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2 JUN 30 2008

3 THOMAS MOSER  
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SKAGIT COUNTY  
PROSECUTING ATTORNEY

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **IN AND FOR THE COUNTY OF SKAGIT**

9 ANNIE JANICKI,

Petitioner,

No. 08-2-01130-8

10 vs.

11 CITY OF SEDRO-WOOLLEY, a municipal  
12 corporation, and DELUXE RECYCLING  
AND DISPOSAL, LLC, a Washington limited  
13 liability company,

Respondents.

RESPONDENT CITY OF SEDRO-  
WOOLLEY'S RESPONSE TO SKAGIT  
COUNTY'S MOTION TO INTERVENE

14 **I. INTRODUCTION**

15  
16 First, Skagit County's motion to intervene is the type of preliminary matter that must  
17 be decided at the initial hearing in the LUPA petition and not before. Second, Skagit  
18 County's motion to intervene should be denied because the narrow issues in this action  
19 under the Land Use Petition Act ("LUPA") do not concern the stated interests of Skagit  
20 County.

21 In the process of deciding whether to grant a building permit application to Deluxe  
22 Recycling and Disposal LLC for a solid waste recycling facility ("Facility"), the City of  
23 Sedro-Woolley ("City") issued a Mitigated Determination of Non-Significance ("MDNS")  
24 finding that the Facility would have no significant environmental impacts. (Pet., Ex. A.)  
25

1 The MDNS decision was appealed to a hearing examiner by Annie Janicki (“Petitioner”)  
2 and the hearing examiner affirmed the MDNS. (*Id.*) Petitioner then filed this LUPA  
3 petition challenging the hearing examiner’s decision. (Pet.) Skagit County filed a motion  
4 to intervene in this case regarding the environmental determinations reached in the MDNS,  
5 claiming that its solid waste management planning and agreements were at issue. (Mot. 1.)  
6 Skagit County has noted its motion for July 7, 2008, before the initial hearing, which is  
7 noted for July 21, 2008.  
8

9 The issues surrounding the Facility are highly controversial within Skagit County  
10 (Pet., Ex. A at 3; more than 200 people attending the hearing before the hearing examiner),  
11 as well as between the cities within the county and the county itself (*see* Berg Dec. - letter  
12 from City of Burlington to County). Therefore, the City is also filing a motion requesting a  
13 change of venue, noted for the initial hearing on July 21, 2008.

## 14 II. AUTHORITY

15 Skagit County seeks intervention as a matter of right under Civil Rule 24(a)(2).  
16 Skagit County’s motion should be considered at the initial hearing, not as noted by the  
17 county. Furthermore, intervention should be denied because (1) Skagit County lacks an  
18 interest in this LUPA petition that will be impeded or impaired; (2) any Skagit County  
19 interest is adequately represented by Petitioner; and (3) Skagit County lacks standing to  
20 challenge the MDNS.  
21

### 22 A. Skagit County’s Motion to Intervene Should be Considered at the Initial 23 Hearing in this LUPA Action.

24 Skagit County has improperly noted its motion to intervene on July 7, 2008, well  
25 before the initial hearing in this LUPA matter. In an action brought under LUPA, an initial

1 hearing on jurisdictional and procedural matters must be set “no sooner than thirty-five  
2 days and no later than fifty days after the petition is served on the parties. . .”. RCW  
3 36.70C.080(1). All motions on jurisdictional and procedural issues must be noted for  
4 resolution at that initial hearing. RCW 36.70C.080(2). The purpose of the initial hearing is  
5 to highlight jurisdictional and preliminary matters and either resolve them or put them on  
6 the calendar. *Reeves v. City of Wenatchee*, 130 Wn. App. 153, 156, 121 P.3d 777 (2005).  
7 Skagit County’s motion to intervene is a preliminary, procedural issue, but the county has  
8 noted it for July 7, 2008. The petition was filed on June 12, 2008, only 25 days before the  
9 noted date of July 7, 2008. This is well before initial hearing may be noted under RCW  
10 36.70C.080(2). Skagit County’s motion should be re-noted for determination at the initial  
11 hearing.  
12

13 **B. Skagit County Has No Interest at Issue in this LUPA Petition that will be**  
14 **Impaired or Impeded.**

