

Grand Jury Report

RESPONSE FORM

Grand Jury Report Title : *A Report on the City of Ukiah Garbage Contract*

Report Dated : *May 9, 2012*

Response Form Submitted By:

Mary Anne Landis, Mayor
City of Ukiah, City Council
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Ukiah, CA 95482

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Response MUST be submitted, per Penal Code §933.05, no later than:
August 28, 2012

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

- I (we) agree with the Findings numbered:
12, 13, 16, 18, 33, 36, 37
- I (we) disagree wholly or partially with the Findings numbered below, and have **attached, as required**, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

- The following Recommendation(s) have have been implemented and **attached, as required**, is a summary describing the implemented actions:

- The following Recommendation(s) have not yet been implemented, but will be implemented in the future, **attached, as required** is a time frame for implementation:

GRAND JURY REPORT
RESPONSE FORM
PAGE TWO

The following Recommendation(s) require further analysis, and **attached as required**, is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)

The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, **attached, as required** is an explanation therefore:

1, 2, 3, 4, 5, 6

I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 17

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

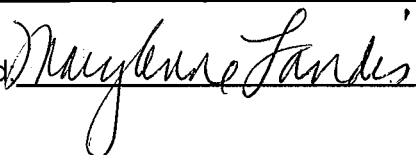
- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge: grandjury@mendocino.courts.ca.gov

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: Mary Anne Landis

Title: Mayor, City of Ukiah

Signed: 

Date: 8/1/12

The Grand Jury report precedes its findings with Summary and Background sections and adds a Discussion section at the conclusion of the report. In addition to its response to the grand jury's findings and recommendations, required by Penal Code Section 933.05, the City will also respond to these additional sections in the report.

RESPONSE TO SUMMARY

Introduction:

The Grand Jury report appears to be based on the premise that the best practice for awarding a waste collection franchise by a city is to publish a request for proposals from competing companies and choose the best proposal from among the bidders. One of its recommendations is to investigate whether this procedure is legally required. In the process of challenging the City's actions regarding the solid waste agreements, the Grand Jury also makes numerous factual errors in its findings addressing the transfer station and waste collection companies and the City employees and officials who participated in renegotiating the existing contracts.

The City Council disagrees with this premise. It deliberately chose to negotiate a long-term contract with the companies which operated the transfer station and provided waste collection in the City. Mendocino County and the cities of Willits and Fort Bragg have used this same procedure within the last two years. Numerous cities throughout California have followed this same practice.

Initially, it must be pointed out that the City could not put the waste collection contract out to bid prior to September 30, 2016, because its existing contracts with these companies would not have expired until then. The City could have waited until then to put the contracts out to bid. For the following reasons, it chose to renegotiate the existing contracts instead. As will appear in the background discussion below, the current owners of the transfer station and the waste collection franchise purchased them from the Ratto Group in 2007. Since that time the new owners purchased new trucks, constructed a materials recovery facility to serve Ukiah and other areas and greatly improved the operation of waste collection in the City, including an increase in the percentage of solid waste that is recycled rather than disposed of in a solid waste landfill, and the operation of the transfer station.

At the same time, due to dramatic increases in the cost of diesel and the gate fee at the Portrero Hills landfill, the costs of operating both the transfer station and the waste collection franchise increased substantially, to the point where the companies were losing money at an unsustainable rate. Also, the contract with the Portrero Hills landfill was expiring and the City needed to decide how to dispose of solid waste on a long-term basis. It could enter a long-term

contract with Portrero Hills or another landfill which would limit its recycling and waste diversion options or it could hope to find a landfill which would enter a more flexible contract.

One of the risks in requesting proposals is that the City can't know how well the company will actually perform until after it is awarded the contract. In the City's experience doing a background check on the company can reduce, but does not eliminate that risk. The owners who purchased the businesses in 2007 had demonstrated both that they were capable of and committed to a successful provision of waste collection in the City and were prepared to make long-term capital investments in improving the waste collection and diversion infrastructure. In order to make that investment, the companies needed reasonable rates designed to cover the actual cost of providing waste collection as well as long-term agreements to allow for the financing of capital improvements. For these reasons, the City Council elected to provide a short term rate increase in 2010 with the understanding that it would negotiate long-term agreements with a reasonable and predictable rate structure.

The Grand Jury report appears to disagree with that policy choice and that the rates under the new contracts are fair and reasonable. The City Council stands by its decision and believes that time will demonstrate that it made the right policy judgment and negotiated contracts which are fair to City ratepayers and the owners of Solid Waste Systems and Ukiah Waste Solutions.

