colusa County, the current County Superintendent proposed a plan to return to parity among the staff involved through compromise and clarification. The CCOE will absorb much of the cost to initiate the process and encourage trust among the districts. A yearly salary review will help to maintain salary parity. A governance review is also proposed to equalize the voting authority for future decisions. These changes are necessary to develop an atmosphere of trust between the county school districts and the county office of education.

Proposal to establish a charter school at the Education Village

Plans for the proposed charter school to fill the Education Village have been dropped.

Overall financial health of the Education Village

Factors contributing to the financial burden of the Education Village are listed here. The maintenance for the Education Village is \$150,000/year. Several income producing programs that were housed there have been discontinued. There are currently 4 students in the county who would fit the original purpose of the Education Village, but are being served out of Colusa County. The special education staff that occupies some of the Education Village buildings are anticipating a move to the 5th Street location in Colusa until a permanent home can be arranged. There are ongoing litigation costs due to a lawsuit with the builders and architects involved in this project. The energy costs for the Education Village are high.

There is a current proposal for the Williams Unified School District to relocate its pre-kindergarten and kindergarten classes to the Education Village. The District would rent four classrooms and the cafeteria and gym. The acceptance or rejection of this proposal will occur soon.

Other possible uses of the Education Village include: Woodland Community College sharing; SED Development for Severity Level 14 facility; inter-county SPED usage; ITT Tech or other type remote facility; County-wide Educational Interactive Museum; Rocketry Museum; and Telescopic Observatory & Space Science Education Facility.

Solar panels are being considered to reduce energy costs.

Phase II of the Education Village is also currently being planned. The ground is owned and ready to build on and there are existing plans. The reasons for building Phase II are to house all CCOE personnel in one location and reduce the CCOE's payments for rental and storage. Phase II could be feasible if the expenses for the Education Village are reduced and some income is generated.

Accounting for the \$2.3 million in CCOE reserve funds

The Grand Jury identified a reserve of \$2.3 million in the accounts of the CCOE. Upon further review, more reserves were identified. It appears a total of \$3.3 million in untagged monies exists. These reserves are being used for expenses incurred at the education village, and previously committed costs for salary raises for which the school districts did not want to be responsible. The use of some of these reserves will be necessary to re-establish programs for our schools and to promote trust and

cooperation among the school districts and the CCOE. The estimated goal of the County Superintendent of Schools is to end up with a \$2.3 million reserve. Some of this reserve will be applied to the building of Phase II.

Findings

F1. At the end of 2014, had no remedial action been taken, the CCOE would have would have soon faced a serious financial crisis.

F2. Fiscal discipline, based upon real-world facts, must be maintained if the CCOE is to remain solvent.

F3. In order to prevent a chaotic and costly situation for the Colusa County school districts, and to provide required special education services for county students, the CCOE must remain as the Administrative Unity for the Colusa County SELPA.

F4. The Colusa County Superintendent of Schools is an elected position. The holder of this office is responsible for daily operations, distribution of finances, office personnel, special education personnel and the direction of the CCOE. The Superintendent is accountable only to the students within this educational system and the voters by whom he or she is elected. There are few checks and balances in place to promote accountability.

Recommendations

R1 and R2. That the current Colusa County Superintendent of Schools continue the re-organization of the CCOE's operations and finances and pursue all reasonable and feasible options to promote utilization of the Education Village and maintenance of financial solvency for the CCOE.

R3. That the CCOE continue as the Administrative Unit of the Colusa County SELPA and that the Colusa County Superintendent of Schools and the county district superintendents and their boards cooperate closely to meet the needs of the county's special education students.

R4. That the Board of Directors of the CCOE, the county district superintendents and the public maintain vigilance regarding the operations and finances of the CCOE in order to promote accountability. Future grand juries may also elect to monitor the ongoing operations of the CCOE.

Response Required

California Penal Code Sections 933© and 933.05 require a response to the findings and recommendations made in this final report. Responses shall be delivered to the Presiding Judge of the Superior Court within the required specified timelines. The following are the affected agencies:

The Colusa County Board of Education (Response required within 90 days)

The Colusa County Superintendent of Schools (Response required within 60 days)

The Colusa County Board of Supervisors (Response required within 90 days)

Disclaimer

This report on the Colusa County Office of Education (CCOE) and the Education Village is issued by the full 2014-2015 Grand Jury with the exception of one member who was related to an employee (within the last three years) of the CCOE. This Grand Juror was excluded from all parts of the investigation including interviews, deliberations and the making and acceptance of this report. This report is based on information obtained from outside sources with none of the information being obtained from the excluded Grand Juror.

City Committee Reports

City of Colusa Municipal Swimming Pool Renovation

Summary

The results of inquiries by the Colusa County Grand Jury indicate that the actions taken by the Colusa City Council and the City of Colusa Public Works Department with regard to the renovation of the city of Colusa Municipal Swimming Pool were responsible and consistent with the general welfare of the citizens of the City of Colusa.

Background

A basic function of a California Civil Grand Jury is "to act as the public's watchdog by investigating and reporting upon the affairs of local government." (McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170.)

The institution having primary responsibility for governing the public affairs of the City of Colusa is the Colusa City Council. The City Council is established by state law and has legislative, executive and quasi-judicial responsibilities and authorities.

An investigation by the Grand Jury into the Council's conduct of the city's business is entirely consistent with the basic purpose of a California Civil Grand Jury.

Approach

Interviews were conducted with the City of Colusa Public Works Director. Colusa City Council meeting minutes and Colusa Sun-Herald Newspaper articles were researched. A copy of the City's contract with Holiday Pools, the company performing the renovation, was obtained and reviewed.

Narrative

Although no formal citizen complaint was received by the Colusa County Grand Jury, it was readily apparent to even a casual observer that repairs on the City of Colusa Municipal Swimming Pool had been ongoing for much of 2014 and further, that the pool was not open for use by the end of the summer of that year. As many Colusa children rely upon that pool for recreational swimming, it became a matter of concern to the Grand Jury as to why the pool renovation took so many months to complete. Consequently, the Grand Jury voted to open an investigation.

Findings

F1. The City of Colusa Municipal Swimming Pool was constructed circa 1930. According to an article in the June 12, 2013 Colusa Sun-Herald, the pool had been losing approximately 30,000 gallons of water daily since sometime prior to 2012. That water, rather than being recycled, was dumping directly into the sewer system, violating California state standards. The choice facing the City of Colusa was to renovate the pool or close it permanently.

F2. A preliminary investigation by the City of Colusa Public Works Department determined that the cost of demolition of the pool would exceed the cost of renovation. After some discussion, the Colusa City Council voted in the fall of 2013 to request bids to renovate the pool. The proposed budget was \$300,000.

F3. Holiday Pools (HP), of Chico, California, submitted the lowest bid and was selected as the contractor for the renovation. HP recently completed work on the municipal pool in Sutter, California, and came highly recommended by the staff of the Sutter Public Works Department.

F4. In January of 2014 the Colusa City Council approved a contract with HP. The contract was signed on March 14, 2014, with work to begin within 30 days. Although the contract called for completion within 120 working days, there was no provision for any penalty for failing to meet the expected completion date. Further, there were exceptions for matters beyond the control of the contractor.

F5. The work involved was extensive. The entire pool deck had to be dug up to remove old building material and locate leaky pipes. The filter system was non-operative and required replacement. Because of the pool's age, the scuppers which took the overflow to the filter system were no longer available and had to be re-created by the original manufacturer in Canada. That process took two months. Eventually all scuppers were replaced and 14 additional ones installed.

F6. The pool had to be ADA compliant and approved. Also, California state standards requiring separate filtration for the pool for smaller children had to be met.

F7. When all of the above work was completed, another delay arose: when the pool pump was initially turned on, it burned out and had to be replaced.

F8. Final cost for the renovation was approximately \$291,000.

F9. Although the renovation was completed in August of 2014, the City of Colusa Public Works Department decided against opening the pool at that time due to the non-availability of lifeguards that late in the season.

F10. Although the pool was unfortunately closed for the entire 2014 summer, the Colusa County Grand Jury has determined that the occurrence was the result of unanticipated problems arising from the renovation of an eighty year-old facility.

Recommendation

That the City of Colusa Public Works Department develop and implement a policy requiring regular (at least annual) monitoring and reporting of the condition of the Colusa Municipal Swimming Pool in order to ensure that all necessary maintenance is performed on a timely basis.

Response Required

California Penal Code Sections 933© and 933.05 require a response to the findings and recommendations made in this final report. Responses shall be delivered to the Presiding Judge of the Superior Court within the required specified timelines. The following is the affected agency:

The City of Colusa Public Works Department (Response required within 60 days)

City of Colusa Privatization of Waste Collection and Disposal

Summary

On December 2, 2008, the City of Colusa entered into an agreement with Norcal Waste Systems of Butte County, Inc., for collection and disposal of Colusa's residential and commercial solid waste, green waste and construction debris. Initially, the agreement was for a four-year period with the possibility of renewals for two more four-year periods. On May 6, 2014, an amendment was signed which extended the term of the agreement until December 31, 2036. In return for the extension, Norcal Waste Systems of Butte County, Inc., (Renamed Recology of Butte and Colusa Counties) agreed to invest over \$1.5 million to make necessary improvements to the Maxwell Transfer Station and to pay a one-time fee of \$400,000 to the City of Colusa.

The Colusa County Grand Jury received a citizen complaint dated August 15, 2014 regarding the current costs to City of Colusa residents and businesses for waste collection and disposal.

In response to the citizen's complaint, the Grand Jury voted to open an investigation, details of which are presented within this report.

Information obtained through inquiries by the Colusa County Grand Jury indicate that the actions taken by the Colusa City Council with regard to the privatization of the city's waste collection and disposal function were responsible and consistent with the general welfare of the citizens of the City of Colusa.

Background

A basic function of a California Civil Grand Jury is "to act as the public's watchdog by investigating and reporting upon the affairs of local government." (McClatchy Newspapers v. Superior court (1988) 44 Cal.3d 1162, 1170.)

The institution having primary responsibility for governing the public affairs of the City of Colusa is the Colusa City Council. The City Council is established by state law and has legislative, executive and quasi-judicial responsibilities and authorities.

An investigation by the Grand Jury into the Council's conduct of the city's business is entirely consistent with the basic purpose of a California Civil Grand Jury.

Approach

Interviews were conducted with a member of the Colusa City council, the City of Colusa Public Works Director and the Finance director for the City of Williams. Colusa City Council minutes and staff reports and Colusa County Sun-Herald newspaper articles were reviewed. Copies of the agreement and amendment between the City of Colusa and Norcal Waste Systems of Butte County/Recology of Butte and Colusa Counties (Recology) were obtained and reviewed.

Narrative

As early as 1998 the Colusa City Council distributed a Request for Proposal (RFP) for solid waste services. Six responses were received, but the decision was made to keep the service in-house. The Ostrom Road Landfill was contracted to take the city's green waste and household garbage.

In 2007, the City council again addressed concerns regarding waste collection and disposal. A staff report issued by the Interim City Manager and dated August 7, 2007 (Exhibit A) detailed ongoing and

increasing costs which were not covered by collection fees. The projected deficit for 2007/2008 was \$324,268.12. The deficit problem was made more severe by regulations issued by the California Air Resources Board which set new standards for emissions for the City's solid waste trucks. These standards required the City to upgrade or replace its solid waste trucks by January 1, 2009.

On June 11, 2008 the results of a rate study conducted by Foresight Consulting were presented to the Colusa City Council. An excerpt from that study is included as Exhibit B.

At the October 7, 2008 meeting of the Colusa City Council, a Staff Report was submitted listing issues and options associated with contracting for waste collection and disposal versus providing the services as a City utility. A copy of that Staff Report is included as Exhibit C.

Subsequently, as indicated in the above Summary, the City of Colusa entered into an agreement with Recology for providing waste collection and disposal services. That agreement was amended on May 6, 2014. The initial agreement and the amendment are included as Exhibits D and E.

Findings

F1. The California Integrated Waste Management Act of 1989 requires the City of Colusa to make adequate provisions for the collection and disposal of the City's solid waste. Various federal and state statutes and regulations prescribe the manner in which this function is to be carried out, including the types of vehicles which can be used.

F2. As with most other governmental and private activities, costs for providing waste collection and disposal services have increased steadily over the years. Consequently, the decision facing the Colusa City Council was not whether City residents would be charged higher collection fees, but how those services were to be provided.

F3. The County of Colusa and the county cities of Williams and Arbuckle have all entered into agreements with Recology for waste collection and disposal services, including the twenty-year term extension. The Finance Director for the City of Williams has indicated that contracting with Recology offers greater efficiency and benefits the health and safety of the Williams community.

F4. The interviews conducted and the documents examined support the 2014/2015 Grand Jury's finding that the Colusa City Council exercised due diligence in arriving at the decision to contract with Recology for waste collection and disposal services, considering the financial, environmental and regulatory issues involved.

Recommendations

No recommendations

Response Required

None

City of Colusa Water and Sewer Rates

Summary

On September 1, 2009, the Colusa City Council (City Council) adopted Resolution No. 09-36 which established increased rates for sewer services for residences and businesses in the City of Colusa. On January 19, 2010, the City Council adopted Resolution No. 10-01 which revised the method of calculation for sewer rates for Colusa residential customers.

On May 4, 2010, the City Council adopted Resolution No. 10-8, establishing increased rates for water deliveries to city residences and businesses. Resolution No. 10-8 was subsequently modified by Resolution No. 13-15 which was adopted on May 7, 2013.

The Colusa County Grand Jury received a citizen complaint dated August 14, 2014 regarding the current costs to the City of Colusa residences and businesses for water and sewer services.

In response to the citizen's complaint, the Grand Jury voted to open an investigation, details of which are presented within this report.

Information obtained through inquiries by the Colusa County Grand Jury indicated that the actions taken by the City Council with regard to the setting of rates for water and sewer services were responsible and consistent with the general welfare of the citizens of the City of Colusa.

Background

A basic function of a California Civil Grand Jury is "to act as the public's watchdog by investigating and reporting upon the affairs of local government." (McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170.)

The institution having primary responsibility for governing the public affairs of the City of Colusa is the Colusa City Council. The City Council is established by state law and has legislative, executive and quasi-judicial responsibilities and authorities.

An investigation by this Grand Jury into the City Council's conduct of the city's business is entirely consistent with the basic purpose of a California Civil Grand Jury.

Approach

Interviews were conducted with a member of the City Council, the City of Colusa Public Works Director and the Finance Director for the City of Williams.

Documents reviewed include the following.

- City Council Minutes;
- City Council Proposition 218 Notification;
- City Council Resolution No. 09-36;
- City Council Resolution No. 12-15;
- California Regional Water Quality Control Board; Central Valley Region, Time Schedule Order 2007-XXXX;
- City of Colusa Water Well and Pump Station Evaluation Report;
- Water Rate Schedules for the California cities of Colusa, Williams, Willows and Yuba City.

Narrative

On March 1, 2002 the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) adopted Waste Discharge Requirements Order No. R5-2002-0020 for the City of Colusa (City) for the discharge of treated domestic wastewater to an unnamed tributary to Powell Slough.

As the City could not consistently comply with the effluent limitations for ammonia and aluminum, the Regional Water Board issued Cease and Desist Order No. R5-2002-0021 (CDO) requiring the City to comply with the effluent limitation by February 1, 2007. The CDO was subsequently modified to allow compliance by August 1, 2008, with an apparent further extension to early 2009. Non-compliance would have resulted in substantial monetary penalties and possible enforcement actions by the Regional Water Board.

In response to the Regional Water Board's requirements, the City completed a Wastewater Facilities Plan in March 2004. Upon review of the possible alternatives, the decision was made to construct a new tertiary treatment plant. According to City Council Minutes of August 18, 2009, work was begun in 2005 and completed in February 2009. Total cost was approximately \$17.5 million. The construction was financed by a grant of \$2.0 million and a \$15.5 million loan from the California State Revolving Loan Fund.

At the August 18, 2009 City Council meeting, the Public Works Administrator advised the City Council that arrangements must be made to repay the \$15.5 million loan. A representative of the engineering firm, Ecologic, gave an overview of the sewer rate study which the firm had conducted under contract with the City.

California Proposition 218, passed in 1996, requires that local agencies put all assessments, charges and user fees out to a vote prior to creation or increase. In most cases, the vote will require individual notices be mailed to affected Property owners. A formal protest hearing is also required to move forward with the charge or increase.

A Proposition 218 notice was mailed to the approximately 2,030 City customers prior to setting the new sewer rates. Ninety-eight protests were received. Accordingly, as indicated above, the City Council adopted Resolution No. 09-36, which established new rates for sewer services for residences and businesses in the City of Colusa and set forth the justification for those new, increased rates. A copy of Resolution No. 09-36 is included as Exhibit F.

As indicated above, Resolution 10-01, which modified the sewer rate structure for Colusa residences, was adopted by the City Council on January 19, 2010. Only one citizen protest was received by the City Council prior to adoption of the resolution.

A November 26, 2007 "Water Well and Pump Station Evaluation Report", prepared by the firm Wood Rodgers, states that "The City of Colusa (City) water system is functional and meets current need, but equipment is aging and maintenance has been deferred in many cases. The City should plan for increasing repair and replacement costs as equipment ages." A copy of the Executive Summary of the report is attached as Exhibit G.

In 2010, a Proposition 218 Notification was sent to households in the City of Colusa, advising of a hearing on May 4, 2010, regarding a proposed increase in city water service rates. The notification cited

the requirements of the 2009 City of Colusa Master Plan and listed further arguments supporting the proposed rate increases. A copy of the Proposition 218 Notification is attached as Exhibit H.

As indicated above, the City Council adopted Resolution No. 10-8, establishing increased rates for water deliveries to city residences and businesses. Resolution No. 10-8 was subsequently modified by Resolution No. 13-15 which was adopted on May 7, 2013.

Findings

F1. According to the City of Colusa's website, "The City of Colusa Water & Sewer Utilities is responsible for the water pumping, operation, treatment and distribution system, also the operation and maintenance of the sewer collection and treatment system as well as disposal. Personnel, Operations and Discharges are regulated and licensed by the State of California." In order to meet these responsibilities and satisfy the requirements imposed by the California Regional Water Quality Control Board, the City of Colusa undertook the construction of a new sewage treatment plant as well as the upgrading and maintenance of the City's wells and water distribution systems.