15 While interest is to be broadly interpreted using flexibility and case-by-case analysis  
16 when determining a right to intervene, the intervener’s interest sought to be protected must  
17 be one recognized by law and be of a direct and immediate character that the intervener  
18 will either gain or lose by the direct legal operation and effect of the judgment. *Westerman*  
19 *v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994). Skagit County has no such interest in  
20 this LUPA petition. Skagit County alleges an interest in defending its solid waste plans  
21 and agreements. However, the county plans and agreements were not at issue in the City’s  
22 threshold determination under SEPA. The threshold determination was that the proposed  
23 Facility, as conditioned by the MDNS, would have no significant environmental impact  
24 under SEPA. This determination on appeal has no bearing on whether the Facility will  
25

1 conflict with county plans and agreements, as the hearing examiner found. (Pet., Ex. A at 4  
2 (whether permit complies with county plan outside scope of MDNS appeal).) The interests  
3 claimed by Skagit County are outside the scope of the decision on appeal, and as a result  
4 the county does not have a right to intervene.

5 Similarly, any interest Skagit County has in defending its solid waste plan or  
6 agreement will not be impaired or impeded by granting or denying this LUPA petition.  
7 The threshold determination that the Facility (as conditioned by the MDNS) would have no  
8 significant environmental impact has nothing to do with whether the Facility violates any  
9 solid waste plans or agreements. In fact, Skagit County admits that its interests in the latter  
10 issue were defended in parallel litigation. (Mot. 5.) The petition at hand merely seeks to  
11 overturn the issuance of the MDNS by the City. Because the MDNS does not address the  
12 application of Skagit County's plans or agreements to the Facility (Pet., Ex. A at 4.), Skagit  
13 County's interest in defending its plans and agreements will not be affected in this appeal.  
14

15 Moreover, Petitioner's claim that the Hearing Examiner erred in not considering  
16 county plans and agreements (*Pet. Sec. 4.4*) will not affect their validity because they were  
17 never considered in this case. If, *assuming arguendo*, this court considers that the county  
18 plans and agreements should have been considered in the appeal of the threshold  
19 determination and remands to the hearing examiner to examine that issue, then the county  
20 would have an interest in weighing in. Until then, however, this case has nothing to do  
21 with the county plans and agreements and the county need not be part of this appeal.  
22

23 **C. Skagit County Lacks Standing Under LUPA to Challenge the Hearing**  
24 **Examiner's Decision.**

25 To have standing under LUPA, Skagit County must show it was aggrieved or

1 adversely affected by the MDNS. RCW 36.70C.060. Skagit County would be aggrieved  
2 or adversely affected only if it can show, *inter alia*, (1) it was prejudiced or likely to be  
3 prejudiced by the MDNS decision and (2) the County's asserted interests were required to  
4 be considered by the MDNS. RCW 36.70C.060(2). *Thornton Creek Legal Defense Fund*  
5 *v. City of Seattle*, 113 Wn. App. 34, 47-48, 52 P.3d 522 (2002). Skagit County will not  
6 suffer (nor does it allege it will suffer) any injury-in-fact from a determination that the  
7 Facility presents no significant environmental impacts. Whether the Facility complies with  
8 county plans or agreements was not required to be considered in the environmental-focused  
9 MDNS, nor was it considered by the Hearing Examiner. *See* Petition Ex. A. Therefore,  
10 Skagit County lacks standing to challenge the MDNS in this LUPA action.  
11

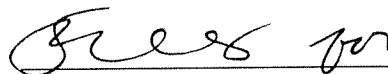
### 12 III. CONCLUSION

13 Based on the foregoing reasons, Skagit County's motion to intervene should be re-  
14 noted for determination at the initial hearing, and ultimately the motion should be denied.

15 Dated this 30th day of June, 2008.

16 **ZENDER THURSTON, P.S.**

Attorneys for City of Sedro-Woolley

17 

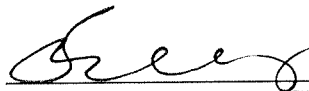
18 **ROBERT A. CARMICHAEL, WSBA #14008**

Zender Thurston, PS

Attorneys at Law

1700 D Street, Bellingham, WA 98225

Phone: (360) 647-1500 • Fax: (360) 647-1501

19 

20 **ERON M. BERG, WSBA #29930**

City Attorney

City of Sedro-Woolley

325 Metcalf Street, Sedro-Woolley, WA 98284

Phone: (360) 855-9922 • Fax: (360) 855-9923

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT**

ANNIE JANICKI,

Petitioner,

No. 08-2-01130-8

vs.