Background:

The City of Ukiah entered a Transfer Station Agreement with Solid Waste Systems, Inc. in 1997, after proposals to provide a countywide transfer station failed. Solid Waste Systems agreed to construct the facility pursuant to the agreement with the City. That agreement required Solid Waste Systems to accept solid waste from the City and the unincorporated area. The agreement prohibited SWS from charging county franchised waste haulers or self-haulers different rates than it charged the City's franchised waste hauler and self-haulers. Solid Waste Systems was also the City's franchised waste hauler under a contract originally entered in 1992. The Transfer Station Agreement had a term of 15 years commencing when the Transfer Station began operating, which occurred in 2001. In 2001, the term of the Waste Collection Contract was revised to coincide with the term of the Transfer Station contract. Both contracts had terms ending on September 30, 2016.

The City has provided waste collection in the City pursuant to long-term exclusive franchise agreements, at least, since 1974. It also provides other utility services under exclusive franchise agreements, including natural gas and cable TV services.

The current owners of Solid Waste Systems and Ukiah Waste Solutions entered an agreement to purchase the Solid Waste System transfer station and waste collection businesses in 2005. Under those agreements, City approval was required for any change in ownership. The City of

Ukiah agreed to allow for the sale, after actively participating in negotiations with the new hauler to assure that the City of Ukiah rate payer did not bear the cost of that purchase, and the City was assured that the new franchise owner would address both customer service and operational issues, including achievement of State mandated diversion rates, as a result of the change in ownership.

The City approved the continuation of Solid Waste Systems operation of the Transfer Station and assignment of the Waste Collection contract to a new Ukiah Waste Solutions. It also approved the disposition of recyclables and green waste at the new materials recovery facility operated by Pacific Recycling Solutions. The agreement approving the sale included a provision requiring the delivery of the City's green waste to Cold Creek Compost on stated conditions which was negotiated among the owners of SWS and UWS and Cold Creek Compost. A company known as C & S Waste Solutions is the administrative arm for SWS, UWS and PRS. Again, the original agreements with these two entities were through 2016, having been assumed from the former owner.

The City Council, through a series of public meetings, and discussion, which included many opportunities for public comment, made public policy decisions with regard to solid waste removal that the City Council concluded would protect the rate payer on a long term basis, and also allow for investment in new waste reducing and recycling technologies. The public record of City Council meetings in which agenda items devoted to this topic were included, runs from February 2010 through and including December 2011. Two members of the City finance staff alone recorded over 300 hours of staff time working on this issue, which does not include the substantial time spent by the Public Works Director, City Manager, City Attorney, and Council members.

Every single one of the Grand Jury's Findings, numbers 1-46, with the sole exception of #20, relates to an issue discussed in public, during the many City Council meetings which addressed the new agreements and related rate increases. Most, if not all, of these issues were also the subject of a letter dated November 1, 2011, from Mr. Mike Sweeney, General Manager, of Mendocino Solid Waste Management Authority (MSWMA). When this letter was received by the City of Ukiah, members Landis and Thomas of the solid waste ad hoc committee appointed by the City Council undertook a series of additional meetings, at least 14 hours in total, having staff, the companies involved, and the ad hoc committee members meet with both Mr. Sweeney and Mr. John McCowen to examine the concerns and comments. Each was addressed, and, in a substantial number of cases, action was taken to revise the agreements and or address issues included in the letter prior to the City Council's final consideration of the agreements.

The fact that all of these items were included in the discussions prior to decision making by the full City Council, and where there were questions, these were answered, is an indicator that the Grand Jury, in its investigation, failed to examine these issues fully. There appears to be a bias in the report towards a single business which has claimed to be damaged by these agreements, a charge that was heard numerous times during the public discussion, but was not validated.

RESPONSE TO FINDINGS

1. Disagree. This statement is incomplete. In December 2011, the City Council approved two separate contracts: a Waste Collection Contract with Ukiah Waste Solutions, Inc., for curbside collection of solid waste in the City and an Amended and Restated Transfer Station Agreement with Solid Waste Solutions, Inc., governing the terms under which the City would direct waste collected in the City to the Transfer Station. The Waste Collection Contract replaced a previous franchise agreement with Ukiah Waste Solutions and the Transfer Station Contract amended and restated the agreement with Solid Waste Solutions. The terms of both of the previous contracts would not have expired until September 30, 2016. The initial term of both of the new agreements expires on December 31, 2026, or 10 years after the expiration of the previous contracts.

2. Disagree. This finding contains inaccurate statements. The new Waste Collection Contract increased the overall collection rate by an average of 7.12% not 7.2% as stated in this finding. The gate fee for franchised waste haulers increased by 5.64%, not 6% as stated in this finding.