F2. Although a portion of the costs of the sewage treatment plant was offset by a grant, with the possibility of additional grants under consideration, the major responsibility for payment of the costs of the sewage treatment plant, as well as the upgrading and maintenance of the water system falls upon the City of Colusa, producing the need for the rate increases.

F3. The above rate increases were properly noticed in accordance with the provisions of Proposition 218, which allowed citizens input into the decisions. There were few citizen objections to the rate increases.

F4. The interviews conducted and the documents examined support the 2014/2015 Grand Jury's finding that the Colusa City Council exercised due diligence in arriving at the decisions to establish new rates for water and sewer rates for the City of Colusa and acted responsibly and in the best interests of the citizens of Colusa.

Recommendations

No recommendations

Response Required

None

Special Districts Committee Report

Colusa Mosquito Abatement District

Summary

Most, if not all of the people who live in Colusa County are aware of the seasonal increases in the mosquito population and the associated health risks. As new diseases, such as West Nile Virus, have migrated into the county, it is of great importance to ensure that proper steps are being taken to protect the residents of the county.

Due to an increase in the number of West Nile Virus cases among the residents of the county, the 2014/2015 Colusa County Grand Jury (Grand Jury) opened an investigation to determine if the current mosquito control services provided by the Colusa County Health Department through the Colusa Mosquito Abatement District are appropriate, especially considering the significant health concerns.

Through the investigation, it was found that, due to an increase in the costs of spraying operations and a prolonged funding shortfall, the mosquito abatement program at the beginning of 2014 was inadequate. However, on September 2, 2014, voters approved a ballot measure providing funding which will be sufficient to allow the Colusa Mosquito Abatement District to maintain a high quality of treatment.

Background

A basic function of a California Civil Grand Jury is “to act as the public’s watchdog by investigating and reporting upon the affairs of local government.” (McClatchy Newspapers v. Superior Court (1988) 44 Cal.3d 1162, 1170)

The Colusa Mosquito Abatement District has the mission of protecting the public’s health from vector borne diseases and nuisance through a comprehensive mosquito and vector control program.

An investigation by the Grand Jury into the operations of the Colusa Mosquito Abatement District is entirely consistent with the basic purpose of a California Civil Grand Jury.

Methodology

Interviews were conducted with twenty-two individuals, including managers and employees of the Colusa County Mosquito Abatement District, the Colusa County Road Department, the Colusa County Public Health Department, the Colusa County Voter Registration Department and county residents.

A site tour was conducted, including inspections of the County Corporation Yard and equipment used by the Colusa Mosquito Abatement District.

Documents reviewed included the following:

Appeal-Democrat 8/14/14 article regarding West Nile Virus in Colusa County;

Colusa Sun-Herald article pertaining to West Nile Virus;

Resolution No. 3/31/14A, calling for a special election in the Colusa Mosquito Abatement District;

Sutter-Yuba Vector Control District report, “What does the District do to fight West Nile Virus?”

Colusa Mosquito Abatement District Map (Page 27);

Colusa Mosquito Abatement District report, "Overview of the Colusa Mosquito Abatement District";

Aerial Survey Map of Sutter Butte Sink.

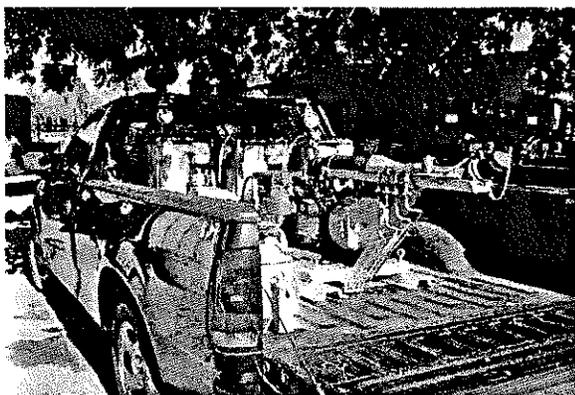
Narrative

From the Colusa Mosquito Abatement District's web site: "The Colusa Mosquito Abatement District was formed in 1958. The District covers 160 square miles, with 2020 square miles in Sutter County. There are three full time employees, and five seasonal employees that provide control services in the district."

During the past summer and throughout the mosquito spraying season (normally April through November), there were reports of West Nile Virus infections. Seven cases of the virus within the county were confirmed. These reports prompted the Colusa Sun-Herald to publish an article regarding these infections. The article generated considerable public interest and as a follow-up, the Colusa Sun-Herald interviewed the Director of the Colusa Mosquito Abatement District. In the interview, the Director disclosed that limited funding, along with increased costs, made it difficult to maintain an adequate level of protection within the District's boundaries. There had been no structured funding increase since 1995.

In order to increase the ability of the Colusa Mosquito Abatement District (District) to perform its function, various proactive measures have been undertaken. The District often acquires necessary tools and equipment through surplus outlets, saving thousands of dollars. The District also has the ability to build and repair the spray rigs mounted in its pickup trucks. Of necessity, some items must be purchased new, but the majority of its spray rigs are fabricated and assembled by the District's personnel during the winter months. A new spray rig would cost approximately \$10,000 to \$13,000, but by fabricating these items in the District's maintenance shop, that cost is reduced to approximately \$3,500. Cooperation with other Colusa County departments has also resulted in some cost savings.

The pictures below are of a Mosquito Abatement District truck-mounted spray rig and vehicles.



The increased costs, lack of funding and health concerns provided the impetus for the request for a special tax to be placed before District voters. The measure providing for the increase was approved on September 2, 2014. The new assessment adds \$29.92 per residential/vacation property and \$58.84 per

2014-2015 Colusa County Grand Jury Final Report

commercial/office/farm property each year. The additional funds (approximately \$127,000 less \$4,000 collection costs) will be deposited to a special account solely for District use.

It is expected that the increased funding will allow the District to operate at a high level of efficiency and effectiveness.

Findings

F1: The Colusa Mosquito Abatement District's performance has been exemplary, especially considering the funding constraints under which it has operated. Taxpayers' funds have been carefully and frugally managed to allow District residents to receive excellent service for their monies.

F2: The increased funding obtained through the 2014 ballot measure should allow the District to maintain this high level of performance.

F3: The District's area of coverage is primarily in eastern Colusa County, leaving much of the county without protection

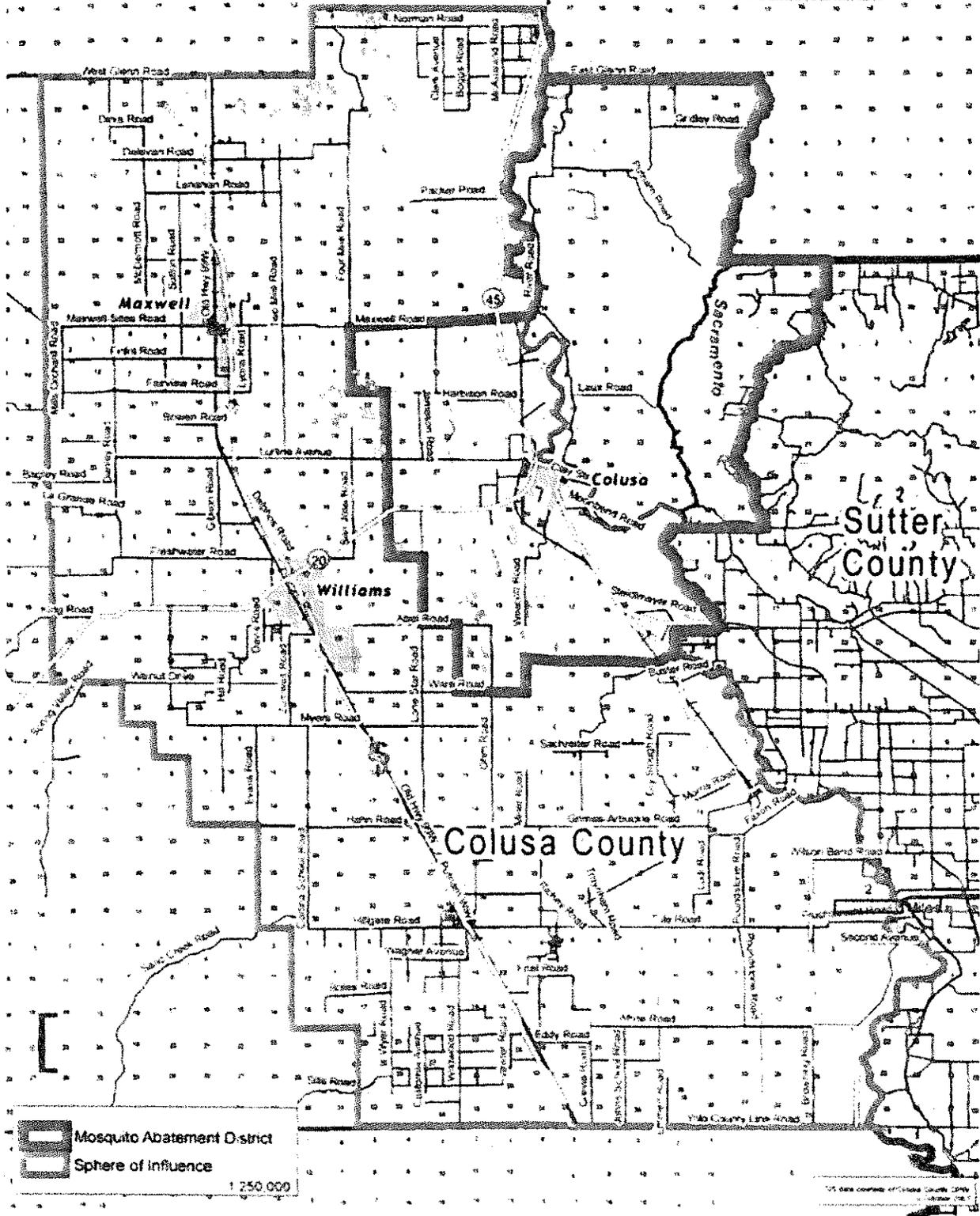
Recommendations

No recommendations

Response Required

None

Colusa Mosquito Abatement District and Sphere of Influence



Jail Inspection Report

Colusa County Jail Inspection Report

Summary

As authorized by Sections 919(a) and 919(b) of the California Penal Code, the Colusa County Grand Jury conducted two separate inspections of the Colusa County Adult Detention Facility (jail). The first was with Sheriff Marshall on October 29, 2014, along with four members of the Grand Jury. The second visit was on February 19, 2015 with incoming Sheriff Joe Garofalo, along with three Grand Jurors. During the inspection interviews were conducted with supervisors, officers of the jail and current inmates.

Introduction

Grand Jury members reviewed several pertinent documents in preparation for the inspection of October 29, 2014, including prior Grand Jury reports on the jail.

The Jurors met with the Sheriff, a detective and a jail line officer. The discussions included philosophical issues, such as the necessity for jails, the inmate dependents and ways to reduce the population of inmates.

The Jurors were presented with statistics comparing numbers of inmates housed and average lengths of stay. The 92-bed facility averaged 72 inmates for 2014, down from 2013 when the average was 82. The Sheriff discussed plans for a new juvenile detention facility in partnership with Sutter and Yuba Counties. Property has been purchased for a new jail facility and the Sheriff's Department is attempting to obtain matching grant funds for construction.

The jail tour began at the dispatch room and proceeded to the sally port where prisoners are initially brought into the jail. The jurors were shown where prisoners are drug tested, fingerprinted and, after giving their personal histories and medical issues, booked. Prisoners are issued inmate clothing colored either orange or green, depending upon status. There is an online service available to staff for translating any prisoners speaking a foreign language.

The jurors were next given a tour of the kitchen. The inmates' food is provided under contract by ARAMARK. The food is served on compartmentalized trays which are heated in an oven provided to the contractor. Utensils are plastic and disposable. The trays are rinsed after meals and returned to the contracting company for reuse. Inmates can earn three-day early release by helping in the kitchen or by performing other chores such as laundry or basic cleaning of the facility.

The Jurors were then shown the indoor recreation area, the horseshoe (which contains several cells), the classroom, a meeting room for church services, the nurse's station and the visitor center.

There is a nurse on duty at the jail forty hours a week. The Colusa County Behavioral Health staff members also serve as mental health therapists for the inmates, including preparation of assessments and follow-up to the psychiatric needs of inmates. A teacher, paid by the Colusa County Office of Education, is available for those inmates interested in obtaining a high school degree.

One issue pointed out by the Jail staff is the problem of dealing with the layout of cells and beds in an aging facility. Depending on the jail population, many times the male inmates will have to switch cells/wings with the female inmates for safety reasons and to provide sufficient beds for inmates.

Jurors interviewed two inmates, one male and one female. Both inmates answered pertinent questions concerning the treatment of inmates, the resolution of issues/complaints and meal service. Both stated that the officers at the Colusa County Jail treat inmates with respect, answer questions and attempt to promptly resolve any issues, while maintaining a professional attitude toward the inmates. Both interviewees stated that there is a need for greater education and rehabilitation assistance.

Interviews were also conducted with jail staff. The officers stated that the work environment is very satisfactory, which accounts for a low turnover rate and the ability to operate with a minimal staff. All staff are very knowledgeable regarding their duties and routines and the operational requirements of the facility.

Both Sheriff Marshal and Sheriff Garofalo emphasized the need for repairs to the existing jail building. Those needs include (but are not limited to) exterior paint, roof and HVAC repairs.

Findings

F1: The Colusa County Sheriff and the staff of the Colusa County Adult Detention Facility are well-trained professionals who take pride in their work and in their relationships with other staff and inmates.

F2: The current facility lacks adequate space for the expected, and known, influx of additional inmates. Operations at the facility are very labor intensive.

F3: Maintenance of the current, aging facility is inadequate.

F4: The taxpayers of Colusa County can be assured that funds received by Colusa County Sheriff for the Colusa County Adult Detention Facility are used responsibly.

Recommendations

R1: No recommendation

R2: The Colusa County Sheriff and the Colusa County Board of Supervisors should actively pursue plans to construct a new jail, including seeking grants to help with funding.

R3: The Colusa County Sheriff and the Colusa County Board of Supervisors should work diligently to obtain funds for needed maintenance of the current facility.

R4: No recommendation

Response Required

California Penal Code Sections 933© and 933.05 require a response to the findings and recommendations made in this final report. Responses shall be delivered to the Presiding Judge of the Superior Court within the required specified timelines. The following are the affected agencies:

The Colusa County Sheriff (Response required within 60 days)

The Colusa County Board of Supervisors (Response required within 60 days)

**Table CIP-1
Projected Capital Costs - Direct Haul (Alternative #1)**
City of Colusa

Operational/Functional Categories	Contingency	Cost/ea.	Projected Budgets									
			FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15		
Capital Costs - New CIP (Cash Funded)			\$0	\$1,176,000	\$0	\$0	\$0	\$0	\$0	\$1,364,000	\$0	
Fully-Automated Vehicle (Curbside, 1-man oper.) (e)	10%	\$280,000		\$567,000						\$657,000		
Back-up: Fully-Automated Vehicle (e)	10%	\$125,000		\$142,000						\$165,000		
Front Loader Vehicle (Commercial Collection) (e)	10%	\$220,000		\$249,000						\$289,000		
Back-up: Front Loader Vehicle (e)	10%	\$110,000		\$125,000						\$145,000		
Commercial Bins (141 2- to 6-CY bins) (b)	10%	\$92,000		\$93,000						\$108,000		
Capital Costs - New CIP (Financed/Leased) (c)			\$0	\$280,000	\$280,000	\$280,000	\$280,000	\$280,000	\$324,000	\$324,000		
Fully-Automated Vehicle (Curbside, 1-man oper.) (e)	0%	-		\$135,000	\$135,000	\$135,000	\$135,000	\$135,000	\$156,000	\$156,000		
Back-up: Fully-Automated Vehicle (e)	0%	-		\$34,000	\$34,000	\$34,000	\$34,000	\$34,000	\$39,000	\$39,000		
Front Loader Vehicle (Commercial Collection) (e)	0%	-		\$59,000	\$59,000	\$59,000	\$59,000	\$59,000	\$69,000	\$69,000		
Back-up: Front Loader Vehicle (e)	0%	-		\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$34,000	\$34,000		
Commercial Bins	0%	-		\$22,000	\$22,000	\$22,000	\$22,000	\$22,000	\$26,000	\$26,000		

- a. Source: Dave Fall, Arate Equipment, 3/7/08 email to Foresight Consulting. Foresight assumes back-ups are used vehicles costing 50% of new vehicles.
- b. 141 bins includes 117 bins on normal commercial routes, 11 bins for special commercial customers, plus 10% additional for back-ups.
- c. Financing and lease assumptions include:
 - 3.00% Assumed inflation rate for equipment and transfer station.
 - 6.00% Assumed interest rate for equipment leases and transfer station financing.
 - 5 Years Assumed repayment period for all equipment leases.
 - 20 Years Assumed repayment period for transfer station loan.

**Table TH-1
Planning Level Analysis of Transfer vs. Direct Haul Operations**
City of Colusa

Year	Waste	Tons Per Year	Haul Loads/Yr. (e)		Haul Miles (b)		Haul Cost (\$/mi.)		Annual Haul Cost		Transfer Savings
			Direct	Transfer	Direct	Transfer	Direct	Transfer	Direct	Transfer	
2005	Greenhousehold	4,663.6	697.6	766	61,271	21,445	\$1.50	\$1.50	\$91,906	\$32,167	\$59,739
	Total	5,361.2		268							
2006	Greenhousehold	4,630.4	849	297	67,943	23,780	\$1.50	\$1.50	\$101,914	\$35,670	\$66,244
	Total	5,945.0									
2007	Greenhousehold	4,449.7	803	281	64,271	22,495	\$1.50	\$1.50	\$96,406	\$33,742	\$62,664
	Total	5,623.7									
Average	Annual Savings of Transfer vs. Direct Haul	5,643.3	806	282	64,495	22,573			\$96,742	\$33,860	\$63,000

- a. Direct haul assumes 7 tons/load, transfer haul assumes 20 tons/load.
- b. Assumes 40 miles (one-way) to landfill.