**DECLARATION OF ERON BERG IN  
SUPPORT OF MOTION TO CHANGE  
VENUE AND IN OPPOSITION TO  
COUNTY'S MOTION TO INTERVENE**

CITY OF SEDRO-WOOLLEY, a municipal  
corporation, and DELUXE RECYCLING  
AND DISPOSAL, LLC, a Washington limited  
liability company,

Respondents.

I, Eron Berg, hereby declare, under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

1. I am one of the attorneys for the City of Sedro-Woolley in the above-noted matter.


2. Attached as Exhibit A hereto is a true copy of a letter dated June 26, 2008, from Scott Thomas, attorney for the City of Burlington, stating that Skagit County does not have the authority to represent the City of Burlington in any way concerning the Comprehensive Solid Waste Management Plan or any agreements to which the City is a party.

3. Attached as Exhibit B hereto is a true copy of a Settlement Agreement between Skagit County, Deluxe Recycling and Disposal, Cimarron Transfer and Recycling

1 Company, Larry McCarter and Steve Snell, that was represented as signed by all parties,  
2 except Skagit County, on June 24, 2008.

3 4. Based upon Skagit County records as presented to the Solid Waste System  
4 Governance Board on June 25, 2008, Skagit County's budgeted revenue from Solid Waste  
5 Operations for 2008 is \$9,942,379.00, of which \$9,745,500.00 is derived from Tip Fees and  
6 \$196,879.00 is derived from Grants.

7  
8 EXECUTED at Sedro-Woolley, Washington, this 30<sup>th</sup> day of June 2008, under  
9 penalty of perjury under the laws of the State of Washington.

10   
11 **ERON BERG**

LEGAL DEPARTMENT

SCOTT G. THOMAS, CITY ATTORNEY CRAIG CAMMOCK, PROSECUTOR  
SHELLEY ACERO, PARALEGAL/RISK MANAGEMENT



833 S Spruce Street  
Burlington WA 98233  
Phone 360-755-9473 FAX 360-755-1297  
E-mail: battorney@ci.burlington.wa.us

June 26, 2008

Richard A. Weyrich  
Skagit County Prosecuting Attorney  
605 S. Third  
Mount Vernon, WA 98273

William W. Honea  
Skagit County Chief Civil Deputy  
605 S. Third  
Mount Vernon, WA 98273

Stephen R. Fallquist  
Skagit County Civil Deputy  
605 S. Third  
Mount Vernon, WA 98273

**SUBJECT: Janicki v. Sedro-Woolley, et. al.,  
Skagit County Cause No. 08-2-01130-8**

Gentlemen:

I write to voice my expectations as to representations to the Superior Court in the matter captioned above.

As Mr. Honea expressed during the Solid Waste System Governance Board meeting yesterday, Skagit County has filed a motion to intervene in the Janicki v. Sedro-Woolley matter for the sole purpose of "protecting the County's Comprehensive Solid Waste Management Plan and Solid Waste Agreements". As you have admitted in your Motion to Intervene, the Cities within Skagit County, including Burlington, have exercised their option under State law to participate in the preparation of a joint City-County plan for solid waste management. As you also admit in your Motion, the County and the Cities within Skagit County, including Burlington, have entered into a Regional Solid Waste Agreement and established the Solid Waste System Governance Board, comprised of members of

EXHIBIT     A

the County and the Cities. From your Motion, and from Mr. Honea's comments made at the Governance Board meeting yesterday, I understand that these are the Agreements and planning documents that you seek to defend in the Janicki v. Sedro-Woolley matter.

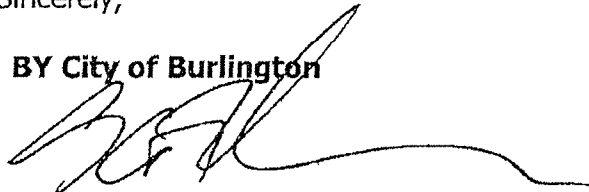
The City of Burlington disagrees with Mr. Honea's sweeping characterizations of the Interlocal Agreement between the County and the Cities within Skagit County, as articulated in Mr. Honea's memorandum of June 25, 2008. Further, we have significant doubt that we agree with your interpretation of the Comprehensive Solid Waste Management Plan that Burlington, and the other cities, have adopted.

As such, I want to be extremely clear: **YOU DO NOT HAVE ANY AUTHORITY TO EITHER REPRESENT TO THE COURT OR IMPLY THAT THE CITY OF BURLINGTON CONCURS WITH YOUR VIEWS IN ANY WAY CONCERNING THE COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN OR ANY AGREEMENTS TO WHICH THE CITY IS A PARTY.**

I trust that you will take appropriate steps to advise the Court of this limitation in accordance with your obligations pursuant to RPC 3.3.