3. Disagree. This finding has inaccurate statements. The gate fee at the transfer station increased by 21% per ton before surcharges, such as the \$5.00/ton surcharge from Mendocino Solid Waste Management Authority (MSWMA), and 46%/cubic yard after surcharges. As the staff reported at the August 18, 2010, City Council meeting, the cost to dispose of solid waste collected at the transfer station increased by \$29.23 per ton just for increased transportation costs and gate fees at the Portrero Hills Landfill. The City Council approved an increase of the gate fee at the Transfer Station of \$11.13/ton. The larger percentage increase in the per yard charge was proposed to account for the higher cost to process solid waste delivered by self-haulers as compared to the cost of solid waste delivered in compacted loads by franchised waste haulers and to provide an equitable rate structure for all customers comparable to other transfer stations in the county. The increased gate fee at the transfer station was projected to increase the curbside rate in Ukiah by 6.22%. The City Council authorized notice and hearing on the necessary increase in waste collection rates pursuant to Proposition 218. That hearing was not conducted until every property owner and waste collection customer in the City received mailed notice of the proposed rate increase and the right to file written protests for a period of 45 days after the notice was given.

4. Disagree. In August 2010, the increase was sought by Solid Waste Systems, not C&SWS.
5. Disagree. Mike Sweeney, General Manager of MSWMA and Mendocino County's solid waste director, and John McCowen, member of the Mendocino County Board of Supervisors, were invited to participate in meetings that included the City Council appointed ad hoc waste collection committee, consisting of Councilmembers Mary Anne Landis and Benj Thomas, and representatives of Solid Waste Systems and Ukiah Waste Solutions. The City Council decided at its November 2, 2011, meeting to invite them to participate, after Mike Sweeney submitted a letter to the City Council listing 43 concerns with the contract. In his cover letter to the City, Sweeney stated: "I applaud the City for undertaking this major task and charting a new relationship with its franchised hauler. It is an achievement for both the City staff and the company. In rewriting major contracts from scratch, however, there are bound to be a few glitches. . . ."
6. Disagree. The City's Finance Director and the City's consultant (CPA) jointly read and studied the financial statements provided by the companies. This effort included application of various mathematical calculations and other analyses to assure that the rates being proposed reflected costs comparable to those in the industry and the marketplace. Costs for individual services were mapped, and at each juncture, a reasonableness comparison was applied to determine that the base rates of these agreements were not overstated, and represented a return for the businesses that covered costs but did not provide profit over and above the norm for providing such services. The City's consultant has more than 30 years' experience in the solid waste collection industry and is highly qualified by education, training and experience to assess the reasonableness of the companies' financial statements. This is why the City has used his services for over 10 years in contract negotiations and rate reviews.
7. Disagree. The City's consultant (CPA) disclosed that he provides professional services to Solid Wastes of Willits, Inc., which is a completely separate and unrelated company from Ukiah Waste Solutions or Solid Waste Systems. He noted that Solid Wastes of Willits, Inc. and C&SWS had recently entered a joint venture to operate a composting facility on Eastside Road and that C&SWS has never been a source of income to him. His consulting services to the City were limited to reviewing proposed rate changes. Given that the City's consultant (CPA) has been providing professional services to the City in negotiating solid waste related agreements and reviewing rate increases by City contractors for more than 10 years and has consistently and aggressively represented the City's interests in protecting the ratepayer, the City Council did not object to his continuing work for the City.
8. Disagree. As stated in answer to Finding #7 above, with regard to a conflict of interest on the part of the City's consultant (CPA), the City Council found no conflict. The City has no record of such discussion and disclosure in February 2012.

9. Disagree. See response to No. 8.

10. Disagree. City staff and the ad hoc committee had extensive meetings with representatives of Solid Waste Solutions and Ukiah Waste Solutions. As is standard practice, the meetings and discussions with staff were not subject to the Brown Act and the ad hoc meetings were not subject to the Brown Act. As stated above Mike Sweeney and John McCowen were invited to participate in ad hoc committee meetings for a period of about a month before the new contracts were approved by the City Council.

11. Disagree. The City negotiated revisions to the existing Transfer Station Agreement with Solid Waste Systems, because it was negotiating revisions to an existing agreement. Moreover, Solid Waste Systems owns the transfer station property. When the existing agreement terminates in September 2016, the City would be entitled to title to the transfer station property and could negotiate with other companies, but not until then. The same was true of the Waste Collection Contract with Ukiah Waste Solutions. There was a request from Cold Creek Compost in Potter Valley to re-negotiate the existing agreement, regarding green waste and Cold Creek offered to accept food waste from the City. The City elected to continue the agreement that had been in effect since 2007, but to require Ukiah Waste Solutions to commence a food waste collection pilot program by July 2013, and a full program within six months thereafter. In proposing the full program, the agreement requires the presentation of alternatives to include other disposal options, including open air composting at Cold Creek Compost.