**Table CIP-2
Projected Capital Costs - Establish New Transfer Station (Alternative #2)**

City of Colusa

Operational/Functional Categories	Contingency	Cost/ea.	Projected Budgets								
			FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	
Capital Costs - New CIP (Cash Funded)			\$0	\$371,000	\$2,427,000	\$0	\$0	\$0	\$0	\$0	\$1,558,000
Used Collection Vehicles (Short-term)	10%	\$53,500		\$121,000							\$487,000
Two Fully-Automated Vehicle (Curb-side, 1-man oper)	10%	\$180,000			\$420,000						\$122,000
Back-up: Fully-Automated Vehicle (e)	10%	\$90,000			\$105,000						\$243,000
Front Loader Vehicle (Commercial Collection) (e)	10%	\$180,000			\$210,000						\$122,000
Back-up: Front Loader Vehicle (e)	10%	\$90,000			\$105,000						\$111,000
Commercial Bins (141 2- to 6-CY bins) (b)	10%	\$92,000			\$96,000						
Transfer Station Devel. (Permitting & Engineering) (c)	0%	\$250,000		\$250,000							\$473,000
Transfer Station Equipment (d)	10%	\$350,000			\$408,000						
Transfer Station - New Road (f)	10%	\$400,000			\$467,000						
Transfer Station Construction (incl. 15% cont.) (g)	15%	\$505,000			\$616,000						
Capital Costs - New CIP (Financed/Leased) (e)	Add'l Cont.		\$0	\$296,000	\$395,000	\$415,000	\$415,000	\$415,000	\$415,000	\$415,000	\$465,000
Used Collection Vehicles (Short-term) Cash-Funded	0%	--		\$121,000							\$116,000
Two Fully-Automated Vehicle (Curb-side, 1-man oper)	0%	--			\$100,000		\$100,000	\$100,000	\$100,000	\$100,000	\$29,000
Back-up: Fully-Automated Vehicle (e)	0%	--			\$25,000		\$25,000	\$25,000	\$25,000	\$25,000	\$58,000
Front Loader Vehicle (Commercial Collection) (e)	0%	--			\$50,000		\$50,000	\$50,000	\$50,000	\$50,000	\$29,000
Back-up: Front Loader Vehicle (e)	0%	--			\$25,000		\$25,000	\$25,000	\$25,000	\$25,000	\$26,000
Commercial Bins (141 2- to 6-CY bins) (b)	0%	--			\$23,000		\$23,000	\$23,000	\$23,000	\$23,000	
Transfer Station Devel. (Permitting & Engineering) (c)	0%	--		\$175,000		\$75,000					\$112,000
Transfer Station Equipment (d)	0%	--			\$97,000		\$97,000	\$97,000	\$97,000	\$97,000	\$41,000
Transfer Station - New Road (f)	0%	--				\$41,000		\$41,000	\$41,000	\$41,000	
Transfer Station Construction (incl. 15% contingency)	0%	--			\$54,000		\$54,000	\$54,000	\$54,000	\$54,000	\$54,000

- a. Source: Dave Fall, Arate Equipment, 3/7/08 email to Foresight Consulting. Foresight assumes back-ups are used vehicles costing 50% of new vehicles.
- b. 141 bins includes 117 bins on normal commercial routes, 11 bins for special commercial customers, plus 10% additional for back-ups.
- c. Per CH2M Hill memo of 3/11/08. Assumes a negative dec EIR and fast-track permitting process. Costs are assumed to be financed as part of the transfer station.
- d. CH2M Hill estimates based on recent equipment purchases and conceptual design analysis (memo dated March 11, 2008). Includes a wheel bucket loader (8-CY bucket, used), 2 transfer trailers, and one transfer tractor (cab).
- e. Financing and lease assumptions include:
 - 3.00% Assumed Inflation rate for equipment and transfer station.
 - 6.00% Assumed Interest rate for equipment leases and transfer station financing.
 - 5 Years Assumed repayment period for all equipment leases.
 - 20 Years Assumed repayment period for transfer station loan.
- f. City staff assumes a 4,000 foot road will be needed. Foresight/CH2M Hill assume a cost of \$100/lineal foot.
- g. Not including permitting, equipment, or engineering costs (see CH2M Hill memo dated March 11, 2008); includes \$75,000 for land purchase (Foresight assumption).

CITY OF COLUSA

Staff Report
Council Meeting October 7, 2008

TO: Honorable Mayor and Members of the Council

FROM: Jan McClintock, Interim City Manager

RE: Discussion and direction to staff on the direction the City Council chooses to meet the California Air Resources Board (ARB) new standards for emissions on vehicles that become effective January 1, 2009 specifically as these standards relate to the City's Solid Waste trucks and therefore Solid Waste Collection in the City.

RECOMMENDED ACTION:

Staff is seeking Council direction on choosing an option to meet these standards.

ISSUE STATEMENT AND DISCUSSION:

For four years the ARB has been working on the implementation of new emissions standards which will impact the City's vehicle fleet. The City has been able to obtain a small rural community and county exemption until 2015 for all our vehicles except our solid waste disposal fleet. Therefore, the only vehicles that do not currently meet the January 2009 standards are the City's Solid Waste collection vehicles. Time is of the essence on this issue due to the State Mandated implementation deadline of January 1, 2009.

The City has previously looked at retrofitting these vehicles and/or purchasing used vehicles and this was determined to be impossible due to the age of some vehicles, the costs to retrofit the remaining fleet, and the unavailability of used vehicles which meet the new ARB standards.

The City has reviewed another option that included a transfer station. However, due to the Environmental Impact Report process and the probable mitigations required for this option, this was determined to be impractical.

The Council City previously directed staff to solicit an RFP/RFQ to retain the services of a company that could potentially be utilized to contract the services provided by the city's solid waste department. A Request for Qualifications (RFQ) was sent out with a date certain of September 5, 2008 for qualifications to be received. The RFQ was advertised in both the local and Yuba City newspapers. A copy of the RFQ was sent

directly to all the respondents to the 1999 RFQ in 1999 that could be located at this time. City staff located 7 of the 1999 respondents.

On September 5, 2008, at 4:00, the city had received two packages: one from Waste Management and one from Norcal Waste Systems of Butte County, Inc.

The Waste Management package did not contain a valid response to the RFQ and was deemed "non-responsive". The Norcal statement responded per the RFQ.

It is important to note at this point that the response provided by Norcal was to a very general RFQ and must be specifically negotiated for the City of Colusa based on the specific services and associated franchise fees that the City would chose.

The City Council is faced with two remaining alternatives for solid waste disposal services: 1.) Contract the services via a franchise or 2.) Upgrade the existing trucks and continue services as a City utility.

Option 1: Contract the Services via a franchise:

Council can direct staff to negotiate a service rate for services with Norcal, and should that fail, then with Waste Management Systems. The timeline for this could look as follows:

10-7-2008 – Direct staff to negotiate an agreement and bring it back to the City Council by a date certain. This would require modifications to sections of the City Code which would have to begin no later than the first meeting in November.

2 – 4 weeks – Negotiate a franchise with Norcal

November – Approve franchise agreement

December – transition time for new waste hauler

January 1, 2009 – Norcal takes over solid waste disposal.

Concerns:

- 1.) Currently, the Solid Waste Utility costs the City approximately \$865,000/year and generates only \$665,000 in revenue. A private hauler will not be able to absorb such losses and therefore the rates will need to increase substantially.
- 2.) If negotiations with Norcal are unsuccessful, there would be little to no time to negotiate with Waste Management Systems.
- 3.) Negotiations would need to include a transfer of City Staff to Norcal.
- 4.) City would need to dispose of existing equipment out-of-state or for scrap as this equipment does not meet ARB emission standards for California.

- 5.) The franchise would need to address solid waste collection around the low utility lines in alleyways.
- 6.) A franchise fee would need to be calculated which would keep the General Fund whole since part of some salaries and City Hall overhead was covered by the Solid Waste Utility/Enterprise. This franchise fee will add more to the rates. These shared expenses involved items such as electricity at the City Hall, overhead for City Council agendas, telephone services, staffing costs, etc.

Current Costs	\$865,000
Current Revenue	\$665,000
Projected Savings	\$439,000
Projected Costs transferred to Water	\$142,000
Projected Costs transferred to Sewer	\$142,000
Projected Costs transferred to the General Fund	\$142,000

Advantages:

- 1.) The City is no longer responsible for maintaining the fleet and compliance with complex and rapidly changes environmental disposal laws.
- 2.) If contract negotiations are successful the City will meet the required deadlines of the California ARB and avoid potential daily fines for the use of old equipment. The daily fines are up to \$1000/day/violation. Staff has not been able to obtain a definition of violation so for the purposes of this discussion we will assume that not more than 1 violation can be received per day. Based on the current usage, the City could incur up to \$9,000/week in ARB fines.
- 3.) If the City modifies the City Code appropriately rates will not be subject to the Proposition 218 processes.
- 4.) All billing and requests for service goes through Norcal's offices
- 5.) All customer questions go through Norcal's offices.

Disadvantages:

- 1.) The City will lose control of daily operations. The City's influence over this service will be limited to the remedies and processes as defined in the franchise agreement. These would include such issues as hours of operations, grievance procedures, and quality control. Public Works would be charged with managing the franchise agreement.
- 2.) The franchise will need to be periodically renewed or renegotiated. This may involve another RFP process.
- 3.) The City Council will not be able to set the rates for solid waste disposal.
- 4.) All billing and requests for service goes through Norcal's offices
- 5.) All customer questions go through Norcal's offices.
- 6.) Loss of potential cost allocation opportunities for expense sharing. This can be partially mitigated through Franchise fees.

Option 2: Maintain Solid Waste disposal as a City Utility:

Council can direct staff to immediately begin a 218 process to set new solid waste collection rates which would support the purchase of new vehicles for solid waste disposal. Timing issues are difficult for this option. The 218 will take at minimum until December. New vehicles cannot be ordered until there is a rate structure in place to support payment of the lease/purchase terms. There is a minimum 90-day period to acquire new, replacement equipment should the council decide to retain the ability to collect and dispose of solid waste. This would mean that the City would be operating in an out-of-compliance manner for approximately 3 months and could be subject to daily fines per truck during that time period.

The proposed timeline for this option is:

- 10-7-2008 – City Council directs staff to do the 218 process.
- 10 -8-2008 – Staff updates the current rate study to insure compliance with current laws. Staff puts together the required information for the 218 mailing. This includes a letter and ballot for each parcel identifying the parcel number and the address. Only 1 vote can be registered for each parcel so the parcel number must be on the ballot.
- 10-21-2008 – City Council approves the rate study.
- 10-22-2008 – 218 is mailed to all property owners and garbage customers in town.
- 10-23-2008 – 12-15-2008 – City Council and Solid Waste staff use their own resources and time to educate the public on why this is needed, what it means if the 218 fails, why everyone must vote – including YES votes as the tally is from the ballots received not the number of potential ballots.
- 12-16-2008 - City Council receives and counts the ballots to determine if the new rate structure is accepted by 50% + 1 of the parcels **for which ballots were received.**
- 12-17-2008 – If the 218 is successful, order trucks.

Concerns:

- 1.) What if the 218 is not successful? The City will be out of compliance with the State Mandates with no ability to argue that a plan is in place to correct the issue.
- 2.) The timeline for this option is very tight. Any slippage will result in dangerous delays. Temporary staff will be needed to insure the ballots are available for distribution on October 22. Mailing lists will need to be purchased from the County. Due to changes in the court's interpretation of Proposition 218, ballots will also need to be mailed to all customers of the service. This will require matching parcel numbers to the customer lists. This is a time consuming process.
- 3.) The costs associated with a 218 process are not budgeted.

Advantages:

- 1.) The City Staff would remain in place.
- 2.) Citizens would continue to contact City Hall with questions and concerns about solid waste disposal.

- 3.) Cost sharing will continue to help offset some of the administrative costs of City Hall such as heating, A/C, electricity and phone.
- 4.) City Council would continue to have control of how solid waste is managed in the City.

Disadvantages:

- 1.) The City would be required to process a 218 for any new rates for solid waste disposal. While this can be minimized by setting a rate escalator in the current 218, any major changes in State law which would substantially increase the costs of disposal over the predefined escalator would require a 218 process.
- 2.) The City would be required to monitor and meet all new EPA and State solid waste disposal laws.
- 3.) Since the City would not be in compliance by January 1, there is a risk of daily fines estimated at up to \$9000/week while waiting on new equipment to be delivered.
- 4.) Costs of the 218 process.
- 5.) The City will be forced to do a 218 for both the water and the sewer rates over the next 18 months. This 218 would make a third and this could cause concern with the citizens.
- 6.) The City would be required to make multiple trips per week to Ostron because there are no permitted transfer facilities in the area available to the City.
- 7.) The City staff would not be able to continue alley pick-up.

FRANCHISE AGREEMENT

BETWEEN THE

CITY OF COLUSA

AND

NORCAL WASTE SYSTEMS OF BUTTE COUNTY

FOR

**SOLID WASTE, GREEN WASTE AND
CONSTRUCTION DEBRIS COLLECTION AND
DISPOSAL**

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**FRANCHISE AGREEMENT BETWEEN THE CITY OF COLUSA AND
NORCAL WASTE SYSTEMS OF BUTTE COUNTY FOR SOLID WASTE,
GREEN WASTE AND CONSTRUCTION DEBRIS COLLECTION AND DISPOSAL**

This Franchise Agreement for Solid Waste, Green Waste and Construction Debris Collection and Disposal ("Agreement") is made and entered into this 2nd day of December, 2008 ("Effective Date"), by and between the City of Colusa, a California municipal corporation ("City"), and Norcal Waste Systems of Butte County, Inc., a California Corporation ("Contractor").

RECITALS

WHEREAS, the California Integrated Waste Management Act of 1989, codified at California Public Resources Code Section 40000 et seq. ("Waste Management Act") authorizes and requires each local agency to make adequate provisions for the handling and disposal of Solid Waste within the local agency's jurisdiction to meet the goals and requirements of the Waste Management Act; and

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), City has determined that in order to protect the public health and safety of the residents and business within the City of Colusa, it is appropriate to provide for solid waste collection and disposal by a private waste hauler as an alternative to providing such services through public resources; and to that end has determined that an exclusive franchise be awarded to a qualified company for the handling of certain Solid Waste materials and other services to meet the goals and requirements of the Waste Management Act, which franchise can be appropriately integrated into and function as part of the Solid Waste system provided in City; and

WHEREAS, Public Resources Code Section 40059 permits City to impose terms and conditions on the award of a solid waste franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions; and

WHEREAS, Contractor has represented and warranted to City that it has the experience, responsibility, and qualifications to provide solid waste handling services, as defined in Public Resources Code Section 49505 and as described herein; and

WHEREAS, the City Council of City has determined that Contractor, by demonstrated experience, reputation and capacity is qualified to exclusively provide for the collection of Solid Waste within the corporate limits of City and to transport such solid waste to places of processing and disposal, and City and Contractor desire that Contractor be engaged to perform such services on the terms and conditions set forth in this Agreement; and

WHEREAS, the City Council of City has determined that the public health, safety and well being of its residents require that solid waste collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be governed by and provided under an exclusive Solid Waste agreement;

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises contained and made in this Agreement, and subject to all the terms and conditions of this Agreement, City and Contractor now desire to enter into this Agreement to memorialize the terms of the Franchise, as more particularly set forth herein.

ARTICLE 1. DEFINITIONS

1.1 **Agreement.** "Agreement" shall have that meaning set forth in the preamble of this Agreement.

1.2 **Reserved.**

1.3 **Bin.** "Bin" shall mean a three (3) or six (6) cubic yard metal container provided by Contractor for the Collection of Bulky Items and Residential Construction Waste.

1.4 **Bulky Items.** "Bulky Items" shall mean appliances, furniture, cabinets and counter tops, auto parts, play equipment, mattresses and bedsprings, carpets and pads, toilets and bathroom fixtures and lumber (e.g., fences and posts) or other items too large to fit in a Customer's standard Container, but shall not include any Construction and Demolition Debris or any motor vehicle or any subassembly, component or part thereof (except tires).

1.5 **City.** "City" shall have that meaning set forth in the preamble of this Agreement.

1.6 **Collection.** "Collection" shall mean Contractor's act of removing Solid Waste, Green Waste and other Refuse Materials from Customer Containers for transportation and disposal pursuant to this Agreement and/or gathering Bulky Items or other Refuse Materials from Customers in the Service Area for transportation and disposal pursuant to this Agreement.

1.7 **Construction and Demolition Debris.** "Construction and Demolition Debris" shall mean debris and other materials resulting from the construction, remodeling or demolition of buildings and other structures including concrete, asphalt, rock, dirt and Residential Construction Waste.

1.8 **Container.** "Container" shall mean the wheeled carts provided to Customers for the Collection of Solid Waste, Green Waste, and/or Refuse Materials of the sizes and types specified in Article 8.

1.9 **Contractor.** "Contractor" shall have that meaning set forth in the preamble of this Agreement.

1.10 **Customer.** "Customer" means residential service recipients within the Service Area and any business, school, church or other commercial enterprise which subscribes for Collection services with Contractor.

1.11 **Franchise Fee.** "Franchise Fee" shall have that meaning set forth in Article 4 of this Agreement.

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1.12 **Green Waste.** “Green Waste” shall mean any plant materials such as leaves, yard clippings, brush, tree cuttings, and other yard wastes separated by the Customer from Solid Waste. Green Waste does not include individual tree branches more than three (3) inches in diameter or more than three (3) feet long or Construction and Demolition Debris.

1.13 **Hazardous Waste.** “Hazardous Waste” shall mean any material or substance now or hereafter defined as a “hazardous substance,” “hazardous waste,” “hazardous material,” “extremely hazardous waste,” “restricted hazardous waste” or “toxic substance,” or words of similar import, under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 et seq. (“RCRA”); the Clean Air Act, 42 U.S.C. §§7401 et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq.; the Toxic Substance Control Act, 15 U.S.C. §§2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Atomic Energy Act of 1954, 42 U.S.C. §§2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101 et seq.; the California Hazardous Waste Control Law, Cal. Health and Safety Code §§25100 et seq.; and the Medical Waste Management Act (Health and Safety Code §§25015 et seq.).