Sincerely,

**BY City of Burlington**



Scott G. Thomas, City Attorney

SGT/sa

cc: Edward J. Brunz, Mayor  
Ian Munce, Anacortes City Attorney  
Kevin Rogerson, Mount Vernon City Attorney  
Eron Berg, Sedro Woolley City Attorney  
Brad Furlong, LaConner Town Attorney  
Burlington City Council Members  
Jon Aarstad, City Administrator  
Chal Martin, Burlington Public Works Director

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this \_\_\_ day of June, 2008, by and between Skagit County, on the one hand, and Deluxe Recycling and Disposal, LLC ("Deluxe"), Cimarron Transfer and Recycling Company ("Cimarron"), Larry McCarter, and Steve Snell (collectively the "Deluxe/Cimarron Parties") on the other hand.

### RECITALS

A. Skagit County and Deluxe are parties to a lawsuit filed in the Superior Court of Washington for Skagit County captioned *Deluxe Recycling and Disposal LLC v. Skagit County*, et al., No. 08-2-00532-4 (the Deluxe Lawsuit), in which Deluxe asserts claims against Skagit County, Ken Dahlstedt, Sharon Dillon, Don Munks and James Voetberg (collectively, the "Skagit County Defendants").

B Skagit County and Cimarron are parties to a lawsuit filed in the Superior Court of Washington for Skagit County captioned *Cimarron Transfer and Recycling Co. v. Skagit County*, No. 07-2-05838-7 (the Cimarron Lawsuit, and collectively with the Deluxe Lawsuit, the "Lawsuits"), in which Cimarron asserts claims against Skagit County and Skagit County asserts counterclaims against Cimarron, Norm Wietting and Ray Sizemore (collectively the "Cimarron Defendants").

C. Skagit County has put in place a Moratorium, Resolution No. R20080145, which is attached hereto as Exhibit A ("Moratorium"). Deluxe has objected to this Moratorium, and has objected to the process associated with the ongoing amendments to the Skagit County Comprehensive Solid Waste Management Plan.

D. As the result of arms-length negotiations and a desire to avoid the cost of further litigation, Skagit County and the Deluxe/Cimarron Parties wish to fully and finally settle their respective claims on the terms set forth herein.

### AGREEMENT

In consideration of the promises, releases and covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are acknowledged by the parties, the parties hereby agree as follows:

1. Effectiveness and Effective Date. This Agreement will become effective on the date on which all the parties' signatures are affixed below (the "Effective Date").

EXHIBIT   B

2. Dismissal of the Lawsuits. Not later than five (5) court days after the Effective Date: the parties shall file stipulations, pursuant to Washington Rule of Civil Procedure 41(a)(1)(A), dismissing with prejudice the Lawsuits, including all claims and counterclaims.

3. Withdrawal of Public Records Act Requests. Not later than five (5) court days after the Effective Date, the Deluxe/Cimarron Parties shall withdraw all outstanding Public Records Act requests filed with Skagit County, including but not limited to the request submitted by Michael Galletch and dated February 27, 2008; provided, however, Deluxe intends to file a new Public Records Act request seeking financial data associated with the County's Solid Waste System, which shall not be construed as a breach of this Agreement.

4. Governance Board to Make Solid Waste Decisions. Skagit County and the Deluxe/Cimarron Parties agree that the Deluxe/Cimarron Parties and their affiliates shall not handle Municipal Solid Waste ("MSW") generated within the regulatory jurisdiction (currently the territorial limits) of Skagit County (except as otherwise allowed herein or if, in an emergency, Skagit County requests to deliver MSW to the Deluxe/Cimarron Parties' facilities, which Deluxe/Cimarron Parties will not unreasonably deny) without first obtaining, in accordance with all applicable laws and regulations, a valid System/Operator Agreement ("S/OA") and site designation approved by the Solid Waste System Governance Board ("the Governance Board"). "Municipal Solid Waste" for the purposes of this Agreement shall have the meaning set forth in the Skagit County Comprehensive Solid Waste Management Plan. Although Skagit County will remain responsible for negotiating the terms of any System/Operator Agreement and considering any site designation, the Governance Board may exercise final authority to decide whether or not the Deluxe/Cimarron Parties or their affiliates are awarded a System/Operator Agreement and/or Site Designation (interim or final), and the Deluxe/Cimarron Parties shall not object or challenge the exercise of such authority by the Governance Board. In the event that the Governance Board terminates or otherwise ceases to exist, then the Deluxe/Cimarron Parties and their affiliates shall not handle MSW generated within the regulatory jurisdiction of Skagit County without first obtaining a valid System/Operator Agreement ("S/OA") and site designation in accordance with the Skagit County Code, plans, regulations and policies then in effect. The Deluxe/Cimarron Parties further agree and acknowledge that the creation, duties, powers, composition, processes, and other aspects of the Governance Board set forth in the Interlocal Cooperative Agreement Between Skagit County and Cities and Towns in Skagit County for Solid Waste Management dated April 30, 2008 (copy attached as Exhibit B) comply with all applicable laws and regulations, including the Skagit County Code, state law, federal law and the Washington and United States