12. Agree as to both the Waste Collection Contract and the Transfer Station Contract.

13. Agree.

14. Disagree. The City cannot verify "historical." The prior waste collection contract with Ukiah Waste Solutions called for automatic cost of living increases with a rate review every three years. The new contract calls for automatic cost of living increases with a full rate review every five years.

15. Disagree. The first sentence in this item is correct, but the City disagrees with the second sentence. City staff read and studied pertinent financial statements.

16. Agree.

17. Disagree. Neither the County of Mendocino nor the City of Fort Bragg required or used audited financial statements in connection with the recent long-term contract extensions of the existing waste haulers.

18. Agree, but see responses to both Numbers #1 and #11 for a complete explanation. The franchise holder and the City of Ukiah were already bound by contract; an opportunity for RFP

was not present under law. The Grand Jury must also be aware that neither the County of Mendocino nor the City of Fort Bragg used an RFP process in the recent long-term contract extensions of the existing haulers.

19. Disagree. It is in the nature of a franchise agreement that the company awarded the franchise has the exclusive right to perform the franchised services. The City Code contemplates franchise agreements for a number of municipal services. The City has provided waste collection in the City through a franchise agreement with a single company for many years. The agreement assigned to Ukiah Waste Solutions began in 1992 and had been extended several times before it was assigned to Ukiah Waste Solutions in 2007. Due to the complexity of the solid waste industry, it is unrealistic to expect to bid out these services on a three to five year turn around. Such time frames do not provide for the investment necessary for current haulers to provide the range of services now required. It is a regular business practice in this industry to enter into exclusive long term franchise agreements to assure compliance with mandates as well as innovation for increased diversion rates.

20. Disagree. The father of one of the owners of SWS/UWS is a friend of the prior owner of those companies, but the prior owner is not involved in any manner in the operation of SWS or UWS.

21. Disagree. The agreements between SWS/UWS and City of Ukiah describe the parties involved in the agreements, and regulate the business practices involved in the services rendered.

22. Disagree. This is not true. The City has the right to audit financials during the "5 year rate reviews" and if the Company should request an increase based on "extraordinary events".

23. Disagree. Flow control was retained in the new agreements, and detailed procedure for approval from the City Council for a change in destination of materials was outlined specifically in Section 5.11 (d) of the Ukiah Waste Solutions Agreement, and Section 4 of the Solid Waste Systems, Inc. agreement. The approval of flow control by the City Manager in the former agreements was changed to the City Council, in the new agreements, as part of the subsequent meetings of the Ad/Hoc members after receipt of Mr. Sweeney's November 1, 2011, letter.

24. Disagree. Under the terms of the new SWS disposal contract with Lake County, providing for use of the Eastlake Landfill, disposal rates are frozen for 2012, 2013 and 2014 and will rise by 4% or CPI, whichever is higher, thereafter. SWS worked hard to negotiate these provisions, which assure reasonable disposal costs as well as protection, certainty and stability to disposal cost increases.

25. Disagree. The amended and restated transfer station agreement changes the calculation of transfer station gate fees. That method will no longer identify components of the fee, using

the categories, including the construction cost component category, used in the prior agreement. Instead, Exhibit E to the contract contains the calculation of a base per ton and per yard gate fee to commence January 1, 2012. Each year thereafter, the rate will increase or decrease based on changes in the consumer price index and a fuel cost index, subject to full reviews every five years. The calculation of the base rate takes into account that after September 30, 2016, when the City will acquire ownership of the transfer station, SWS will lease the transfer station under a triple net lease. That means that it will be responsible and pay for all costs of operation, maintenance, repair, taxes and required capital improvements of the transfer station. The former construction cost component of \$12.36 was included in the calculation of the SWS base rate. Until September 30, 2016, it will complete the payment of construction costs. When the lease begins in January 2017 \$2.36 is allocated to the SWS costs under the lease attached as Exhibit F to the Transfer Station Contract and \$10 is allocated to the lease payment required by the lease. The City will use the lease payment to cover the unfunded liability for closure and post-closure costs of the Ukiah Landfill. The City Council determined that a fixed amount \$2.36 per ton in 2011 dollars to cover all future costs associated with the ownership, operation, maintenance, repair and capital improvement of the transfer station is a very good deal for City ratepayers and other transfer station customers. It concluded that the \$10/ton lease payment to cover landfill closure and post closure costs should appropriately be paid by customers of the transfer station. These same customers used the Ukiah landfill for many years and should share the cost with Ukiah ratepayers of closing and monitoring the landfill.

26. Disagree. The savings from redirection of garbage from Potrero Hills landfill to Eastlake landfill was not underestimated. This issue was raised in the Sweeney letter. The Finance Director and the City's consultant examined Sweeney's calculations and satisfied the City Council that their original estimates were correct.