1.14 **Holiday.** “Holiday” shall mean any of the following: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

1.15 **Recyclables.** “Recyclables” shall mean a material that is separated from the Solid Waste stream and that can be reused or processed into a form suitable for reuse through reprocessing or manufacture, consistent with the requirements of applicable law. “Recyclables” include without limitation (if separated from the Solid Waste stream) aluminum cans, glass jars and bottles, steel (tin) food cans, bi-metal beverage cans; Type #1 containers (PET-polyethylene terephthalate); Type #2 containers (HDPE-high density polyethylene); Type #4 containers (LDPE-low density polyethylene), newspaper, high grade paper, mixed paper (ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags, wrapping paper), steel and other ferrous and non-ferrous scrap metals, and corrugated cardboard.

1.16 **Refuse Materials.** “Refuse Materials” shall mean any and all materials Contractor is obligated to Collect from Customers pursuant to this Agreement, and shall include Solid Waste, Green Waste, Construction and Demolition Debris and Bulky Items.

1.17 **Residential Construction Waste.** “Residential Construction Waste” shall mean lumber, plywood, siding, drywall, concrete, bricks, windows and other items commonly associated with home improvement projects.

1.18 **Service Area.** “Service Area” shall mean the entire area within the territorial boundaries of City, as such boundaries may change from time to time due to annexation of additional territory or otherwise.

1.19 **Solid Waste.** “Solid Waste” shall mean all garbage (kitchen and food waste and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of foodstuffs), rubbish (non-putrescible solid materials such as paper, cardboard, tin

cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber by-products or litter), Construction and Demolition Debris, home and industrial appliances and equipment, manure, and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the generator thereof at the time of such discard or rejection and which are normally disposed of by or collected from residential, and commercial, governmental and institutional establishments which are acceptable at Class III landfills under applicable laws.

1.20 **Term.** "Term" shall mean the original Term of this Agreement as provided in Section 3.1 and any authorized and executed extensions to the original Term of this Agreement as provided in Section 3.2.

1.21 **Universal Waste.** "Universal Waste" shall have the meaning set forth in the California Universal Waste Rule (Title 22 of California Code of Regulations, Chapter 23, Sections 66273.1 et seq.), as it may be amended or supplemented from time to time, and includes, without limitation, fluorescent lamps and tubes, batteries, computer and television monitors, electronic devices, electrical switches and relays, thermostats containing mercury, pilot light sensors, mercury gauges, mercury thermometers and mercury-added novelties.

1.22 **Waste Management Act.** "Waste Management Act" shall mean the California Integrated Waste Management Act of 1989, codified at California Public Resources Code Section 40000 et seq.

1.23 **Working Day.** "Working Day" shall mean Monday through Friday of each week, excluding Holidays.

ARTICLE 2. SERVICE AGREEMENT

2.1 **Franchise.** City desires to provide quality Refuse Material collection, processing and disposal services to City residents and businesses through the Contractor in all areas that are within the boundaries of the City, as such boundaries may change from time to time due to annexation of additional territory. City hereby grants, and Contractor accepts, the exclusive right and obligation to collect, process and dispose of all Solid Waste, Green Waste and other Refuse Materials accumulated at all residential and commercial sites located within the Service Area, in accordance with the terms and conditions of this Agreement (the "Franchise"). The Franchise shall not include the right and obligation to collect, process and/or dispose of Recyclables.

2.2 **Annexation of Territory.** Notwithstanding any other provision of this Agreement, Contractor's right and obligation to collect and transport materials in territory annexed to the City shall be non-exclusive to the extent that third-party waste haulers in such territory have continuation rights pursuant to Public Resources Code Section 49520. Territory which is annexed to the City and for which an existing waste collection and disposal franchise, agreement, license, or permit was granted by another public entity may continue to be served pursuant to such franchise, agreement, license or permit to the minimum extent required under the provisions of Public Resources Code Section 49520 et seq. City shall provide any third-party waste hauler that has continuation rights in an annexed area with notice of termination pursuant to Public Resources Code Section 49520 et seq. within thirty (30) days of annexation to the City of the territory in which the waste hauler has been operating.

2.3 **Collection Routes.** City reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing Contractor from driving an established Collection route, in which event Contractor will adjust its route without cost adjustment therefore. Contractor shall maintain, and provide to City upon City's written request, current and accurate Service Area route maps and the following information: a) areas of Collection including route numbers; b) day of the week Collection service is provided; c) boundary of each individual route; and d) a listing of the name, address and service(s) provided to each Customer. Proposed routes must be approved by City in writing prior to Contractor's provision of services under this Agreement. Any route changes proposed by Contractor shall be submitted, in writing, for City approval prior to the proposed date of implementation. Contractor shall not implement any route changes without City's prior written consent. Contractor shall implement any approved route changes so that no Customer is left without Collection services for more than six (6) days. City reserves the right to conduct audits of Contractor's Collection routes. Contractor shall fully cooperate in any such route audit and shall supply all reasonably requested information to City or City's agent in a timely manner at no cost to City.

ARTICLE 3. TERM OF THE FRANCHISE AGREEMENT

3.1 **Term.** The term of this Agreement shall be from the Effective Date first written above to December 31, 2012, inclusive, subject to Article 19 of this Agreement and Section 3.2. Collection services shall commence on January 1, 2009.

3.2 **Extension.** Contractor shall have the option to request an extension of this Agreement for two (2) separate four (4) year periods (January 1, 2013—December 31, 2016 and January 1, 2017—December 31, 2020). At least nine (9) months prior to the expiration of any term of this Agreement, Contractor shall provide City written notice of its desire to extend or not extend the term of this Agreement. City, at its sole discretion, may choose to extend or not extend the term of this Agreement, and shall notify Contractor of its intent at least six (6) months prior to the expiration of the relevant term of this Agreement.

ARTICLE 4. FRANCHISE FEE

During the term of this Agreement, Contractor shall remit to City, within thirty (30) calendar days of the end of each quarter, a Franchise Fee calculated as a percentage of the gross receipts collected by the Contractor from all Service Area accounts each quarter ("Franchise Fee"). From January 1, 2009—December 31, 2009, inclusive, the Franchise Fee shall be in the amount of fifteen percent (15%) of the gross receipts collected by the Contractor from all Service Area accounts each quarter. From January 1, 2010—December 31, 2010, inclusive, the Franchise Fee shall be in the amount of twelve and one-half percent (12.5%) of the gross receipts collected by the Contractor from all Service Area accounts each quarter. From January 1, 2011 through the expiration or termination of this Agreement, the Franchise Fee shall be in the amount of ten percent (10%) of the gross receipts collected by the Contractor from all Service Area accounts each quarter. With each quarterly payment of the Franchise Fee to City, Contractor shall inform City in writing of Contractor's gross receipts from all Service Area accounts during such quarter, the total number of Customers at each service level as of the beginning of such quarter, and the total number of tons of Refuse Material Collected by Contractor during such

quarter. Contractor's obligation to remit Franchise Fees to City for all revenues generated from the performance of this Agreement shall survive the termination of this Agreement.

ARTICLE 5. SERVICES

5.1 Collection of Materials. Contractor shall be responsible for Collection of Solid Waste, Green Waste and Construction and Demolition Debris in accordance with the provisions of this Agreement, and warrants that it will provide these services in compliance with all applicable laws and regulations, as such laws may be amended from time to time, specifically including, but not limited to, RCRA, CERCLA, the Waste Management Act and all other applicable laws and regulations of the United States, the State of California, and any other public agency with jurisdiction.

5.2 Processing and Disposal of Collected Materials. Refuse Materials collected by Contractor shall be transported to an appropriate facility for processing. Contractor, and not City, will select (and may change, at Contractor's discretion) the transfer station and landfill facility destinations for the materials which Contractor will Collect under this Agreement, provided that no Refuse Materials Collected under this Agreement shall be disposed of at a landfill facility that does not possess all required licenses and permits to perform such disposal. Contractor acknowledges that City has not, and by this Agreement does not, instruct Contractor on its transfer or transportation methods, and nothing in this Agreement or other action of the City shall be construed to place title to any Solid Waste, Green Waste or Refuse Materials collected by Contractor with City.

5.3 Capacity at Landfill Facility. Notwithstanding Contractor's right to select the landfill facility under Section 5.2, Contractor agrees to utilize landfills and transfer stations that have sufficient physical disposal and processing capacity to accommodate all Solid Waste, Green Waste and other Refuse Materials collected under this Agreement, for the entire term of this Agreement and any amendments or extensions thereto.

5.4 Ownership of Collected Materials. All Solid Waste, Green Waste, and other Refuse Materials collected pursuant to this Agreement shall be the property of the Customer until placed in a Bin or Container for Collection pursuant to this Agreement. Ownership of collected materials shall transfer to Contractor once it is deposited in Containers or Bins set out at the Collection point, or in Contractor's vehicles, and shall never be deemed to vest with City at any time. Contractor is granted the right to collect, transport, process, recover, recycle, retain, market, dispose of or otherwise use any such collected materials, or any part thereof, in any fashion, and retain all benefits or profits resulting therefrom. All collected materials shall be collected, transported, and disposed of in accordance with federal, state and local law.

5.5 Collection and Disposal of Spilled Waste. Contractor shall, at no additional charge, collect and deliver to a transfer station or landfill all Solid Waste, Green Waste and other Refuse Materials that it has spilled in the course of Collection. Contractor shall immediately clean up any litter, leakage or spillage of Refuse Materials which occurs during Collection and transport (collectively referred to as "Spilled Materials"). If City requests the Collection and clean up of such Spilled Materials prior to 12:00 p.m., Contractor shall make the Collection the same day. If City requests Collection after 12:00 p.m. on a given day, Contractor shall collect

and clean up the Spilled Materials as soon as possible, but in no event later than 12:00 p.m. the next Working Day. In addition to any other remedies available to City under this Agreement, Contractor shall reimburse City for all costs reasonably incurred by City in the cleanup of all Spilled Materials generated by Contractor in the performance of this Agreement, including equipment, materials and staff time.

5.6 Non-Collection.

- (a) Notwithstanding any other provision of this Agreement, Contractor shall not be required to collect Refuse Material (i) other than from Containers or Bins (except for Bulky Items at the annual Cleanup Event), (ii) where the volume of Refuse Material exceeds the capacity of the Container or Bin when its lid is closed, or (iii) that is or is contaminated by Hazardous Waste or Universal Waste ("Non-Collection"). In the event of Non-Collection, Contractor shall leave a Non-Collection notice.
- (b) Non-Collection notices for Solid Waste or Green Waste shall indicate the date and time the notice was prepared, the driver's initials, the complete address of the premises, the reason why the Collection was not made, and the manner in which the materials should be prepared for future Collection. Contractor shall leave a card stock copy of the Non-Collection notice at the premises by affixing it to the Customer's Container or Bin, and shall retain one copy. The form of this notice is subject to City's written approval.

ARTICLE 6. FREQUENCY OF SERVICES

6.1 Residential Service. Contractor shall offer residential Customers weekly collection of Solid Waste and Green Waste, as further identified and described on Exhibit "A", attached hereto and incorporated herein by reference. Residential Customers shall initially be provided with the same Solid Waste service level (96-, 64- or 32-gallon service) as they had on December 31, 2008. No Residential Customer may change to a lower service level before June 30, 2009. Collections for a Customer shall occur on the same day of each week, except that if a regularly scheduled Collection day falls on a Holiday, then Collection for such day and subsequent days in the same week shall occur on the next succeeding Working Day (or Saturday, in the case of Collections regularly scheduled for Friday). Collection shall occur at the curb of the City road and/or in City alleyways as depicted on Contractor's approved route map. Customers must have a road of sufficient size and base structure to accommodate the route truck and sign a waiver releasing Contractor from liability before Contractor will travel on private roads.

6.2 Commercial Service. Contractor shall collect Solid Waste from commercial Customers one (1) to five (5) times per week as provided by agreement between the Contractor and each commercial Customer.

6.3 Additional Services.

- a) Contractor shall provide Bins for weekly rental by residential Customers only at the rate listed on Exhibit "A." Residential Customers may use Bins to dispose of

Bulky Items, Residential Construction Waste and other Refuse Materials (but not Universal Waste or Hazardous Waste). Contractor will supply residential Customers with Bins within ten (10) Working Days after the Customer's request and such Bin shall be picked up on the Working Day following the seventh (7th) calendar day after the Bin is delivered.

- b) Contractor will provide, at no additional charge, drop box collection service for one (1) annual Citywide clean-up event (the "Cleanup Event"), to be scheduled each calendar year on a Saturday as agreed by City and Contractor. Contractor will staff the event from 7:00 a.m. to 4:00 p.m. Contractor will accept Solid Waste, Green Waste and Bulky Items at the Cleanup Event.
- c) Contractor will provide, at no additional charge, Solid Waste collection (using appropriate collection receptacles) at certain City sponsored events as required by City, provided that City may not require Contractor to provide this service to more than twelve (12) City events each calendar year.
- d) Contractor shall provide, at no additional charge, Solid Waste collection (using appropriate collection receptacles) at the City facilities and at the frequencies described on Exhibit "C." City and Contractor may amend Exhibit "C" by mutual consent.

6.4 **Recyclables and Bulky Items.**

Nothing in this Agreement shall be construed as requiring residential or commercial Customers to set out Recyclables or Bulky Items for Collection by Contractor. Customers may dispose of Recyclables and Bulky Items through other appropriate means including, but not limited to, taking Recyclables or Bulky Items to drop-off facilities, and donating or selling Recyclables or Bulky Items to private or public entities.

ARTICLE 7. PERFORMANCE REQUIREMENTS

7.1 **Equipment and Vehicles.** Contractor will provide sufficient equipment to ensure a high level of responsive and uninterrupted service to its Customers in conformance with all laws and regulations. Contractor shall maintain and keep its equipment in good repair and operating condition. Contractor shall maintain its vehicles in a clean and sanitary condition at all times, and shall keep all collected materials covered during transportation. Contractor's vehicles shall be licensed and lawfully permitted to operate in the State of California. Contractor shall at all times operate its vehicles in compliance with applicable federal, state and local laws and regulations, including but not limited to laws related to air quality and alternative fuel requirements.

7.2 **Maintenance Log.** Contractor shall maintain a maintenance log for all collection vehicles. The maintenance log shall at all times be accessible to City upon City's request, and shall show, at a minimum, each vehicle's identification number, date of purchase or initial lease, dates of performance of routine maintenance, dates of performance of additional maintenance and a description of any additional maintenance performed.

7.3 **Back-up Equipment.** Contractor shall use commercially reasonable efforts to maintain sufficient back-up equipment to ensure uninterrupted service in the event that any of Contractor's collection equipment is rendered inoperable during the term of this Agreement.

7.4 **Damage to Public Property.** Contractor shall be responsible for all injury, damage or loss to property, including but not limited to public utilities, streets and curbs, resulting from Contractor's negligence or willful misconduct, including but not limited to the use of vehicles that exceed the State of California's legal maximum weight limits. City reserves the right to repair any damage to City property or facilities, and Contractor agrees to reimburse City for City's reasonable costs of repairing such injury, damage or loss. The provisions of this Section 7.4 shall not in any way limit Contractor's duty to indemnify City pursuant to Article 16 of this Agreement or limit City's other remedies available at law or equity.

7.5 **Employees.** Contractor shall perform all services pursuant to this Agreement in a courteous, professional and thorough manner regardless of weather conditions and difficulty of Collection. While engaged in activities authorized or required by this Agreement, Contractor's employees and agents shall be attired in suitable uniforms proposed by Contractor and accepted by the City in writing. All Contractor's employees shall make Collections as quietly as possible and shall avoid unnecessary disturbances to City residents. Contractor and its employees shall not trespass or loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. Contractor shall exercise due care when handling Containers to prevent Containers from being thrown or dropped during Collection services. Contractor shall exercise due care to minimize litter in collecting and transporting waste material. Contractor's employees shall replace Containers in an upright and orderly manner once emptied and shall clean up any Refuse Materials spilled during the Collection process. Contractor shall use commercially reasonable efforts to ensure that at all times Contractor has sufficient back-up labor available to fulfill Contractor's obligations under this Agreement.

7.6 **Missed Stops.** The failure of Contractor to make a scheduled pick-up of Solid Waste, Green Waste or other Refuse Materials which have been set out on time and in an approved Container by a Customer shall be considered a missed stop ("Missed Stop"). If Contractor is notified of a Missed Stop by 12:00 PM on any Working Day, Contractor shall collect the Missed Stop on the day of notification. If Contractor is notified of a Missed Stop after 12:00 PM, Contractor shall collect the material from the Customer within twenty-four (24) hours of Contractor being notified of the Missed Stop, except where Collection on a Sunday or Holiday would be required, in which case the Contractor may remedy the Missed Stop on the first Working Day immediately following the date of notification.

7.7 **Contractor Contact and Complaint Resolution.**

- a) Contractor's Office. Contractor shall maintain an office at its Oroville facility where one or more representatives of Contractor shall be available during normal business hours for communication with City representatives and the public.
- b) Local Telephone Number. A Customer Service Representative shall be available at the Contractor's principle office, and shall be accessible by a local toll-free

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telephone number to City and customers in the Service Area at least during the hours of 8:00 AM to 5:00 PM, Monday through Friday, except for Holidays. The Customer Service Representative shall be able to assist on any matters that relate to the Contractor's performance of services to Customers under this Agreement. A telephone answering machine shall be available at all other times. The local toll-free telephone number shall be listed under Contractor's name in the local telephone directory.

- c) Emergency Telephone Number. Contractor shall maintain an emergency telephone number disclosed to the City's representative and local fire and police departments for use outside of regular business hours. Calls to the emergency number shall be returned as soon as possible and in any event within one hour.
- d) Customer Inquiries and Complaints. All incoming calls shall be answered by a Customer Service Representative or answering machine. Contractor shall return calls to Customers from messages received on its answering machine as follows: if the message is received by 12:00 PM on any Working Day, Contractor shall return the call on the same Working Day; if the message is received on any day other than a Working Day, or after 12:00 PM on any Working Day, Contractor shall return the call on the next Working Day. All attempts to contact the caller shall be recorded in the Customer history file maintained by Contractor.
- e) Call Log. Contractor shall record all complaints in a log which includes the date, time, nature of the complaint, complainant's name and address (if the complainant is willing to give this information), and the nature, date and manner of resolution of the complaint. This log shall be in a format approved by City, and shall be available for inspection by City during Contractor's business hours.
- f) Complaint Resolution. The Contractor shall attempt to resolve all Customer complaints as soon as possible, but no later than within three (3) days of notification thereof. If Contractor and Customer are unable to resolve any complaint, the complaint shall be referred to the City's designated representative. Contractor shall reimburse City for any and all costs related to the resolution of Customer complaints pursuant to this Section.