Constitutions. The Deluxe/Cimarron Parties covenant and agree that they and their affiliates will not take any position or assert any claim, counterclaim or defense inconsistent with this acknowledgement. Skagit County makes no representations or warranties regarding the future existence, duties, powers, composition, operations or actions of the Governance Board, which may be operated, exercised, changed, amended, or eliminated without limitation by this Agreement.

5. Deluxe/Cimarron Free to Take Part in the Competitive Process. Nothing in this Agreement shall restrict the ability of the Deluxe/Cimarron Parties to take part in any competitive bidding process for the handling or disposal of solid waste in Skagit County. Furthermore, nothing in this Agreement shall restrict the Deluxe/Cimarron Parties from advocating for future proposals to the Governance Board.

6. Good Faith Cooperation. Skagit County will use its best efforts to secure for Deluxe a reasonable opportunity to make a presentation to the Governance Board between July 1, 2008 and December 31, 2008, concerning the proposed facility described in Deluxe's Application for Site Designation dated March 10, 2008. Skagit County does not guarantee that Deluxe's presentation and efforts will be successful, and Skagit County makes no representation, warranty or agreement concerning the outcome of the presentation or the positions that it, its representatives, or the Governance Board might take regarding the proposal. Nothing in this Agreement imposes any obligation on Skagit County to make any statement or provide any information with respect to the merits of the proposal. Skagit County shall include any materials submitted by private parties in the agenda packet for the next regularly-scheduled meeting of the Governance Board.

7. Public Statements. Prior to the Effective Date of this Agreement, the parties shall make no public comments with respect to this Agreement or the Lawsuits, except that they may jointly publish a press release at a mutually agreeable time in the form attached as Exhibit C. Nothing in this Agreement imposes any obligation on any party to make any statement or provide any information that is not entirely truthful and accurate. The parties make no representation, warranty or agreement concerning any other statement that may be made by the parties or their officers, employees, agents, or representatives.

8. Handling of Construction, Demolition, Land clearing Waste and Recyclables. Skagit County does not and shall not object to the Deluxe/Cimarron Parties or their affiliates handling Construction, Demolition and Land clearing Waste ("CDL") or other recyclable materials generated inside or outside of Skagit County at any site if properly permitted with all necessary permits, including but not limited to a building permit and Solid Waste Handling Permit, if required by law, consistent with all applicable laws, regulations and policies. This shall not limit the authority and

ability of any County Department to provide SEPA comments as they deem appropriate. The parties agree that that this Agreement and its terms shall become incorporated in and shall become a condition of any Solid Waste Handling Permit required under State law. For the purposes of this Agreement, CDL shall be defined as wastes that are generated from construction and demolition activities, consisting primarily of new and used building materials (wood, sheetrock, pipe, and other metal, shingles, etc.), concrete, asphalt, and clearing wastes, including soil, stumps and brush. CDL loads shall not contain less than 95% of "CDL" materials as defined above. Any residual waste to be landfilled shall be disposed of through the Skagit County Solid Waste System, unless the Deluxe/Cimarron Parties secure the agreement of Rabanco, including an estoppel certificate from Rabanco on behalf of the County providing assurance such arrangement does not violate the County's existing waste transportation agreement with Rabanco. In the event the Deluxe/Cimarron Parties secure Rabanco's assent to such an arrangement, any residual waste shall be disposed of in a manner that comports with all applicable laws, policies and regulations.