27. Disagree. Revenue from commodities, such as scrap metal, fluctuates greatly over time. The operator is required to provide scrap metal disposal services to the transfer station customers. In some years the value of this commodity will cover recycling processing and transportation costs relating to their final disposal. In other years the operator will sustain a loss in providing this service to the transfer station customers. In any case, the contractor is required to provide this service. The potential revenue and related recycling processing and transportation costs were taken into account in the City staff's analysis of the transfer station operation. The buy-back center is required by the City to promote recycling. It also provides a convenient recycling option for the transfer station customer. The potential revenue and related recycling processing and transportation costs were taken into account in the City staff's analysis of the transfer station operation. The buy-back operation was considered when the transfer station fees were proposed.

The value of other recyclables discarded by the customer at the transfer station has been used to reduce the disposal rate for appliances to \$10.00 from \$15.30, a 35% savings to the customer. In most years the market value of these discarded recyclables will not cover the loss of revenue resulting from this reduced appliance disposal rate. In any case, the contractor is required to provide this service and subsidize the lower \$10 rate if market value is insufficient to cover the recycling disposal costs of such appliances.

28. Disagree. Negotiations for the collection contract did not overlook the 2.56% rate increase that was to end in 2013. The previous rate had been implemented to cover the cost of entire fleet replacement necessary to meet state mandated regulations and to provide adequate equipment for curb side operations. Instead, the City negotiated for UWS to replace the fleet on an on-going, as needed, basis. Three improvements for rate payers resulted: 1) Continual as needed equipment replacement assures a fully operational and regulatory compliant fleet of trucks, instead of the previous practice which resulted in trucks breaking down, missing runs, and leaking on city streets, before the entire fleet could be replaced; 2) Rate payers are protected from additional capital replacement costs that occur over and above adopted rates for a given term; 3) Rate payers benefit from locking in a predictable and known amount devoted to fleet replacement for the term of the contract with an amount that motivates the company to buy replacement rolling stock at the best prices available in the market place.

29. Disagree. The contract provides for an annual adjustment of the recycling commodity credit. The curbside recycling commodity credit benefits the ratepayer. It insures that the rate payer will always benefit from a credit from the operator, against collection costs, of at least \$5 per ton, even in years when the fair market value is less than \$5 per ton. Going forward, the Contract provides that in any year in which the value is greater than \$5, the rate payer will benefit from a credit, from the operator, equal to the fair market value of the commodities with no ceiling to that credit. Annually, the credit will be adjusted to fair market value per ton, based upon market value in the prior months.

30. Disagree. City Code Section §4483 has provided since 1989 that the City Council , with or without inviting bids, may enter into an exclusive contract with a business entity for collection of some or all recyclable materials in the City. It also allows the City to extend or renew a contract before or after it expires for any period of time and on terms deemed appropriate by the City Council. Section 4460 of the Ukiah City Code limits refuse collection contracts to an initial term of 15 years. That limit does not apply to a contract to collect recyclables and, in the opinion of the City Attorney; the Waste Collection Contract does not violate Section 4460. This issue was discussed during the City Council meeting and, in approving the contract; a majority of the City Council agreed that the term of the Waste Collection contract with Ukiah Waste Solutions did not violate the City Code.

31. Disagree. This response assumes that this finding refers to the Waste Collection Contract with Ukiah Waste Solutions. In the City's opinion the arbitration provisions in the contract do not limit its remedies which are ample and calibrated to be effective.

Section 10.2.3 of that agreement provides that for 30 days after a dispute, the parties will attempt to mediate a resolution of the dispute. If the dispute is not resolved within 30 days, Section 10.3 provides for non-binding arbitration. However, non-binding arbitration is not required before an action can be filed in court to seek specific performance or other equitable relief or damages of \$25,000 or less. After non-binding arbitration, where it is required, either party can file a law suit to resolve the dispute.

Separate and apart from these dispute resolution procedures, the City has the following additional remedies under Section 10.2 of the contract, if the contractor is in material breach of the agreement:

1. Liquidated damages of \$1,000/day for each day the breach continues.
2. The City has the right to terminate the agreement and to immediately grant a franchise to another company or to take possession of the contractor's trucks and equipment used by the contractor to perform the contract.
3. Any other remedy available in law or in equity.

Finally, under Section 9.4 of the contract the contractor is required to post a \$300,000 performance bond or financial instrument acceptable to the City to secure its faithful performance of the contract.

32. Disagree. Technology is evolving in this industry. The strategic plan provides the City of Ukiah a scope and vision for pursuing new solutions based on new technologies.