7.8 Green Waste and Diversion. Contractor shall provide all necessary reporting data requested by the City relating to the City's compliance requirements pertaining to the Waste Management Act. Contractor shall not co-mingle, in the vehicles or otherwise, any Solid Waste with any Green Waste when collected by Contractor, unless otherwise specifically authorized in writing by City. Contractor shall ensure that, at a minimum, all materials shall be weighed upon delivery to a transfer station or other processing facility, and all weight and related delivery information recorded. Contractor shall use commercially reasonable efforts to ensure that any scales used pursuant to this Section are weigh master certified and regularly maintained consistent with applicable industry standards.

7.9 **Collection Hours.** Collection service shall not start before 5:00 a.m. or continue after 7:00 p.m., Monday through Friday, except for Saturday collections during Holiday weeks as provided in Section 6.1, and except as may be approved in writing by the City Manager.

7.10 **Construction and Demolition Diversion Laws.** Contractor shall comply with applicable laws related to the diversion of Construction and Demolition Debris, including the requirements of the City's Construction and Demolition Debris diversion ordinance, as such ordinance may be adopted or amended, and shall assist Customers with compliance by diverting Construction and Demolition Debris to the maximum extent feasible and by providing receipts for all materials collected.

7.11 **Additional Programs.** If City determines that additional programs not contemplated in this Agreement are necessary to meet any required diversion goals or otherwise, City and Contractor agree to meet and confer regarding the scope and cost of such programs, and such programs may be implemented by mutual agreement of the parties.

7.12 **Customer Privacy.** Contractor shall not market, sell, convey, donate or disclose to any person or entity (other than the City and its agents and representatives and Contractor's subcontractors, affiliates, agents and representatives) any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by applicable law, the City or a court of competent jurisdiction.

ARTICLE 8. CONTAINERS

8.1 **Use of Containers.** Contractor shall be entitled to use, without cost or restriction and for all purposes under this Agreement, all Containers owned by City that (i) are in or come into the possession of commercial or residential Customers as of January 1, 2009 or thereafter, or (ii) that are or become part of City's stock of excess Containers. The preceding sentence shall not constitute a transfer of any ownership interest in any such Containers, which shall remain the property of City. Contractor shall not be required to provide new or replacement Containers to Customers except (a) to new Customers who do not possess Containers, (b) pursuant to Section 8.3(c), or (c) where the Container(s) in the Customer's possession do not correspond to such Customer's service level subscription. Contractor shall provide such new or replacement Containers from City's stock of excess Containers to the extent possible, except that if suitable Containers are not available from City's stock, Contractor shall provide such Containers from other sources. Any such new or replacement Containers provided by Contractor shall remain the property of Contractor.

8.2 **Service Levels.** Service levels will be based on the following Container sizes:

- a) Residential Solid Waste Container. Subject to Section 6.1, one (1) 96-gallon, 64-gallon or 32-gallon wheeled Container with lid (except that Customers may order additional Containers upon payment of the requisite fees).
- b) Residential Green Waste Container. One (1) 96-gallon wheeled Container with lid suitable for Green Waste.

8.3 Container Delivery, Pick-Up and Exchange.

- a) Delivery. Contractor will provide any delivery, pickup and exchange of Contractor's Containers during business hours. Within three (3) days of receiving Customers' oral or written request for service (other than temporary Bin service), following execution of a subscription order, Contractor will provide and deliver, without charge to Customer, any Containers required to be delivered to such Customer.
- b) Pickup. On a Customer's next regularly scheduled Collection day after receiving oral or written direction from that Customer to discontinue services, but no later than seven (7) days thereafter, Contractor will pick-up and remove, without charge, Containers.
- c) Exchange. Any Residential or Commercial Container, Bin, or roll-off box which is severely damaged or has jagged or sharp edges shall be replaced and removed from future use by Contractor until and unless repaired. All cleaning of such Containers, Bins, and roll-off boxes shall be completed in full compliance with all applicable laws, including any requirements of the National Pollution Discharge Elimination System.

8.4 Commercial Waste Wheeled Containers, Bins and Roll-Off Boxes.

Each Commercial Customer shall be provided with one or more wheeled Containers, Bins and/or roll-off boxes commensurate with the service level ordered by such Customer.

ARTICLE 9. SERVICE RATES

As of January 1, 2009 (and as adjusted periodically pursuant to Article 11), Contractor shall charge Customers in the Service Area according to the monthly service billing rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. Monthly service billing rates shall reflect the service level selected by each Customer in the Service Area. Contractor acknowledges that such rates are intended to address all services provided by Contractor under this Agreement, including Collection, transportation, landfill, administration, overhead, and other expenses incurred by Contractor, and Contractor shall not impose any fee or charge not listed in Exhibit "A", including but not limited to account setup or termination charges, provided that Contractor may charge delinquent accounts as provided in Article 10.

ARTICLE 10. BILLING AND COLLECTION OF ACCOUNTS

10.1 **Billing**. Contractor will bill residential accounts in advance on a quarterly basis and commercial accounts in arrears on a monthly basis. Residential accounts shall be delinquent if not paid by the end of the quarter for which services have been billed, and commercial accounts shall be delinquent if not paid by the end of the month in which the bill is sent to the Customer. Contractor shall send a letter to any Customer whose account is delinquent to inform them of the delinquency and the Contractor's right to send the delinquent account to a collection service and to terminate service to such Customer. For delinquent residential accounts, ten (10) days after the account becomes delinquent, Contractor shall have the right to send the delinquent

account to a collection service and/or to terminate service. For delinquent commercial accounts, Contractor shall have the right to terminate service to such Customers and to send the delinquent account to a collection service immediately upon the account becoming delinquent. Any account that is delinquent will be charged an interest rate of 1.5% per month (18% per year) on the outstanding balance from the date of the delinquency. Contractor will provide City with a written list of all accounts that have been delinquent for at least one year on an annual basis. Contractor shall notify City within three (3) Working Days after terminating service to a Customer under this Section 10.1.

ARTICLE 11. SERVICE RATE INCREASES

11.1 CPI Adjustments. The service rates specified in Article 9 of this Agreement shall be increased (or decreased) each year of this Agreement beginning January 1, 2010. Such increase (or decrease) shall be based on the increase in the CPI for the Pacific Cities and U.S. City Average, All Items Indexes, for All Urban Consumers for the San Francisco-Oakland-San Jose area published by the U. S. Department of Labor, Bureau of Labor Statistics and shall be based on the annual percentage change in the CPI from June of the preceding year to June of the year in which the rate adjustment request is submitted. The adjustment based on the change in the CPI shall apply only to the "Base Rate" component of the service rate, as shown in Exhibit "B." Such increase (or decrease) shall be submitted to the City no later than August 31, 2009 and no later than August 31 of each subsequent year. Except as provided herein, such increase (or decrease) shall be automatically effective on January 1 of the year immediately following the year in which the submission is made, provided, however, that such increase (or decrease) shall not be automatic if on the date such increase (or decrease) would otherwise take effect, Contractor is in material breach of this Agreement after City has provided Contractor with the notice and opportunity to cure required under Article 19 with respect to such breach. Rate decreases shall be automatically effective whether or not Contractor is in material compliance with this Agreement.

11.2 Transfer Station Gate Rate and Fuel Rate Adjustments. The service rates specified in Article 9 of this Agreement shall also be increased (or decreased) each year of this Agreement beginning January 1, 2010 based on the annual percentage change in transfer station gate rates and fuel rates. Specifically, the service rates shall be adjusted based on the annual percentage change in transfer station gate rate and California Statewide Average Fuel rate (calculated in each case as the average over the 12 month period ending on June 30 of each year) from the current rates of \$71.67 per ton and \$3.70 per gallon, respectively. The adjustment based on the change to the fuel rate shall apply only to the "Fuel" component of the service rate, as shown in Exhibit "B" and the adjustment based on the change to the transfer station gate rate shall apply only to the "Transfer Station" component of the service rate, as shown in Exhibit "B." Such increase (or decrease) shall be submitted to the City no later than August 31, 2009 and no later than August 31 of each subsequent year. Such increase (or decrease) shall be automatically effective (without the requirement for approval by the City) on January 1 of the year immediately following the year in which the submission is made, provided, however, that such increase (or decrease) shall not be automatic if on the date such increase (or decrease) would otherwise take effect, Contractor is in material breach of this Agreement after City has provided Contractor with the notice and opportunity to cure required under Article 19 with

respect to such breach. Rate decreases shall be automatically effective whether or not Contractor is in material compliance with this Agreement.

11.3 Adjustment for Undersubscription. The parties acknowledge and agree that Contractor's cost proposal is based on all current and new residential Customers continuing to subscribe for 96-gallon Solid Waste service, other than those currently subscribed for 64- or 32-gallon service. The parties further agree that Contractor shall be entitled to rate increases in accordance with this Section 11.3 to reflect increases in the number of residential Customers subscribing for 64- or 32-gallon service. Accordingly, Contractor shall be entitled to an increase in the service rates in each calendar year sufficient to enable Contractor to recover, during such calendar year, and over and above any other adjustment in service rates, an amount equal to the Undersubscription Rate for the previous calendar year. The Undersubscription Rate for a given calendar year shall be the sum of (a) for each residential Customer subscribing for 64-gallon service as of June 30 of such calendar year in excess of the number of residential Customers subscribing for 64-gallon service as of January 1, 2009, an amount equal to the rate for 96-gallon service as of such June 30 less the rate for 64-gallon service as of such June 30, prorated for a one-year period; and (b) for each residential Customer subscribing for 32-gallon service as of June 30 of such calendar year in excess of the number of residential Customers subscribing for 32-gallon service as of January 1, 2009, an amount equal to the rate for 96-gallon service as of such June 30 less the rate for 32-gallon service as of such June 30, prorated for a one-year period. Contractor shall submit any request for a rate increase pursuant to this Section 11.3, together with a calculation of the Undersubscription Rate and documentation reasonably satisfactory to City evidencing the facts on which such calculation is based, no later than August 31, 2009 and no later than August 31 of each subsequent year. Such increase shall be automatically effective (without the requirement for approval by the City) on January 1 of the year immediately following the year in which the submission is made, provided, however, that such increase shall not be automatic if on the date such increase would otherwise take effect, Contractor is in material breach of this Agreement after City has provided Contractor with the notice and opportunity to cure required under Article 19 with respect to such breach.

11.4 Extraordinary Rate Events. The Contractor may submit a special rate application at any time upon the occurrence of any of the following events:

- a) Natural disasters.
- b) Acts of war or terrorism.
- c) Other extraordinary circumstances that are substantially outside of the control of Contractor (*e.g.* loss of commodity markets).
- d) Changes in law.

In the event of such an application for extraordinary rate increase, Contractor shall have the burden of establishing that the increase is necessary to enable the Contractor to cover the changes in cost and to make a reasonable industry profit. The cost for the City to conduct a review of an extraordinary rate request from the Contractor shall be paid by the Contractor to the City, the cost of which shall be included into the rates for that projected fiscal year. The adjusted

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rates, if an adjustment is granted, may include a lump sum equal to any increase applicable to that portion of the franchise year which has elapsed during which the extraordinary service was provided. Extraordinary rate increases shall be subject to the approval of the City Council, which may be granted or denied in the City Council's sole discretion.

ARTICLE 12. FINANCIAL STATEMENTS

12.1 **Accounting Records.** Contractor shall maintain full, accurate, and complete records of all Collection and disposal services performed within the Service Area and of all monies owing and all monies collected. All accounting records shall be maintained in accordance with generally accepted accounting principles for at least three (3) years following the close of Contractor's fiscal year. Contractor shall maintain the accounting records in a manner that allows for the separate identification of all costs and revenues associated with providing services under this Agreement (including reasonable allocations of shared costs). Such records shall be maintained at Contractor's office and City and its agents shall have the right to inspect and audit said records from time to time at all reasonable times.

12.2 **Audits.** The City shall initially bear the cost of any audit undertaken or commissioned by City. If such audit discloses Contractor's underpayment of the Franchise Fee to City in any amount, Contractor shall repay such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment. If such audit discloses an underpayment of more than two and one half percent (2.5%), Contractor shall pay to City a fee equal to two times (200% of) the underpaid amount (such fee, an "Underpayment Penalty") and further shall reimburse City for the reasonable costs and expenses of City's audit, including, without limitation, City's auditor's reasonable costs and expenses, City's reasonable internal costs and expenses, and City's reasonable legal and other third party expenses, provided, however, that the first time such an audit discloses an underpayment of more than two and one half percent (2.5%), no Underpayment Penalty shall be payable with respect to such underpayment.

ARTICLE 13. SERVICE RECORDS AND REPORTING

13.1 **Service Records.** Contractor shall accurately maintain and preserve all records related to services provided and revenue collected pursuant to this Agreement for the term of this Agreement plus three years. Upon request, Contractor shall provide copies of any and all documents to City or City's designees for inspection, review or audit at City offices.

13.2 Reports.

- a) **Annual Reports.** Contractor will submit an annual report to City on or before February 1 of each year including the total aggregate tons of Solid Waste, Green Waste and other Refuse Materials Collected during the preceding contract year. The report shall include a description of any significant events that occurred during Franchise operations for the year and any significant trends that have developed (e.g., cost increases, tonnage variation, service issues, etc.), and a discussion of major variances in operations from the prior year. The report shall also include any other pertinent "business plan" type information such as new

regulations, new technologies, and other factors that Contractor expects will have a material effect on Contractor's Franchise operations in the future.

- b) Quarterly Reports. With each quarterly payment of the Franchise Fee to City, Contractor shall provide City with the information required by Article 4.
- c) Additional Information. Contractor shall provide City with additional information reasonably requested by City related to Contractor's performance under this Agreement within fourteen (14) calendar days of City's written request.
- d) Required Reports. Contractor shall prepare and submit, in a form reasonably satisfactory to City, any and all reports required by federal, state and local governmental agencies to be prepared and submitted by Contractor with respect to Contractor's services hereunder.

ARTICLE 14. TRANSITION PLANS

Contractor will work closely with City to help ensure a smooth transition for Contractor to begin providing services as contemplated by this Agreement on January 1, 2009. Specifically, Contractor will take the following actions in respect of the transition:

14.1 Customer Data/Field Survey. Contractor shall obtain electronic files from the City listing all residential and commercial Customers, and will integrate them into its database to be used for mailing and billing support services prior to sending the introductory mailing (described in Section 14.2 below). Contractor shall also field check all locations for Collection and ensure that Contractor is able to begin Collection services in the Service Area by January 1, 2009.

14.2 Introductory Mailing. Contractor will send an introductory mailing to all residential and commercial Customers in the Service Area no later than January 1, 2009 describing the Solid Waste, Green Waste and other Refuse Material collection and disposal services available to Customers, the Container and Bin sizes available, service rates and other related matters.

14.3 Community Outreach/Website. Contractor will announce the commencement of its Solid Waste and other services through print advertising and displays at City Hall. Contractor shall also update the Norcal Waste Systems website (www.norcalwaste.com) and the Contractor's own website to include information about its services in the City.

14.4 Equipment. Contractor will ensure that an appropriate number of vehicles, drivers and support personnel are available to begin service on January 1, 2009.

14.5 Billing Inserts. As part of the transition, Contractor will distribute materials in the form of billing inserts to residential Customers regarding the benefits of disposing of yard waste in Containers.

ARTICLE 15. COMMUNITY EDUCATION AND OUTREACH

In addition to the community education and outreach efforts in connection with the transition (as described in Article 14 above), Contractor shall undertake the following community education and outreach efforts:

- a) *New Account Packets.* Contractor will provide to each new residential Customer, by mail or with Containers delivered to such Customer, an introductory packet describing Container use, acceptable and not acceptable materials, contact information, website referral and other services available from Contractor. Information regarding the intended pickup day for the relevant Customer will be included in this packet, in a separate mailing to the Customer, or in a flyer placed on the Customer's Container(s).
- b) *Presentations.* Contractor agrees to provide presentations regarding Contractor's services at community events and schools as reasonably requested by City, provided that City may not require Contractor to provide this service more than twelve (12) times in any calendar year.
- c) *Annual Newsletter.* Contractor will distribute an annual newsletter to all residential and commercial Customers regarding Contractor's services and including information on yard waste and other matters in a form and manner satisfactory to City.
- d) *Corrective Action Notices.* Contractor may distribute corrective action notices to residential or commercial Customers to alert them to certain problems or concerns which may adversely affect Contractor's ability to provide services to such Customer (e.g. inability to access Containers, overflowing Containers, etc.). In the event Contractor distributes such a notice, Contractor's customer service representative shall follow up with the Customer to offer assistance. Subject to Section 5.6, Contractor shall have the right to terminate service for any Customer who fails to take appropriate action to address the problems described in two (2) corrective action notices, but in no event shall Contractor terminate service under this Section 15.1(d) without allowing Customer at least one (1) month to remedy the problems identified in the notices. Contractor shall notify City within three (3) Working Days after terminating service to a Customer under this Section 15.1(d).

ARTICLE 16. INDEMNIFICATION

16.1 **General Indemnification.** Contractor, for and on behalf of itself and its agents, subcontractors, directors, officers, employees, and representatives shall indemnify, defend and hold harmless City, its officers, agents and employees, with counsel reasonably acceptable to City, from and against any and all losses, liabilities, penalties, claims, demands, judgments, damages, actions or suits, of any and every kind and description, including without limitation property damages, personal injury and death, arising or resulting from any work or services performed, or the failure to perform, by Contractor or its agents, subcontractors, directors,

officers, employees, or representatives pursuant to this Agreement, or which result from Contractor's noncompliance with any laws respecting the Collection, transportation, processing or disposal of Solid Waste, Green Waste or other Refuse Materials, excepting the sole negligence or willful misconduct of City or City's material breach of this Agreement. The acceptance by City of any work or services under this Agreement shall not operate as a waiver of Contractor's obligation to indemnify, defend and hold City harmless.