9. Handling of Municipal Solid Waste Generated Outside Skagit County. Skagit County does not object to the Deluxe/Cimarron Parties or their affiliates handling MSW generated outside and lawfully acquired outside the territorial limits of Skagit County at any site properly permitted with all necessary permits, including but not limited to a building permit (if required) and Solid Waste Handling Permit consistent with all applicable laws, regulations and policies. Provided, however, any such facility shall not accept self-hauled solid waste generated outside Skagit County. For the purposes of this Agreement, "self-hauled solid waste" shall be defined as solid waste other than waste transported by a commercial or municipal generator or by a commercial solid waste transportation contractor. The Deluxe/Cimarron Parties and their affiliates shall be responsible for any necessary consents and approvals from the jurisdiction that is the source of the out-of-county waste, and shall indemnify, hold harmless and defend Skagit County against any failure to acquire the necessary consents and approvals. Nothing about this paragraph shall obligate Skagit County to execute interlocal agreements with any other jurisdiction. Any Solid Waste Handling Permit for a facility under this paragraph will incorporate this Agreement as a condition. Any residual waste shall be disposed of in a manner that comports with all applicable laws and regulations. Provided, however, that the Deluxe/Cimarron Parties and/or their affiliates shall indemnify, hold harmless and defend Skagit County from any claims or demands that the Deluxe/Cimarron Parties' disposal of residual waste violates Skagit County's existing residual waste transportation agreement with Rabanco. Nothing in this agreement shall limit or bar Deluxe/Cimarron Parties from negotiating a separate, independent waste transportation agreement with Rabanco.

10. Release by Skagit County. Skagit County, for itself and on behalf of its successors and assigns, hereby releases and forever discharges the Deluxe/Cimarron Parties, and their predecessors, successors, parents, subsidiaries, or affiliated entities, past or present, as well as any partner, officer, member (including Ray Sizemore, Larry McCarter, Steve Snell, and Norm Wietting), director, shareholder, agent, servant, employee, representative, attorney or insurance carrier of Deluxe/Cimarron, and each of them (collectively the "Deluxe/Cimarron Releasees"), from any and all claims, demands or causes of action of every kind and nature (including but not limited to all claims for damages, costs, expenses, and attorneys' fees and expenses), whether known or unknown, suspected or unsuspected, which Skagit County now owns or holds or at any time heretofore has owned or held against the Deluxe/Cimarron Releasees, or any of them, arising out of, resulting from, or in any way related to any transaction, agreement, occurrence, act, or omission whatsoever relating to any matters alleged in the Lawsuits, *provided however*, that Skagit County does not release Deluxe/Cimarron from any claims or causes of action arising from breach of this Agreement. Skagit County represents and warrants that it is not aware of any claims or causes of action arising from breach of this Agreement that it could assert as of the Effective Date of this Agreement.

Release Does Not Extend to Janicki LUPA Appeal.

Notwithstanding any other term of this Agreement, this release does not extend to Skagit County's intervention in *Janicki v. City of Sedro-Woolley and Deluxe Recycling and Disposal LLC*, 08-2-01130-8 ("Janicki LUPA Appeal"). Nothing in this release prevents Skagit County from continuing its intervention in the Janicki LUPA Appeal, and continuing to express its views in the context of that lawsuit on the appropriateness of the proposed Sedro-Woolley Site at issue in the Janicki LUPA Appeal ("the Sedro-Woolley Site"). The parties agree that Skagit County's intervention is proper. However, if after conclusion of the Janicki LUPA Appeal the Sedro-Woolley Site is permitted by the City of Sedro-Woolley, Skagit County will not object or further oppose the building permit for the Sedro-Woolley Site or other permits consistent with this Agreement.

11. Release by Deluxe/Cimarron. Deluxe Recycling and Disposal, LLC, Cimarron Transfer and Recycling Company, Larry McCarter and Steve Snell, for themselves and on behalf of their present and future affiliates, members, successors and assigns, release and forever discharge the Skagit County Defendants, their predecessors, successors, and past and present affiliated entities, officials, commissioners, agents, servants, employees, representatives, attorneys and insurance carriers, and each of them (collectively the "Skagit County Releasees"), from any and