Those solutions may result in reducing and ultimately eliminate the use of landfills. The City Council, as policy makers for the City of Ukiah, has determined that the pursuit of that goal is beneficial to Ukiah rate payers. The agreement includes a specific schedule for expanding waste diversion to include food waste with a pilot program to commence on or before July 1, 2013 and a full program to commence within six months thereafter. UWS is required to provide a detailed and comprehensive analysis of food waste diversion alternatives, including open air composting, in vessel composting and waste-to-energy systems using anaerobic digestion and related technologies. After the City Council considers this and other available information, it will decide which technologies make environmental and economic sense for Ukiah and which private companies to use in implementing the program.

33. Agree. Resolution 95-6 passed July 20, 1994, refers to support for an M & M Feed which proposed a commercial composting facility at Guntley Ranch in Mendocino County. The Resolution urged local, state and federal regulatory and financial agencies to issue permits and applications for the project. The City has been informed that M & M Feed was a predecessor to Cold Creek Compost.
34. Disagree. Assuming the reference is to Cold Creek Compost in Potter Valley, according to Trey Strickland, of Mendocino County Environmental Health Division, that facility was apparently fully permitted and allowed to accept food waste in 2008.
35. Disagree. This statement is incorrect. SWS (for operation of the Transfer Station) is the same corporate entity that has provided services at the Transfer Station since 2001. Ukiah Waste Solutions (UWS) (for solid waste, green waste and recycling collection) was a new provider for the curbside business when it purchased the franchise in 2007. These are separate corporate entities, and perform separate and distinct functions.
36. Agree. Cities do not perform audits. Audits are performed by independent Certified Public Accountants (CPAs).
37. Agree that C & S Waste Solutions describes itself on its website as a family of integrated companies. The City does not know the precise number of companies which are interrelated or the exact ownership of each company. It does know the relationship with and the ownership of the companies which provide waste collection and disposal services for the City, including Solid Waste Solutions, Ukiah Waste Solutions, and Pacific Recycling Solutions. It ascertained whether costs shared by more than one company were appropriately allocated to the companies contracting with or providing waste handling services to the City and concluded that the ratepayers actually benefit from the increased efficiency of multiple companies being able to share equipment and other expenses.
38. Disagree. Expenses paid by either SWS or UWS to related companies are carefully monitored and must be reasonable and market-based. These were reviewed by the City when the 2011 agreements were negotiated and will be reviewed again at the 5 year rate review.
39. Disagree. The proposed agreements were both published in the City of Ukiah agenda on Thursday October 27, 2011, and were available to the public through the date the City Council took action on this item, Wednesday December 7, 2011, a time span of 43 days.
40. Disagree. According to Trey Strickland, REHS, Mendocino County Environmental Health Division, who supervises the solid waste program (LEA-Local Enforcement Agency) for Mendocino County Environmental Health Division, which is the local representative for Cal Recycle, the State of California's permitting agency for solid waste and composting facilities, none of the three alleged compliance issues in Finding #40 is true. Mr. Strickland has informed

the City that he sent a notice to the Grand Jury with this information. Two owners of SWS and UWS operate a green waste composting facility through Mendocino Earth Products, LLC, and a joint venture with the owner of SWOW, on Old River Road. This facility is commonly referred to as "Sagehorn".

41. Disagree. Pursuant to the new UWS collection agreement, plans are underway to initiate a pilot commercial food waste composting program in the fall of this year. The agreement requires a full-fledged food waste program for all customers after completion of the pilot program. Green waste is not trucked to Humboldt County for cogeneration as alleged. Only wood waste is used for this purpose and only within the constraints of applicable law, in accordance with the limitations imposed by the City in the new agreements. All green waste collected by SWS/UWS is composted at either Cold Creek Compost or at the Sagehorn facility

42. Disagree. The arrangements in the UWS agreement for delivery of green waste to Cold Creek Compost continue unchanged from the previous agreement. Moreover, these arrangements date back to 2007 and were voluntarily agreed to by the owner of Cold Creek Compost, who was represented by legal counsel, as a condition to getting an assured stream of material from the City rather than rely on normal market conditions. Cold Creek Compost had previously been charging City residents a substantially higher price for composting their green waste. The City does not control the tip fees charged by Cold Creek Compost, and claims no authority to do so.

43. Disagree. The relevance of this Finding is unclear. It appears to be an opinion summarizing a new state law.

44. Disagree. An application has been filed with the County of Mendocino and this application includes food waste composting.