16.2 Cooperation in the Event of Legal Challenge.

(a) City and Contractor agree to cooperate, solely to the extent set forth in this Section 16.2, in the event any legal action is instituted by a third party, including another governmental agency, challenging the validity of any of the provisions of this Agreement under Article XIII C or Article XIII D of the California Constitution ("Third Party Action"), including but not limited to provisions relating to the fees, rates and charges associated with the performance of this Agreement. Each party shall have the right, but not the obligation, to contest, defend, respond or otherwise appear in any such Third Party Action, at its sole cost and expense (except as otherwise agreed pursuant to Section 16.2(b)).

(b) Within ten (10) calendar days after the commencement of a Third Party Action, the parties shall meet and confer to discuss whether one or both parties desire to defend the Third Party Action, and if so, whether to jointly undertake the defense of the Third Party Action. If the parties (each in their sole discretion) agree to jointly undertake the defense of the Third Party Action, they shall negotiate with a view to entering into a joint defense agreement which addresses the retention of counsel and consultants, payment of fees and costs associated with such defense, settlement of the Third Party Action, and other matters that the parties deem appropriate.

(c) If the parties do not agree to jointly undertake the defense of the Third Party Action, or fail to agree on a joint defense agreement within thirty (30) calendar days after their initial meeting pursuant to Section 16.2(b), each party shall have the option to terminate this Agreement by providing written notice to the other party within ninety (90) calendar days of the commencement of such Third Party Action. Additionally, each party shall have the option to terminate this Agreement by providing written notice to the other party within ninety (90) calendar days of the entry of a judgment in the Third Party Action that invalidates this Agreement or any provision thereof. Should either party choose to exercise its right of termination by providing written notice within the timeframes specified above, then this Agreement shall terminate thirty (30) calendar days after the delivery of such written notice.

(d) City understands and agrees that, in the event of any termination of this Agreement pursuant to this Section 16.2, whether initiated by Contractor or City, (i) City shall not be entitled to keep or use, after the effective date of termination, any vehicles, equipment, personnel, facilities, Containers or Bins provided by Contractor pursuant to this Agreement or that are otherwise the property of Contractor or its affiliates; (ii) City shall not as a result of such termination be entitled to recover any amounts not otherwise recoverable under this Agreement pursuant to any indemnification obligation, insurance policy, performance bond or other surety, liquidated damages provision or otherwise under this Agreement; and (iii) Contractor shall have

no obligation to continue to provide services, or to assist City in any transition of services, after the effective date of termination.

16.3 Acceptance of Insurance. Acceptance of insurance required by this Agreement does not relieve Contractor from liability under this Article. Contractor's duty to indemnify City shall apply regardless of the applicability of any insurance required under this Agreement.

16.4 Separate Agreement. The Parties agree that this Article 16 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is terminated by a Party to this Agreement or invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Article 16, which shall survive such termination, invalidation, nullification, or setting aside.

ARTICLE 17. INSURANCE

17.1 Insurance Policies. Contractor shall procure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with Contractor's performance of work or services under this Agreement. Contractor's performance of work or services shall include performance by Contractor's employees, agents, representatives and subcontractors.

The insurance policies required by this Article shall in no way limit Contractor's obligation to indemnify City pursuant to this Agreement.

- a) **Minimum Limits of Insurance.** Contractor shall maintain insurance limits no less than:
 - 1. **Comprehensive General Liability:** \$4,000,000 per occurrence for bodily injury, personal injury, products and completed operations, contractual liability and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit.
 - 2. **Automobile Liability:** \$2,000,000 per accident for bodily injury and \$2,000,000 per accident for property damage; \$4,000,000 general aggregate limit per accident.
 - 3. **Workers' Compensation and Employers Liability:** Workers' Compensation limits as required by the California Labor Code and for Employers Liability to a limit of \$1,000,000 per occurrence.
 - 4. **Hazardous Waste and Environmental Impairment Liability:** \$4,000,000 each occurrence.
- b) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-

insured retentions as respects City, its officers, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Manager.

17.2 Endorsements. The policies are to contain, or be endorsed to contain, the following provisions:

- a) **General Liability and Automobile Liability Coverage.**
 1. City, its officers, agents and employees, are to be covered and named as additional insured's as respects: Liability arising out of activities performed by, or on behalf of, Contractor; products and completed operation of Contractor; premises owned, leased or used by Contractor; and automobiles and other vehicles or equipment owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, agents and employees.
 2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, employees, or agents.
 3. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- b) **All Coverage**—All insurance coverage's shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to Contractor. Contractor shall notify City within five (5) Working Days upon receipt of such notice.
- c) **The General Liability and the Workers' Compensation shall be endorsed with "Waiver of Rights of Recovery" (GL) and a "Waiver of Subrogation" (WC) clauses, excluding an insurer's right of recovery against the City.**

17.3 Acceptability of Insurers. Insurance shall be executed by a surety licensed and in good standing with the Department of Insurance in the State of California, and have a Best Company rating of A-7 or better. All insurers must be identified by full name; rating, according to the latest edition of Best's Key Rating Guide; and status as insurers admitted in California.

17.4 Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall furnish City with a new certificate of insurance and endorsements upon each renewal of coverage or change of insurers. Proof of insurance shall be provided in writing to the City Manager. Upon request, the City shall be provided with certified copies of insurance policies.

17.5 **Subcontractors.** Subcontractors shall be bound by the same terms and conditions concerning insurance as are outlined herein, and this Article 17 will be made a part of any such subcontract agreements.

17.6 **Modification of Insurance Requirements.** The insurance requirements provided in this Agreement may be modified or waived by the City Manager, in writing, upon the request of Contractor if the City Manager determines such modification or waiver is in the best interests of City considering all relevant factors, including exposure to City.

17.7 **Force and Effect.** This Franchise Agreement shall be of no force or effect until Contractor provides proof of appropriate insurance reasonably satisfactory to the City Manager.

ARTICLE 18. INDEPENDENT CONTRACTOR

Contractor is an independent Contractor and not an agent, officer or employee of City. The Parties mutually understand that this Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the Parties. Contractor shall have exclusive control over the details of work performed and over all persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees and subcontractors, if any. Neither Contractor nor its officers, employees, agents or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to City employees and Contractor expressly waives any claim it may have or acquire to such benefits.

ARTICLE 19. DEFAULT AND TERMINATION

19.1 **Contractor's Default.** City may terminate this Agreement upon Contractor's default of any material duty or obligation of Contractor under this Agreement and Contractor's failure to cure such default within thirty (30) calendar days of City's written notice to Contractor of such default. If the default is not capable of cure within thirty (30) calendar days, Contractor shall provide written notice to City together with a reasonable schedule of cure within fifteen (15) calendar days of City's notice of default, shall begin actions to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. If Contractor fails to cure such default within the period set forth in Contractor's schedule of cure, City may terminate this Agreement by written notice to Contractor.

19.2 **Failure to Collect.** In the event Contractor fails to provide Refuse Material Collection services as set forth herein for a period in excess of ten (10) consecutive calendar days, and such failure is not caused by an event or cause beyond Contractor's control, City shall have the right to terminate this Agreement by giving Contractor forty-eight (48) hours written notice of such termination, notwithstanding any other provision in this Agreement. For purposes of this Section, strikes and labor unrest shall not constitute events or causes beyond Contractor's control. City's rights under this Section shall be in addition to City's other rights available under this Agreement and applicable law.

19.3 **Violations of Law.** Notwithstanding any provision of this Agreement to the contrary, City may terminate this Agreement upon thirty (30) days' notice to Contractor following the guilty plea or conviction of any officer, employee, or agent of Contractor or any

affiliated entity of bribery of, or providing kickbacks, other improper consideration or unlawful campaign contributions to, a public official or employee of any public agency in Colusa County, including the County of Colusa.

19.4 Insurance, Surety and Indemnification. Notwithstanding any provision of this Agreement to the contrary, City may terminate this Agreement immediately upon written notice to Contractor in the event Contractor fails to (i) provide and maintain the performance bond or other surety required by Article 22 of this Agreement, (ii) obtain or maintain the insurance policies and endorsements as required by this Agreement, or (iii) provide the proof of insurance as required by this Agreement, and such failure is not caused by an event or cause beyond Contractor's control.

19.5 Assurances. City may terminate this Agreement immediately upon written notice to Contractor upon the occurrence of any of the following and Contractor's failure to provide adequate assurance that any of the following can be removed within thirty (30) calendar days of City's demand for such assurance: (1) the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Contractor; (2) Contractor's general assignment of its assets for the general benefit of Contractor's creditors; (3) a court entry of any decree or order adjudging Contractor to be insolvent or bankrupt; (4) a court entry of any decree or order approving as properly filed a petition seeking reorganization of Contractor or an arrangement made under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State; or (5) a determination by the City Manager, based upon a statement prepared by an independent certified public accountant mutually agreed upon by Contractor and the City Manager, that there is a reasonable probability that Contractor lacks the financial capability to substantially perform this Agreement.

19.6 Continuing Obligation. Any termination under this Article 19 shall not relieve Contractor of the obligation to pay any fees, taxes or other charges then due to City for the period prior to termination nor relieve Contractor of the obligation to file any quarterly, annual or other reports covering the period to termination nor relieve Contractor from any claim for damages previously accrued or then accruing against Contractor. City's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

19.7 City's Default. The failure of City to comply with the terms and conditions of this Agreement shall constitute a default. Contractor may terminate this Agreement upon City's default and City's failure to cure such default within thirty (30) calendar days of Contractor's written notice to City of such default. If the default is not capable of cure within thirty (30) calendar days, City shall provide written notice to Contractor together with a reasonable schedule of cure within fifteen (15) calendar days of Contractor's notice of default, shall begin actions to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. If City fails to cure such default within the period set forth in City's schedule of cure, Contractor may terminate this Agreement by written notice to City.

ARTICLE 20. TEMPORARY INABILITY OF CONTRACTOR TO PERFORM

In the event Contractor fails to provide the Refuse Material Collection service provided for herein for any reason, whether or not beyond Contractor's control, including strikes and labor

unrest, and such failure results in the accumulation of Refuse Material in a manner that City determines endangers public health, safety or welfare, City may elect, after three (3) consecutive Working Days without Collection service, to arrange to provide the service with another service provider of City's choice, temporarily and only for so long as Contractor fails to provide such collection service, without termination of this Agreement. Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses reasonable under the circumstances, including the reasonable cost of City employees and/or third party laborers required to perform emergency services pursuant to this Section, incurred by City in arranging for services under this Section. Contractor shall pay such reimbursable costs and expenses within five (5) Working Days of City's written request therefor, accompanied by reasonable documentation of such costs and expenses. If Contractor fails to provide such reimbursement within such five (5) Working Day period, City may declare a portion of the performance bond (or other surety required by Article 22) equal to the amount reimbursable but unreimbursed by Contractor hereunder, forfeited to the City. To facilitate reimbursement of such reasonable costs and expenses to City, Contractor also agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement, to the extent that such services have been rendered to such Customers by City and have not been reimbursed by Contractor pursuant to the preceding sentence, and further agrees to allow City to collect such payments directly from the Customers. In the event Contractor is unable to resume Collection services as provided herein within thirty (30) calendar days thereafter, City may then terminate this Agreement by providing written notice to Contractor, with or without an additional notice or cure period, in the City's sole discretion. City's rights under this Article are in addition to other rights available under this Agreement and applicable laws.

ARTICLE 21. LIQUIDATED DAMAGES

21.1 General Provisions. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (1) substantial damage results to members of the public who are denied services or denied quality or reliable service; (2) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (3) franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (4) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

21.2 Performance Standards; Liquidated Damages for Non-compliance. The parties further acknowledge that consistent, reliable Refuse Material Collection service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further

recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's other remedies available under law and equity, including City's right to treat such non-performance as an event of default under Article 19 of this Agreement, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

CONTRACTOR	CITY
Initial Here	Initial Here

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. The sum of Five Hundred Dollars (\$500) for each of the following occurrences:
 - Each failure to commence service to a new Customer account within seven (7) days after order (excluding temporary Bin service).
 - Each failure to collect Refuse Materials, which have been properly set out for Collection, from an established Customer account on the scheduled Collection day and not collected within the period described in this Agreement;
 - Each failure to clean up spills caused by Contractor from Refuse Material Containers;
 - Each occurrence of collecting Refuse Material during unauthorized hours;
 - Each spill or leakage of oil, hydraulic fluid, coolant, or other fluid from any collection vehicle used by Contractor, which causes a stain of 0.5 square feet or greater, provided that no liquidated damages shall be imposed if a stain remains after Contractor has taken reasonable measures to clean the spill or leakage with a moisture-absorbent material, and has then cleaned up the material used.
2. The sum of Two Hundred Fifty Dollars (\$250) for each failure to initially respond to a Customer complaint within two (2) Working Days.
3. The sum of Five Hundred Dollars (\$500) as to each annual report, for each Working Day it is late.

21.3 **Assessment of Liquidated Damages.** City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages with respect to a particular violation or incident of non-performance, and within thirty (30) days of becoming aware of such violation or incident of non-performance, City shall give Contractor notice of its intention to do so. Contractor shall not be liable to pay any liquidated damages with respect to any violation or incident of non-performance that occurs more than thirty (30) days before notice thereof is given to Contractor. The notice will include a brief description of the violation or incident of non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to the violation or incident of non-performance. At Contractor's request, within ten (10) days after receiving the notice, City representatives shall meet with Contractor. Contractor may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. City will provide Contractor with a written explanation of its determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager shall be final.

21.4 **Timing of Payment.** Contractor shall pay any liquidated damages assessed by City within thirty (30) days after they are assessed. If they are not paid within the thirty (30) day period, City may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or both. Payment and acceptance of liquidated damages shall in no way constitute a waiver of City's authority to terminate this Agreement. Liquidated damages paid pursuant to this Article may be used as a set-off against damages in the event of a breach of this Agreement.

ARTICLE 22. INSTRUMENT FOR SECURING PERFORMANCE

No later than January 1, 2009, Contractor shall file with City an instrument for securing performance payable to City, in a form acceptable to City, securing the Contractor's faithful performance of each and every one of its obligations under this Agreement. The principal sum of this instrument shall be three hundred thousand dollars (\$300,000), and may be in the form of a certificate of deposit, letter of credit, or performance bond. The instrument shall be executed by an admitted surety authorized to issue such instrument in the State of California, with a financial condition and record of service satisfactory to City. The instrument shall remain in force for the duration of this Agreement. The premium for a letter of credit or any other charge related to maintenance maintaining any of the instruments shall be paid by the Contractor. The earnings from any instrument provided for under this Section shall accrue to the Contractor.

ARTICLE 23. WAIVER

One or more waivers of any covenant, agreement, or condition of default regarding provisions of the Agreement by either City or Contractor shall not be construed as a waiver of a further breach of the same covenant, agreement, condition, or the right of such party thereafter to enforce each and every provision.

ARTICLE 24. NOTICES

Whenever, under this Agreement, provision is made for notice of any kind, it shall be deemed sufficient notice and service thereof if the notice is in writing and is deposited in the mail in a properly stamped envelope or delivered by certified mail or nationally recognized overnight courier service, addressed as follows:

City	Contractor
City of Colusa	Norcal Waste Systems of Butte County, Inc.
425 Webster Street	2720 South 5th Avenue
Colusa, CA 95932	Oroville, CA 95965
ATTN: City Manager	ATTN: General Manager

Changes in the respective address to which notices shall be directed may be made from time to time by either party. If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

ARTICLE 25. CITY AUTHORITY

Whenever the context of the Agreement requires City to perform an act, and said act is to be performed by an individual, City shall be interpreted as meaning the City Manager unless otherwise specified.

ARTICLE 26. ASSIGNMENT

Contractor acknowledges that the local experience, expertise and particular personnel of Contractor are material considerations of City in entering into this Agreement with Contractor. This Agreement, or any portion thereof, shall not be assigned, transferred, or conveyed by Contractor (except to an affiliate of Contractor) without the prior written consent of City. Any assignment made in violation of this Article 25 is void and constitutes an event of default.

ARTICLE 27. CHANGE OF OWNERSHIP

City, in entering into this Agreement, has placed a special value, faith and confidence upon the experience, background and expertise of Contractor in the field of waste management. Such faith and confidence being a substantial consideration in the granting of Agreement, the parties hereto therefore agree that any dissolution, merger, consolidation, or other reorganization of Contractor (other than in a transaction with an affiliate of Contractor), or the sale, transfer or change of ownership of stock in the Contractor's business (other than to an affiliate of Contractor) in an amount equal to or greater than forty-nine percent (49%) of such ownership shall be deemed a voluntary assignment under this Agreement. No change of ownership or transfer of stock in Contractor's business in an amount equal to or greater than forty-nine percent (49%) of such ownership or stock (other than to an affiliate of Contractor) shall take place without the prior written consent of City.

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ARTICLE 28. MISCELLANEOUS

28.1 **Materiality.** Each representation and warranty contained herein shall be deemed to be material and to have been relied upon, and shall survive the execution and delivery of this Agreement.

28.2 **Licenses, Permits and Approvals.** Contractor shall obtain, and shall maintain throughout the term of this Agreement, all necessary permits, licenses and approvals required for Contractor to perform the work and services agreed to be performed by Contractor pursuant to this Agreement. Contractor shall show proof of such permits, licenses or approvals upon request of the City Manager, including without limitations, a business license.

28.3 **Transition of Services.** In the event Contractor is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, Contractor shall cooperate fully with City and any subsequent service provider to assure a smooth transition of services described in this Agreement. Such cooperation shall include, but not be limited to, transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and lists of Customers and Customer account information. During the last six (6) months of this Agreement, these materials shall be provided to City within ten (10) Working Days of the request by City.

28.4 **Headings.** The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.

28.5 **Interpretation as to Drafting Party.** This Agreement, and each of the provisions hereof, have been reached as a result of negotiations between the parties and their respective attorneys. Each of the parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party or parties, shall not be employed in the interpretation of this Agreement.

28.6 **Non-Discrimination.** In performing the Refuse Material Collection services hereunder, Contractor shall not discriminate against any person on the ground of race, sex, age, creed, color, religion or national origin.

28.7 **Survival of Terms.** In the event any covenant condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity thereof shall in no way affect any other provision in this Agreement if the provision does not materially prejudice either Contractor or City in their respective rights and obligations hereunder.