all claims, demands or causes of action of every kind and nature (including but not limited to all claims for damages, costs, expenses, and attorneys' fees and expenses), whether known or unknown, suspected or unsuspected, which they now own or hold or at any time heretofore have owned or held against the Skagit County Releasees, or any of them, arising out of, resulting from, or in any way related to any transaction, agreement, occurrence, act, or omission whatsoever occurring, existing, or omitted at any time before the Effective Date, including, without limiting the generality of the foregoing, all claims, demands, and causes of action that were or could have been alleged in the Lawsuits or related to the Moratorium or any amendment to the Skagit County Comprehensive Solid Waste Management Plan, *provided however*, that the Deluxe/Cimarron Parties do not release the Skagit County Releasees from any claims or causes of action arising from breach of this Agreement. The Deluxe/Cimarron Parties represent and warrant that they are not aware of any claims or causes of action arising from breach of this Agreement that they could assert as of the Effective Date of this Agreement. Notwithstanding any other provision in this Agreement, Deluxe/Cimarron Parties retain their rights to encourage, influence, lobby Skagit County and the Skagit County Governance Board, in any manner that does not involve litigation or the threat of litigation, from adopting amendments/revisions to the Solid Waste Management Plan or legislation related to MSW.

12. Cimarron System/Operator Agreement Terminated. The foregoing specifically release all obligations, duties, rights and claims based upon the System/Operator Agreement between Skagit County, Washington and Cimarron Transfer and Recycling Company for MSW Composting and Recycling Facility dated November 2005 ("Cimarron Agreement"), without costs or fees to either party. The parties specifically agree that the Cimarron Agreement is null, void, and of no further force and effect,

13. No Admission of Liability. This settlement is a compromise of disputed claims and is not to be construed as an admission of liability on the part of the parties hereby released, by whom liability is expressly denied.

14. Binding Effect. Unless otherwise provided, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereto shall be binding upon and shall inure to the benefit of Skagit County and the Deluxe/Cimarron Parties, their representatives, affiliates, officers, directors, members, Commissioners, officials, agents, attorneys, employees, successors and assigns.

15. Reasonable Cooperation. Skagit County and the Deluxe/Cimarron Parties agree to cooperate fully and to take all additional action that may be necessary or appropriate to give full force and effect to this Agreement.

16. Choice of Law and Venue. This Agreement shall be interpreted, construed and enforced in accordance with the law of the State of Washington. The Courts of the State of Washington sitting in Skagit County shall have exclusive jurisdiction over any proceeding based upon, arising from or relating to this Agreement.

17. Attorneys' Fees and Costs. Skagit County and the Deluxe/Cimarron Parties shall bear their own attorneys' fees and costs as they were originally incurred in connection with the matters covered by this Agreement. If any party brings an action or proceeding based on or arising out of this Agreement, the substantially prevailing party shall be entitled to recover its reasonable costs, damages and expenses, including but not limited to reasonable attorneys' fees, expended or incurred in connection with the action or proceeding.

18. No Assignments. This Agreement shall not be assigned, transferred, conveyed, leased, encumbered or otherwise disposed of without the prior written consent of the County, which consent shall be within the sole discretion of Skagit County. Each party hereto represents and warrants to each other party hereto, and each of them, that no portion of any claim, demand, cause of action, or other matter released herein, nor any portion of any recovery or settlement to which one party might be entitled from another party, has been assigned or transferred to any other person or entity, either directly or by way of subrogation or operation of law. Each party hereby agrees to indemnify, defend, and hold harmless each other party, and each of them, from all loss, cost, claim, or expense (including, but not limited to all expenses of investigation and defense of any such claim or action, including reasonable attorneys' and accountants' fees and expenses) arising out of any claim made or action instituted by any person or entity who claims to be the beneficiary of such assignment or transfer, and to pay and satisfy any judgment resulting from or any settlement of any such claim or action.

19. Failure or Delay Not a Waiver. No failure or delay on the part of any party to exercise any right hereunder, nor any other indulgence of such party, shall operate as a waiver of any other rights hereunder, nor shall any single exercise by any party of any right hereunder preclude any other or further exercise thereof. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

20. Skagit County Approval Required. The Deluxe/Cimarron Parties understand and acknowledge that this Agreement must be approved by the Skagit County Board of Commissioners and that no representative of Skagit County has authority to execute this Agreement until the Agreement is so approved.

21. Free Will. Skagit County and the Deluxe/Cimarron Parties hereby represent and warrant that (a) they have entered into this Agreement of their own free will and in accordance with their own judgment and upon advice of their own legal counsel who has represented them in connection with this Agreement, and (b) they have not been induced to enter into this Agreement by any statement, act or representation of any kind or character on the part of anyone except as expressly set forth in this Agreement. Each party to this Agreement, with the assistance of competent counsel, has participated in the drafting of this Agreement, and any ambiguities shall not be construed against any party on account of such drafting.

22. Authority. The individual signatories to this Agreement represent that they have been duly authorized to execute this Agreement on behalf of the parties they purport to represent herein.