45. Disagree. This statement is vague and nonspecific. The City is unable to respond.

46. Disagree. Agree except with statement that the City's franchised waste hauler has avoided the collection of food waste for 17 years. Contrary to the report's statement that Cold Creek Compost was licensed to accept food waste since 1995, the Mendocino County Department of Environmental Health confirms that Cold Creek Compost was not licensed until 2008 to receive food waste. Therefore, neither the City of Ukiah nor its waste hauler has avoided this type of collection for 17 years. Rather, the new Waste Collection contract with UWS requires a pilot program collecting food waste from commercial and industrial accounts on or before July 2013 and a full food waste collection program within six months thereafter to determine the best service solution for the City's ratepayers.

RECOMMENDATIONS

1) The City Council initiate an inquiry at the California League of Cities to determine whether audited financials are required or recommended before a municipality signs a garbage contract and determine the actual costs.

Response: The recommendation will not be implemented because it is not warranted. Audited financial statements were not legally required before the City Council approved the Transfer Station or Waste Collection contracts. The City Council was satisfied that the Finance Director and City's consultant (CPA) adequately analyzed the expenses and income reported in the financial statements of Solid Waste Solutions, Inc. and Ukiah Waste Solutions, Inc. for reasonableness, and calculated the base rates for the agreements using reliable information.

2) The City Council initiate an investigation into the related business transactions among the companies related to C&SWS as these transactions relate to costs passed on to the City.

Response: The recommendation will not be implemented because it is not warranted. The City conducted an adequate investigation into the allocation of costs among Solid Waste Systems, Inc., Ukiah Waste Solutions, Inc., and Pacific Recycling Solutions, Inc. to assure itself that the correct income and costs were considered in establishing base rates.

3) The City Council conducts an investigation into any possible violations of the contract by C&SWS.

Response: The recommendation will not be implemented because it is not warranted. The findings cited by the grand jury in support of this recommendation do not reflect any violation of the prior or current waste collection contract by the contractor, even if those findings were accurate, which they are not, as shown by the City Council's response to each of the cited findings. The City monitors the contractor's performance and has not received any information that would warrant such an investigation.

4) If it fits in the budget, the City Council engage an economics advisory firm to investigate the potential impact of the C&SWS monopoly in the trash collection business in Ukiah.

Response: The recommendation will not be implemented because it is not warranted. The City does not have funds in the budget for this expense. The grand jury findings don't support this recommendation, even if they were accurate, which they are not. Moreover, the City Council sees no purpose in conducting this study, where the City has already entered long-term agreements arrived at after an exhaustive due diligence process.

5) The City Council determine if other companies would have responded to a Request for Proposals (RFP) had the City issued an RFP for its trash collection and hauling contracts.

Response: The recommendation will not be implemented because it is not warranted. There would be no benefit from soliciting that information. The City assumes that other companies would have submitted proposals in response to an RFP, but for reasons disclosed in response to the grand jury's findings and as discussed at length during the public process of extending these contracts, the City Council concluded that it would benefit the City ratepayers to develop a long-term solution for waste collection and waste diversion with the existing companies.

6) The City Council determine whether the City's contract with C&SWS can be voided, or any other legal action taken, after the City's investigations noted above are completed and fully evaluated.

Response: The recommendation will not be implemented because it is not warranted. The City does not have a contract with C&SWS. It entered a Transfer Station Agreement with Solid Waste Solutions and a Waste Collection Contract with Ukiah Waste Solutions. The Green Waste Contract among SWS, UWS and PRS is an exhibit to both the Transfer Station Contract and the Waste Collection Contract. The City is specifically given the authority to enforce the PRS agreement and is entitled to review the rates charged by PRS every five years.

RESPONSE TO DISCUSSION

The City Council believes that if the grand jury had gotten its facts right and objectively evaluated the entire public record of the City Council's consideration of these contracts, it would conclude, as the City Council did, that revising and extending the contracts is in the long-term best interest of its residents.

As to the bullet points and other comments in the "Discussion" at the end of the report:

- **Apparently careless city procurement practices.** Apparent to whom? After Ukiah Waste Solutions and Solid Waste Systems purchased the transfer station and waste collection franchise in 2007, the companies demonstrated both competence and a commitment to improved waste collection and waste diversion by:
 - Constructing a materials recovery facility on North State Street that separates single stream recycled materials for the most effective reuse
 - Increasing substantially recyclable materials recovered from the transfer station floor
 - Replacing all of the garbage trucks collecting solid waste and recyclables in the City with newer vehicles that meet California Air Resources Board air pollution standards

- Substantially increasing waste diversion rates in the City
- Convincing Lake County to accept out-of-county waste at the East Lake Landfill and negotiating a favorable 5 year contract, thus reducing the distance large garbage transfer trucks are required to travel in transporting waste from the Ukiah Transfer Station for disposal
- Greatly improving the operation of the Transfer Station
- Acquiring additional property to develop an indoor composting and waste to energy facility
- Initiating, in cooperation with Willits Solid Waste, a new composting facility on Old River Road, increasing the composting opportunities available to inland Mendocino County