28.8 **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to matters covered hereby and no other agreement, statement, or promise made by any party hereto, or agent of such party, which is not contained herein, shall be binding or valid. No purported modification, amendment, or other change in this Agreement shall be valid unless set forth in writing signed by both Contractor and City.

28.9 **Reserved.**

28.10 **Costs and Attorney Fees.** In the event that the services of an attorney are required by either party to secure the performance hereof or otherwise, the prevailing party in any action brought to secure such performance shall be entitled to all reasonable costs, expenses, attorney's fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

28.11 Dispute Resolution.

- a) If the parties are unable to resolve a dispute arising under this Agreement in a cooperative manner, either party may call for mediation, as hereafter described. The party calling for mediation shall serve notice in writing upon the other party setting forth the question or questions to be mediated. The costs of mediation shall be borne equally between the parties.
- b) Within ten (10) calendar days after delivery of the notice called for under Section 28.11(a) above, the parties shall select a mutually acceptable mediator from the Judicial Arbitration and Mediation Service ("JAMS") or other mutually agreeable organization. In the event the parties are unable to agree on a mediator, a mediator shall be selected for them at random pursuant to JAMS procedures. However, either side may reject the proposed mediator and JAMS will select another. Within ten (10) calendar days thereafter, the parties shall meet with the mediator in a good faith attempt to resolve their dispute. The parties shall continue to meet with the mediator until their dispute is resolved or the mediator indicates that he or she does not believe that further efforts are likely to result in a successful resolution.

28.12 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

28.13 Venue and Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The duties and obligations of the parties hereunder are performable in City of Colusa and any court with original jurisdiction over contracts entered into in the City of Colusa shall be the venue for any action or proceeding pursuant to this Agreement.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto have caused this Franchise Agreement to be executed by their authorized signatories as of the later date set forth below.

CITY:

CITY OF COLUSA



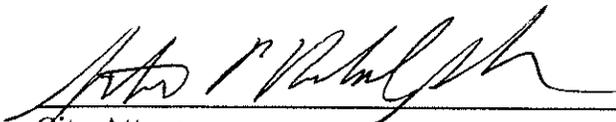
City Manager

ATTEST:



City Clerk

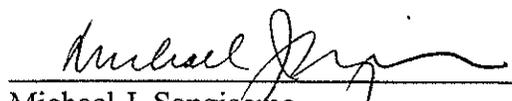
APPROVED AS TO FORM



City Attorney

CONTRACTOR:

NORCAL WASTE SYSTEMS OF BUTTE COUNTY, INC.



Michael J. Sangiameo
President and Chief Executive Officer

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FRANCHISE AGREEMENT BETWEEN THE CITY OF COLUSA AND
 NORCAL WASTE SYSTEMS OF BUTTE COUNTY FOR SOLID WASTE,
 GREEN WASTE AND CONSTRUCTION DEBRIS COLLECTION AND DISPOSAL

Exhibit A - Monthly Service Billing Rates (January 2009)

Residential

Size	Rate
32 gal	\$ 29.90
64 gal	\$ 31.40
96 gal	\$ 32.90

Temporary Bin Rental-7 days		
3 yard	\$ 50.00	
6 yard	\$ 85.00	

Commercial

	1X	2X	3X	4X	5X
96 gal	\$ 32.90				
2 yard	\$ 89.70	\$ 179.41	\$ 269.11	\$ 358.81	\$ 448.52
3 yard	\$ 134.55	\$ 269.11	\$ 403.66	\$ 538.22	\$ 672.77
4 yard	\$ 179.41	\$ 358.81	\$ 538.22	\$ 717.63	\$ 897.03
6 yard	\$ 269.11	\$ 538.22	\$ 807.33	\$ 1,076.44	\$ 1,345.55
8 yard	\$ 358.81	\$ 717.63	\$ 1,076.44	\$ 1,435.25	\$ 1,794.06

FRANCHISE AGREEMENT BETWEEN THE CITY OF COLUSA AND
NORCAL WASTE SYSTEMS OF BUTTE COUNTY FOR SOLID WASTE,
GREEN WASTE AND CONSTRUCTION DEBRIS COLLECTION AND DISPOSAL

Exhibit B - Components of Monthly Service Billing Rates (January 2009)

	Transfer Station	Fuel	Base Rate	Total Before Franchise Fees	Franchise Fees	Total
<u>Residential</u>						
32 Gallon	\$9.50	\$1.32	\$14.59	\$25.41	\$4.49	\$29.90
64 Gallon	\$9.98	\$1.39	\$15.32	\$26.69	\$4.71	\$31.40
96 Gallon	\$10.45	\$1.46	\$16.05	\$27.96	\$4.94	\$32.90
<u>Commercial</u>						
96 Gallon - 1 x per week	\$10.45	\$1.46	\$16.05	\$27.96	\$4.94	\$32.90
2 Yard Bin - 1 x per week	\$28.51	\$3.97	\$43.76	\$76.24	\$13.46	\$89.70
3 Yard Bin - 1 x per week	\$42.76	\$5.96	\$65.65	\$114.37	\$20.18	\$134.55
4 Yard Bin - 1 x per week	\$57.02	\$7.94	\$87.54	\$152.50	\$26.91	\$179.41
6 Yard Bin - 1 x per week	\$85.52	\$11.91	\$131.31	\$228.74	\$40.37	\$269.11
8 Yard Bin - 1 x per week	\$114.03	\$15.88	\$175.08	\$304.99	\$53.82	\$358.81
2 Yard Bin - 2 x per week	\$57.02	\$7.94	\$87.54	\$152.50	\$26.91	\$179.41
3 Yard Bin - 2 x per week	\$85.52	\$11.91	\$131.31	\$228.74	\$40.37	\$269.11
4 Yard Bin - 2 x per week	\$114.03	\$15.88	\$175.08	\$304.99	\$53.82	\$358.81
6 Yard Bin - 2 x per week	\$171.05	\$23.82	\$262.62	\$457.49	\$80.73	\$538.22
8 Yard Bin - 2 x per week	\$228.07	\$31.76	\$350.16	\$609.99	\$107.64	\$717.63
2 Yard Bin - 3 x per week	\$85.52	\$11.91	\$131.31	\$228.74	\$40.37	\$269.11
3 Yard Bin - 3 x per week	\$128.28	\$17.87	\$196.96	\$343.11	\$60.55	\$403.66
4 Yard Bin - 3 x per week	\$171.05	\$23.82	\$262.62	\$457.49	\$80.73	\$538.22
6 Yard Bin - 3 x per week	\$256.57	\$35.73	\$393.93	\$686.23	\$121.10	\$807.33
8 Yard Bin - 3 x per week	\$342.10	\$47.64	\$525.23	\$914.97	\$161.47	\$1,076.44
2 Yard Bin - 4 x per week	\$114.03	\$15.88	\$175.08	\$304.99	\$53.82	\$358.81
3 Yard Bin - 4 x per week	\$171.05	\$23.82	\$262.62	\$457.49	\$80.73	\$538.22
4 Yard Bin - 4 x per week	\$228.07	\$31.76	\$350.16	\$609.99	\$107.64	\$717.63
6 Yard Bin - 4 x per week	\$342.10	\$47.64	\$525.23	\$914.97	\$161.47	\$1,076.44
8 Yard Bin - 4 x per week	\$456.13	\$63.52	\$700.31	\$1,219.96	\$215.29	\$1,435.25
2 Yard Bin - 5 x per week	\$142.54	\$19.85	\$218.85	\$381.24	\$67.28	\$448.52
3 Yard Bin - 5 x per week	\$213.81	\$29.78	\$328.26	\$571.85	\$100.92	\$672.77
4 Yard Bin - 5 x per week	\$285.08	\$39.70	\$437.70	\$762.48	\$134.55	\$897.03
6 Yard Bin - 5 x per week	\$427.62	\$59.55	\$656.55	\$1,143.72	\$201.83	\$1,345.55
8 Yard Bin - 5 x per week	\$570.16	\$79.40	\$875.39	\$1,524.95	\$269.11	\$1,794.06
<u>Temporary Bin Rental - 7 days</u>						
3 Yard Bin	\$15.89	\$2.21	\$24.40	\$42.50	\$7.50	\$50.00
6 Yard Bin	\$27.01	\$3.76	\$41.48	\$72.25	\$12.75	\$85.00

FRANCHISE AGREEMENT BETWEEN THE CITY OF COLUSA AND
NORCAL WASTE SYSTEMS OF BUTTE COUNTY FOR SOLID WASTE,
GREEN WASTE AND CONSTRUCTION DEBRIS COLLECTION AND DISPOSAL

Exhibit C – City Facilities

Facility	Location
City Hall	525 Webster
Police Station	260 6th
Fire Station	750 Market Street
Water Works	9th and Main
Waste Water	South end of Willis Green
Scout Cabin (Sr. Center)	900 block of Webster, close to Park Hill
Supply Yard Lift Station	1420 Willis Green Avenue
City Corp Yard	12th and Main
Pool	Behind Pool on Webster, 900 block

RESOLUTION NO. 09-36
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUSA
ESTABLISHING INCREASED SEWER RATES

WHEREAS, the City of Colusa is permitted to operate its wastewater treatment plant under NPDES (National Pollutant Discharge Elimination System) Permit No.R5-2008-0184 issued in December 2008; and

WHEREAS, in February 2009 the City of Colusa completed a \$15.7 million dollar upgrade to the Wastewater Treatment Plant; and

WHEREAS, the City of Colusa has a \$15.5 million dollar loan through the Clean Water State Revolving Fund Program to repay over a twenty (20) year period commencing fiscal year 2009-10; and

WHEREAS, the City of Colusa retained a consultant to conduct an analysis of the existing rate structure, future wastewater treatment system costs and the City's options to fund the actual costs of the wastewater treatment system; and

WHEREAS, on June 16, 2009, the City Council held a public workshop to discuss the draft revenue program and the City's options related to future wastewater treatment system expenses and rates; and

WHEREAS, it is necessary to increase rates to fund the actual costs of wastewater treatment system operations, maintenance and the repayment of loan; and

WHEREAS, additional monies are included in the rate structure to support capital improvements, these monies shall be set aside and restricted for waste water capital projects, and;

WHEREAS, in accordance with the requirements of Proposition 218, the City mailed notice of the public hearing on the proposed rate increase ("Notice") to affected property owners and utility rate payers in the City; and

WHEREAS, the Notice was mailed more than 45 days prior to the scheduled public hearing and included information related to the proposed rate increase, protest process, and five-year rate schedule; and

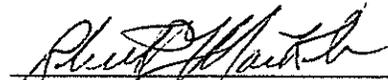
WHEREAS, on August 18, 2009, the City Council held a public hearing as required by law on the proposed rate increase; and

WHEREAS, at the conclusion of the public hearing, the City Council determined that a majority protest did not exist.

NOW, THEREFORE, the City Council of the City of Colusa does hereby resolve:

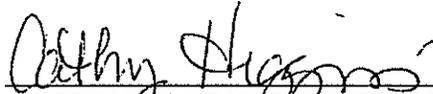
1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The City Council of the City of Colusa hereby adopts the schedule of sewer rates set forth in the attached Exhibit "A."
3. The City Council of the City of Colusa hereby directs that the sewer rates adopted by this Resolution be collected consistent with applicable laws.

ADOPTED as a Resolution of the City Council of the City of Colusa at a regular meeting duly held on the 1st day of September 2009



ROBERT MACKABEN, MAYOR

ATTEST:



CATHY HIGGINS, DEPUTY CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF COLUSA)
CITY OF COLUSA)

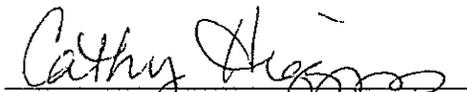
I, Cathy Higgins, Deputy City Clerk of the City of Colusa, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 09- adopted by the City Council of the City of Colusa, California, at a regular meeting thereof held on the 1st day of September, 2009 by the following vote:

AYES: MacKaben, Critchfield, Hosmer, Reische, Kelleher

NOES:

ABSENT:

ABSTAIN:



CATHY HIGGINS, DEPUTY CITY CLERK

SUMMARY OF PROPOSED RATE ADJUSTMENTS

Under the current structure some users pay a fixed charge per month; the proposed rates include a monthly base fixed charge and flow charge. The proposed rates have been calculated such that, per California law (Prop. 218), each customer pays their proportional cost of the service.

EXISTING RATE STRUCTURE AND PROPOSED RATES FOR FISCAL YEAR 2009-2010

City of Colusa Wastewater Revenue Program
Summary of Current and Fiscal Year 2009-10 Calculated Monthly Rates

	Current Rates and Rate Structure			Fiscal Year 2009-2010		
	Base Charge	Flow Charge per 100 cubic feet		Rate Structure	Base Charge	Flow Charge per 100 cubic feet greater than 1,000 cubic feet 7 mo
Residential				Residential		
Detached	\$57 00	n a	per unit	All Units	per unit	\$57 50
Attached	\$57 00	n a	per unit			\$1 05
Non-Residential (1)				Commercial (2)		
Class C1	\$53 00	\$0 72	per account	Moderate Strength	per account	\$57 50
Class C2	\$53 00	\$2 97	per account	Medium Strength	per account	\$4 94
Class C3	\$53 00	\$2 81	per account	High Strength	per account	\$57 50
Class C4	\$53 00	\$4 85	per account			\$7 28
Class C5	\$53 00	\$2 93	per account	Schools	per person	\$57 50
Class C6	\$53 00	\$3 03	per account			\$10 98
Class C7	\$53 00	\$3 56	per account	Fairgrounds	per agreement	\$2 79
Class C8	\$53 00	\$2 85	per account			\$517 06
Class C9	\$53 00	\$2 18	per account			

Source: City of Colusa and ECO LOGIC Engineering Inc

[1] Classes defined as

Class C1	Retail, Office, Auditorium/Hall, Storage, Animal Shelter, Beauty/Barber Shop, Church, Day Care, Doctor/Dentist, Fitness Center, Florist, Hotel/Motel, Library, Other, Theatre, Veterinary Clinic
Class C2	Day Cleaners, Laundromat
Class C3	Auto Dealership, Autobody Shop, Car Wash, Gas Station
Class C4	Bakeries & Delis, Fast Food, Funeral Home, Market, Restaurant/Bar
Class C5	Fire Station, Hospital, Jail, Schools
Class C6	Multi-User, Bowling Alley
Class C7	Assisted Living/Convalescent Hospitals
Class C8	Fairgrounds
Class C9	Commercial Laundry

[2] Appropriate classification for each customer is determined

by the Public Works department according to estimated strength of effluent. Most, but not all, commercial businesses will move to the new rate structure as follows

Moderate Strength	C1, C2, C5, C9
Medium Strength	C3, C6, C7
High Strength	C4

"comh_rate_sum"

**FOR FISCAL YEARS 2010-2011 THRU 2013-2014 RATE
WILL BE INCREASED PER THE FORMULA LISTED
BELOW**

Step 1: Calculate next year's revenue requirement (2010-11 will be the first year)

- a) Calculate the next year's personnel costs based on the City's negotiated labor contract. Apply the labor contract percentage increase/decrease to the current year personnel costs*
- b) Calculate the next year's supplies/services and capital expenditures based on the San Francisco CPI. Add current year supplies/services costs and capital expenditures costs, then apply the April to April percentage change in the San Francisco CPI¹ to the total supplies/services and capital expenditure costs*
- c) Determine next year's depreciation expense, debt service payments, and CWSRF loan reserve requirement, and add these together. Depreciation expense is set at \$231,000 for Fiscal Year 2010-11 and \$350,000 for each year thereafter. Debt service payments are provided in the official documents of each of the loans. The CWSRF loan reserve requirement is an amount equal to at least 0.5% of the total loan per year*
- d) Calculate any revenue credits for the next year. Liaise with other City departments to determine whether any credits can be applied. Credits include anticipated revenues from new development (development impact fee revenue for debt service, or additional wastewater service charge revenues), and other non-operating revenue including interest income and grants*
- e) Add items a) through d) to calculate next fiscal year's revenue requirement*

Step 2: Determine the percentage change from the current to the next fiscal year's revenue requirement

- a) Deduct the current year revenue requirement from next year's (Step 1 e) and divide this by the current year revenue requirement*

Step 3: Increase / Decrease Base and Flow Rates for the next fiscal year

- a) Multiply the current base rate and flow rates by the percentage change*
- b) Add the increase/decrease in rates to the current year rates*

City of Colusa

Water Well and Pump Station Evaluation Report

November 26, 2007

Prepared By:



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City of Colusa Water Well and Pump Station Evaluation Report

EXECUTIVE SUMMARY

The City of Colusa (City) water system is functional and meets current needs, but equipment is aging and maintenance has been deferred in many cases. The City should plan for increasing repair and replacement costs as equipment ages. Going forward, the City should plan to replace equipment and materials at a progressive interval of 50 years to reduce the risk of failure and promote system reliability.

Wells

Wells Nos. 2 and 3 are probably at or beyond the normal reliable lifespan for similar structures. For Well No. 2, the City should spend as little time and money as possible to keep the well running until a replacement well is constructed. The Well No. 2 site would be suitable for a replacement well. The City should plan to phase out the use of Well No. 3 and ultimately abandon the site; its location and size will make future improvements and upgrades very difficult if not impossible. In the interim, the City's best option is probably to spend as little time and money as possible to keep Well No. 3 running.

Wells Nos. 4, 5, and 6 have some problems but are the City's lead wells and are within the normal reliable lifespan for similar structures. The City should plan to conduct regular (at least once per year) well testing to monitor the wells' performance and see if specific capacity declines or sand production increases over time. If changes in these parameters become problematic, or if other problems occur in any of the lead wells, the City should perform a video survey of the well structure to determine its condition and ability to withstand well repair or rehabilitation. The City should be prepared for some upcoming repair and rehabilitation, and ultimate replacement of the lead wells as the end of their normal reliable lifespan approaches.

The cost for engineering and construction to drill a test hole and construct a multiple-completion monitoring well to a depth of 1,000 feet, then construct a 16-inch production well to a depth of 500 feet, would be approximately \$500,000.