23. Entire Agreement, Etc. This Agreement constitutes the final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms. This Agreement may not be amended or modified except by a writing signed by the parties to be bound thereby or signed by their respective attorneys as authorized. If any provision of this Agreement is invalid or unenforceable, then, to the fullest extent permitted by law: (i) the other provisions herein shall remain in full force and effect; and (ii) the invalidity or unenforceability of any provisions hereof shall not affect the validity or unenforceability of such other provisions. The captions contained in the paragraphs of this Agreement are for convenience only and do not in any ways limit, expand or modify the terms or provisions of this Agreement.

24. Counterparts. This Agreement may be signed in two or more counterparts and by means of signatures conveyed by telephonic facsimile transmissions or images attached to e-mails, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. No Third Party Beneficiaries. This Agreement is specific to its signatories, and is not intended to benefit any third party in any way.

26. Severability. In the event any portion of this Agreement is determined to be illegal, void or unenforceable by a court or other tribunal of competent jurisdiction, the offending provision shall be deemed severed, the remaining portions of this Agreement shall remain in full force and effect, and the Agreement shall not be deemed void for failure of consideration.

27. Within sixty (60) days from the Effective Date of this Agreement, the Deluxe/Cimarron parties shall obtain a general release in favor of Skagit County and its officers from Cimarron principals Norm Wietting and Ray Sizemore, releasing

Skagit County and its officers from any liability associated with or arising from the Cimarron System/Operator Agreement.

28. Notice. Whenever any party is required to give notice of any action to any other party under this Agreement, such notice shall be in writing and sent by (1) either facsimile or e-mail and (2) certified mail, to the following persons or such other person as any party may designate in writing:

For Skagit County

William W. Honea  
Courthouse Annex  
605 S. Third  
Mount Vernon, WA 98273

With a copy to:

David F. Taylor  
Perkins Coie LLP  
1201 Third Avenue  
Seattle, Washington 98101  
Fax No.: (206) 359-9440

For Deluxe/Cimarron

Larry McCarter c/o RDS  
4916 Labounty Place  
Ferndale, WA 98248

With a copy to:

Jeffrey P. Fairchild  
Adelstein, Sharpe and Serka  
P.O. Box 5158  
Bellingham, WA 98227  
Fax No.: (360) 647-8148

In witness whereof, Larry McCarter and Steve Snell, on behalf of themselves and Cimarron, Deluxe and any of their affiliates, and Skagit County, by its duly authorized representatives, have executed this Agreement on the dates hereinafter subscribed.

**DELUXE RECYCLING AND DISPOSAL LLC**

By: Steven R. Snell  
Its: Member

**CIMARRON TRANSFER AND DISPOSAL CO.**

By: [Signature]  
Its: \_\_\_\_\_

**Larry McCarter**

[Signature]

**Steve Snell**

Steven R. Snell

1 RECEIVED

2 JUN 30 2008

3 THOMAS MOSER  
CLERK

RECEIVED  
SKAGIT COUNTY  
PROSECUTING ATTORNEY

2008 JUN 30 PM 3:46

FILED  
SKAGIT COUNTY CLERK  
SKAGIT COUNTY, WA

2008 JUN 30 PM 3:41

4  
5  
6  
7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **IN AND FOR THE COUNTY OF SKAGIT**

9 ANNIE JANICKI,

Petitioner,

No. 08-2-01130-8

10 vs.

PROPOSED

11 CITY OF SEDRO-WOOLLEY, a municipal  
12 corporation, and DELUXE RECYCLING  
AND DISPOSAL, LLC, a Washington limited  
liability company,

ORDER DENYING SKAGIT  
COUNTY'S MOTION TO INTERVENE

13 Respondents.

14  
15 THIS MATTER having come before the Court on the 7<sup>th</sup> day of July, 2008, on  
16 Skagit County's Motion to Intervene and the Court having heard argument from all parties  
17 and considered the written materials submitted, the Court finds as follows:

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Skagit County's  
19 Motion to Intervene is hereby DENIED.

20  
21 \_\_\_\_\_  
JUDGE

22  
23  
24  
25  
PROPOSED  
ORDER DENYING SKAGIT COUNTY'S MOTION TO  
INTERVENE - 1

ZENDER THURSTON, P.S.  
ATTORNEYS AT LAW  
1700 D Street, Bellingham, WA 98227  
Phone: (360) 647-1500 • Fax: (360) 647-1501