Recognizing that the companies' ability to continue making these investments and improvements in solid waste collection services required a long-term commitment from the City, City staff and a subcommittee of City Council members over a period of 22 months embarked on negotiations to restate and extend the contracts with both companies. This is a common practice among municipalities and, in fact, was used by Mendocino County, Fort Bragg and Willits in extending contracts with their franchised waste haulers. Over that two year period, the City staff, its consultant and the City Council ad hoc committee engaged in a rigorous process of due diligence in developing the content of the revised contracts and the base rates and rate increases allowed under the contracts. The rate increases in 2010 and under the revised contracts in 2011, in combination, increased the monthly rate for garbage collection in the City from \$4.15 to \$4.72, or \$.57 for a 10 gallon can, from \$8.72 to \$9.92, or \$1.20 for a 20 gallon can and from \$15.68 to \$17.82 or \$2.14 for a 32 gallon can. Securing a long-term solution for garbage collection in the City at this extremely modest cost to ratepayers cannot fairly be characterized as "apparently careless city procurement practices." The City's rates are still the lowest rates in Mendocino County. After conducting rate hearings under Proposition 218 for both the 2010 rate increase and the 2011 rate increase, which required 45 day advance direct mailed notice to all garbage customers in the City, the City received almost no formal written protests and less than 10 speakers raising concerns about the contracts, which are some of the same concerns repeated in the grand jury report, all of which were considered but rejected by the City Council during the five or six City Council meetings during which the 2010 and 2011 rate increases and the revised contracts were considered.

- **A relationship between the new contractor and the old contractor.** There has been no evidence produced by the grand jury or to the City establishing any business relationship between the old garbage company and Ukiah Waste Solutions or Solid Waste Solutions or any of the companies under common ownership with them. The use of the non-

specific term “relationship,” and failing to provide any explanation why an unspecified “relationship” should be considered significant, exemplifies a major flaw with the grand jury report as a whole. The report is replete with similarly vague evidence in justifying its conclusions.

- **Restricted public access government decision-making.** In addition to the many public meetings and hearings as detailed in this response, the City Council subcommittee invited the two most vocal critics of the contracts into more than 14 hours of direct meetings among representatives of the garbage companies, City staff, City consultant and ad hoc committee members which culminated in a staff report received at a city council meeting detailing every change to both contracts made in response to the critique filed by Mike Sweeney.
- **Weak City Council oversight.** In addition to the City Council’s actively engaged ad hoc committee, the City Council as a whole conducted multiple public meetings and legally required public hearings on the contract revisions and rate increases. On more than one occasion, the matter was continued to a later City Council meeting to allow more time to the public and the council members to consider the information presented at these public meetings. The City Council exercised diligence and strict control over the consideration of both the contract revisions and the rate increases.
- **Less than adequate City Staff work.** Aside from making this accusation, the grand jury report does not contain findings demonstrating inadequate staff work. The City Council believes that over the 22 months during which these matters were considered, City staff performed well.
- **Apparently out-classed City Negotiators.** The City’s other responses address this less than professional description.
- **Allegedly hidden business transactions.** Alleged by whom? A conclusion without substantive support.

The comment about higher rates is addressed in the City Council’s response to the first bullet point.

The comment about the “current compost facility,” presumably refers to the Cold Creek Compost facility in Potter Valley, since there is more than one compost facility in Mendocino County. The report says that Cold Creek was fully permitted to receive City food waste in 1995. In its concluding statement, the report states: “The grand jury wonders how much longer it is going to take the City to assess its options. Its current option – and best it is every likely to find – sits underused in front of its face.”

In fact, Cold Creek was not permitted to receive food waste until 2008. It did not seek City food waste until 2010. In Section 5.4 of the 2011 waste collection contract, Ukiah Waste Solutions is required to begin a food waste collection pilot program among commercial and institutional customers, who generate 75% of the food waste in the City, on or before July 1, 2013. The company has informed the City that it intends to start the program ahead of schedule in the fall of 2012. The contract requires a full food waste collection program within six months thereafter. Under Section 5.4 of the contract:

In developing such a program Company shall provide City with a list of any proven options, including, but not limited to, open air composting, in vessel composting and anaerobic digestion, information about potential Processing Facilities, and a comparative analysis of the methods of collection, feasibility, cost, impact on rates, and environmental benefits of each alternative. City may request additional information before approving a program.

Contrary to the factually flawed accusation in the Grand Jury Report, the City Council elected to move quickly but responsibly toward developing a food waste program, and to require its franchised waste hauler to propose a full range of options, taking into account the latest technologies as well as the impact on the ratepayers.