Pump Stations

Overall, the City's pump stations are functional and appear to meet service conditions. However, some of the equipment is outdated and near the end of its reliable service life. The City has deferred maintenance on some equipment. Although the age and condition of the equipment does not currently affect its functionality, it does affect reliability. With older equipment with deferred maintenance, the City should consider that a higher degree of redundancy may be needed to accommodate facilities that are off line for more frequent upcoming repairs/maintenance or during unexpected failures. The City should plan to replace equipment and materials at a progressive interval of 50 years to reduce the risk of failure and promote system reliability. An entirely new pump station, similar to Well No. 6, would cost approximately \$750,000 for engineering and construction.

If the City wishes to continue to use Well No. 2 as an active permitted source, the well and discharge piping should be disinfected and flushed, then connected to the distribution



City of Colusa Water Well and Pump Station Evaluation Report

system. The equipment should be exercised periodically to keep it operational. More frequent operation of the well should reduce the need for flushing.

For Well No. 3, the time delay relay setting on the soft start should be adjusted. If this does not significantly reduce motor noise on startup, the soft start should be replaced with a modern unit. Replacing the soft-start would cost approximately \$15,000.

For Wells Nos. 3, 4, 5, and 6, the flowmeter calibration should be checked. If the flowmeters cannot be properly calibrated, modern flowmeter and pressure transmitter with digital output capability should be installed. Efficiency tests should be re-run once flowmeter have been confirmed accurate. Installation of new flowmeters would cost approximately \$15,000 per site; rerunning efficiency test at all wells would cost approximately \$5,000.

Water Quality

The City has expressed that its primary concerns with regard to water quality are consumer complaints of dirty water and a rotten egg odor. Water quality in the City's wells generally meets all drinking water standards except for manganese, and occasionally iron. There is a secondary (aesthetic) maximum contaminant level (MCL) for manganese of 50 ug/L and for iron of 300 ug/L. Enforcement of secondary standards is somewhat discretionary, based on level of consumer complaints and cost of treatment, and the City has not been subject to enforcement.

Manganese and iron are the most likely causes of the "dirty water" complaint. The "rotten egg odor" is likely a result of the presence of hydrogen sulfide gas in water from the City's wells. Chlorination is the City's only treatment, and is helping reduce odor. The drawbacks with chlorination are that over-chlorination can contribute to dirty water, can leave a chlorine taste to the water, and can increase chlorine byproduct formation.

Oxidation and filtration is the standard treatment to remove iron and manganese, which should reduce the problem of "dirty water". Aeration removes odor and improves taste. Sequestering agents chemically bind iron and manganese to prevent them from reacting with chlorine, allowing them to remain soluble and pass undetected through the distribution system. The sequestering agents would help reduce the demand for chlorine so that it would be more effective in treating hydrogen sulfide without causing dirty water or other problems. Although sequestering agents would not reduce the amount of iron or manganese in the City's water, they would likely reduce the problems associated with their presence.

Oxidation and filtration could be considered for Wells Nos. 5 and 6, and aeration could be considered for Well No. 6. Well No. 4 has generally acceptable water quality according to the City. Because the lifecycle cost of sequestering agents is substantially lower than other recommended treatment options, we recommend that the City consider a pilot program to select and test whether sequestering agents would be a good option for the City.



City of Colusa Water Well and Pump Station Evaluation Report

A summary of the 25-year lifecycle costs, including capital and operating costs, for each recommended option for the City's lead wells is presented below. An annual inflation rate of 3% was assumed, and applied to yearly operations and maintenance costs, and to the cost of planned equipment replacement within the 25-year estimating period. Costs assume production of 110 MG/year for Well No. 4, 193 MG/year for Well No. 5, and 220 MG/year for Well No. 6.

Option	Lifecycle Costs (25 Years)		
	Well No. 4	Well No. 5	Well No. 6
Filtration	N/A	\$822,400	\$1,214,000
Aeration Only	N/A	N/A	\$1,019,800
Aeration + Filtration	N/A	N/A	\$2,066,500
Sequestering	\$96,650	\$148,850	\$165,800

Because of the age, condition, and infrequent use of Wells Nos. 2 and 3, treatment is generally not recommended; however, sequestering could be considered as an option because its capital costs are much lower, and ongoing costs are proportional to production.

DESCRIPTION OF WATER SYSTEM OPERATION

The City's water system consists of five wells, two storage tanks, and the distribution system. Three of the City's wells (Wells Nos. 4, 5, and 6) are "lead" wells, and two wells (Wells Nos. 2 and 3) are used for supplemental supply on an as-needed basis. The City serves water to approximately 2,400 service connections within and slightly outside of the City limits. The location of the City's wells, storage tanks, and distribution system are shown in Map 1; the location of the City's wells, storage tanks, and two new well sites are shown in Figure 1.

The City operates its wells to maintain pressure in the storage tanks between 48 to 54 psi, with a preferred range of 50 to 52 psi. Pressure is only monitored at the storage tanks, not in the distribution system. Wells Nos. 4, 5, and 6 are called on by a SCADA system at the City's master station located at the storage tank site. The master station is linked to the slave control panels at each well site via a landline telephone connection. The master station monitors pump station run status, pump failure, tank level, tank low and high level alarms, and loss of signal. The SCADA system was installed in 1992 and calls the well pumps to activate or deactivate to maintain pressure in the storage tanks according to a programmed sequence in the following order: First – Well No. 6, Second – Well No. 4, Third – Well No. 5. Well No. 3 can be called on using the SCADA system, but is not part of the automated routine; it must be called manually. Well No. 2 is not equipped with SCADA. Wells Nos. 2 and 3 must be flushed before water from the wells can be introduced into the distribution system, so they are typically operated manually.

WELL FIELD PRODUCTION

The City's well field production averages about 575 million gallons (MG) per year. Average monthly production ranges from a low of about 25 MG in December, January,



**Proposition 218 Notification
NOTICE OF PUBLIC HEARING
ON PROPOSED WATER RATES**



City of Colusa
425 Webster Street
Colusa, CA 95932

Hearing Date & Time: May 4, 2010 at 7:00 PM or as soon thereafter as possible
Hearing Location: City of Colusa
City Council Chambers
425 Webster Street, Colusa, CA 95932

Why a Rate Adjustment is Needed

Cost of Service. Water rates have not increased since 2002. During that time expenses have increased while revenues have remained about the same. At times the water utility was subsidized by the General Fund. The water utility needs to collect revenue sufficient to cover the costs of operating the water system. These costs include electricity, equipment and supplies, ongoing maintenance and replacements, treatment chemicals, salaries and benefits for water staff, and capital improvement projects.

Capital Improvement Projects. The City of Colusa Master Plan (February 2009) identifies \$14.5 – 18.9 million of capital improvements needed to correct existing deficiencies for current users. Over the next five years, the City will implement a capital improvement plan with approximately \$7 million of projects to improve water quality and meet regulatory requirements. These projects include:

- Replacement of 50 year old wells
- Pipeline replacements
- Removing naturally occurring salts, as mandated by California State DPH
- Removing naturally occurring manganese and sulfates that discolor the water and have an unpleasant odor

Note: It is expected that these capital projects will result in much improved water quality, taste, and reduced odors.

Basis of Proposed Rates

The City needs to collect revenues sufficient to cover the costs of operating the water system. These costs include electricity, equipment and supplies, ongoing maintenance and replacements, treatment chemicals, and salaries and benefits for water enterprise staff. Additionally, revenue generated from these water rates will be used to meet the City of Colusa Master Plan capital improvement projects to correct existing deficiencies in the water system and improve the water quality.

A study by an independent consulting firm working closely with a Citizens Advisory Committee concluded that the proposed rates will provide enough funds for the City to recover the cost of operation, maintenance, administration, and capital improvement projects.

Water Rates

The City currently charges customers a minimum monthly service charge based on the size of the water meter which includes a water consumption allowance that increases with meter size. Water consumption over the allowance is billed on a four-tier schedule based on the amount of water consumed. The monthly consumption rate is an inclining block, but the price increase per tier is so small that it does not provide substantial incentive to conserve water.

Have questions, attend a Town Hall meeting:

Meetings will be held at City of Colusa City Hall 425 Webster Street on March 25th at 10am, March 30th at 6pm, and on April 8th at 2pm

Current Water Rates

Minimum monthly service charge and water allowance			Consumption Charges for water used above allowance							
Meter Size	Minimum Monthly Service Charge	Maximum Consumption before excess usage is charged	Excess Usage Rates 4-tiers:							
			Inside City Limits		Outside City Limits					
5/8" or 3/4"	\$11.45	10 HCF	Tier 1	\$0.40 per HCF	Tier 2	\$0.50 per HCF	Tier 3	\$0.55 per HCF	Tier 4	\$0.65 per HCF
1"	\$20.47	25 HCF	Tier 2	\$0.45 per HCF	Tier 3	\$0.50 per HCF	Tier 4	\$0.55 per HCF		
1 1/2"	\$35.50	50 HCF								
2"	\$60.16	100 HCF								
3"	\$95.62	150 HCF								
4"	\$155.74	250 HCF								
6"	\$306.04	500 HCF								

1 HCF = one hundred cubic feet = 750 gallons of water

Inside City Proposed Water Rates

Starting in May 2010, the proposed rate increases would modify the existing tier structure for single family residential customers. Customers would continue to be billed a monthly service charge based on meter size plus a three-tier monthly consumption charge for all water consumed over three HCF. All non-single family water customers (multi-family, commercial, industrial) will be billed a monthly service charge based on meter size plus a uniform consumption charge for all water consumed over three HCF.

Proposed Water Rates Effective Every May 2010 through 2014					
Inside City					
Monthly Meter Charge	2010/11	2011/12	2012/13	2013/14	2014/15
5/8" or 3/4"	\$15.11	\$18.14	\$21.76	\$25.03	\$28.78
1"	27.02	32.42	38.91	44.75	51.46
1 1/2"	46.86	56.23	67.48	77.60	89.24
2"	79.41	95.29	114.35	131.50	151.23
3"	126.22	151.46	181.75	209.02	240.37
4"	205.58	246.69	296.03	340.44	391.50
6"	403.97	484.77	581.72	668.98	769.33
Single Family Residential Usage Tiers (per HCF consumed)					
Keep Colusa Green Landscaping Allocation					
0 -3 HCF	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Tier 1					
4 - 10 HCF	0.24	0.41	0.51	0.59	0.68
Tier 2					
11 - 32 HCF	0.63	1.07	1.34	1.54	1.77
Tier 3					
over 32 HCF	1.19	2.02	2.53	2.91	3.35
Multi-family Residential & Commercial Usage Tiers (per HCF consumed)					
Keep Colusa Green Landscaping Allocation					
0 -3 HCF	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Over 3 HCF	0.64	1.08	1.36	1.56	1.79

Calculating Your Single Family Residential Water Bill

A single family residence inside the City with a 5/8" or 3/4" meter consuming 21 HCF of water per month would have a monthly bill of \$23.72, with the proposed water rates effective May 2010.

Monthly meter charge: 5/8" or 3/4"				\$15.11
Monthly water consumption: 21 HCF	Keep Colusa Green (0-3 HCF)	3 HCF * \$0.00 per HCF		0.00
	Tier 1 (4 - 10 HCF)	7 HCF * \$0.24 per HCF		1.68
	Tier 2 (11 - 32 HCF)	11 HCF * \$0.63 per HCF		6.93
		Monthly Water Bill		\$23.72

Each year a single family residence inside the City with a meter 5/8" or 3/4" meter consuming 21 HCF of water per month would see approximately a \$6.00 to \$9.00 increase in their monthly bill.

	Current	2010/11	2011/12	2012/13	2013/14	2014/15
Monthly Single Family Residential Water Bill	\$15.85	\$23.72	\$32.78	\$40.07	\$46.10	\$53.01
Monthly Increase		\$7.87	\$9.05	\$7.30	\$6.02	\$6.91

Calculating Your Non-Single Family Water Bill

A non-single family water customer (multi-family, commercial, industrial) inside the City with a 5/8" or 3/4" meter consuming 25.0 HCF of water per month would have a monthly water bill of \$29.19, with the proposed water rates effective May 2010.

Monthly meter charge: 5/8" or 3/4"				\$15.11
Monthly water consumption: 25 HCF	Keep Colusa Green (0-3 HCF)	3 HCF * \$0.00 per HCF		0.00
	Over 3 HCF	22 HCF * \$0.64 per HCF		14.08
		Monthly Water Bill		\$29.19

Outside City Proposed Water Rates

Proposed Water Rates Effective Every May 2010 through 2014					
Outside City	2010/11	2011/12	2012/13	2013/14	2014/15
Monthly Meter Charge					
5/8" or 3/4"	\$18.89	\$22.67	\$27.21	\$31.29	\$35.98
1"	33.78	40.53	48.64	55.93	64.32
1 1/2"	58.58	70.29	84.35	97.00	111.55
2"	99.26	119.12	142.94	164.38	189.04
3"	157.77	189.33	227.19	261.27	300.46
4"	256.97	308.37	370.04	425.54	489.38
6"	504.97	605.96	727.15	836.22	961.66
Single Family Residential Usage Tiers (per HCF consumed)					
Keep Colusa Green Landscaping Allocation					
0 -3 HCF	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Tier 1					
4 - 10 HCF	0.30	0.51	0.64	0.74	0.85
Tier 2					
11 - 32 HCF	0.79	1.34	1.68	1.93	2.22
Tier 3					
over 32 HCF	1.49	2.53	3.16	3.63	4.17
Multi-family Residential & Commercial Usage Tiers (per HCF consumed)					
Keep Colusa Green Landscaping Allocation					
0 -3 HCF	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Over 3 HCF	0.80	1.36	1.69	1.95	2.24

Drought Rates

If the City Council declares water consumption cutbacks due to a drought, a drought surcharge will be implemented equal to the cutback. E.g. if the City implements a 15% cutback, a corresponding 15% drought surcharge would be charged.

Compliance with Proposition 218

In 1996 California voters approved Proposition 218, which amended the state constitution as it relates to the passage of property related fees. Today, "Prop 218" requires that local governments follow a defined process when setting fees such as water bills. The City must 1) inform property owners and/or rate payers who are responsible for the bill that a proposed rate increase is being considered, 2) clearly demonstrate the basis on which these fees are calculated (the rate study), and 3) hold a public hearing at least 45 days after notice where the City hears all protests to the rate increase. Water rates are subject to "majority protest" meaning they cannot be passed if a majority of property owners or rate payers impacted by the rate change submit written protests opposing the increase.

Concerns, Please Contact Us

If you have questions or comments about the proposed water rate increases or wish to protest, you may:

Attend a Town Hall Meeting: Meetings will be held at City of Colusa City Hall 425 Webster Street on March 25, 2010 at 10am, March 30, 2010 at 6pm, and April 8, 2010 at 2pm.

Write: Written protests against the proposed rate change have to identify the address or the parcel number of the impacted property, and include the signature(s) of the owner of record or utility ratepayer. Written protests must be received by the City at 425 Webster Street Colusa, CA 95932 before the time set for the public hearing. If the City receives written protests against the proposed water rates by a majority of the affected property owners or ratepayers prior to the end of the hearing, the Council will not approve the change. Only one protest for each property will be counted.

Address the Council: Attend the Public Hearing on May 4, 2010

Questions: If you have any question about this notice, please call the City at (530) 458-4740 during regular business hours.

City of Colusa
2014-15 Water Rate Revenue Projections

User Type	Meter Size	Users	Avg. Month Usage	2014-15 Base Rate		FY 2014-15 Base Rate			Free Units	Tier			Total Estimated Revenue	Average New Water Bill
				Estimated Revenue	Units	Tier 1	Tier 2	Tier 3						
Outside City	3/4"	159	12	\$ 35.98	5	\$ 68,649.84	5	\$ 5,915.45	\$ 3,568.29	\$ 84,696.64	\$ 42.52			
Outside City	1"	7	16	\$ 64.32	10	\$ 5,402.88	10	\$ 180.56	\$ 1,339.47	\$ 7,202.76	\$ 69.80			
Outside City	1.5"	3	28	\$ 111.55	20	\$ 4,015.80	20	\$ 177.60	\$ -	\$ 4,573.43	\$ 125.65			
Business	3/4"	121	11	\$ 28.78	5	\$ 41,788.56	5	\$ 16,060.20	\$ -	\$ 57,848.76	\$ 39.84			
Business	1"	25	20	\$ 51.46	10	\$ 15,438.09	10	\$ 5,917.08	\$ -	\$ 21,355.08	\$ 71.18			
Business	1.5"	21	52	\$ 89.24	15	\$ 22,488.48	15	\$ 16,055.52	\$ -	\$ 38,544.00	\$ 152.95			
Business	2"	20	69	\$ 151.23	20	\$ 36,295.20	20	\$ 19,794.84	\$ -	\$ 56,090.04	\$ 233.71			
Business	3"	6	2042	\$ 240.37	25	\$ 17,306.64	25	\$ 35,474.40	\$ -	\$ 52,781.04	\$ 733.07			
Business	4"	1	817	\$ 391.50	30	\$ 4,698.00	30	\$ 14,726.40	\$ -	\$ 19,424.40	\$ 1,618.70			
Business	6"	1	0	\$ 769.33	35	\$ 9,231.96	35	\$ -	\$ -	\$ 9,231.96	\$ 769.33			
Multi User	3/4"	84	19	\$ 28.78	5	\$ 25,010.24	5	\$ 21,632.52	\$ -	\$ 50,642.76	\$ 50.24			
Multi User	1"	14	42	\$ 51.46	10	\$ 8,645.28	10	\$ 8,494.20	\$ -	\$ 17,139.48	\$ 102.07			
Multi User	2"	1	221	\$ 1,814.76	20	\$ 1,814.76	20	\$ 3,776.76	\$ -	\$ 5,591.52	\$ 465.96			
Multi User	3"	2	819	\$ 240.37	25	\$ 5,768.88	25	\$ 14,403.48	\$ -	\$ 20,172.36	\$ 840.52			
Multi User	4"	2	1045	\$ 391.50	30	\$ 9,396.00	30	\$ 18,436.08	\$ -	\$ 27,832.08	\$ 1,159.67			
Outside Multi User	1.5"	3	22	\$ 111.55	15	\$ 4,015.80	15	\$ 863.85	\$ -	\$ 4,879.65	\$ 135.55			
				\$ 904,920.24		\$ 260,322.68		\$ 83,160.35	\$ 75,198.81	\$ 1,323,602.08				
											\$ 70,000.00			
											\$ 1,393,602.08			

Walnut Ranch Intertie
Total 2014-15 Water Revenue