

AGREEMENT

between the

**WEST CONTRA COSTA INTEGRATED WASTE
MANAGEMENT AUTHORITY**

and

**WEST COUNTY RESOURCE RECOVERY, INC.;;
WEST CONTRA COSTA SANITARY LANDFILL, INC.;;
GOLDEN BEAR TRANSFER SERVICES, INC.;;
RICHMOND SANITARY SERVICE, INC.;; AND,
KELLER CANYON LANDFILL COMPANY, INC.**

for

**POST-COLLECTION RECYCLING, AND DISPOSAL
SERVICES**

October 10, 2013

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104 This Agreement is entered into by and between the West Contra Costa Integrated Waste Management
 105 Authority (Authority) and West County Resource Recovery, Inc., West Contra Costa Sanitary Landfill,
 106 Inc., Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. ("RSS") and Keller Canyon
 107 Landfill Company, Inc. (operating subsidiaries of Republic Services, Inc. and hereinafter collectively
 108 referred to as "Contractor") (together, the "Parties") for the Transfer, Transport, Recycling, Composting,
 109 and Disposal (Post-Collection Services) of Solid Waste, Recyclable Materials, Dry Materials, Organic
 110 Materials, and Construction and Demolition Materials from the cities of Hercules, Pinole, Richmond, and
 111 San Pablo (collectively the Member Agencies of the Authority and hereinafter referred to as "Member
 112 Agencies") and certain portions of the unincorporated areas of the County of Contra Costa pursuant to
 113 a franchise collection agreement between RSS and the County (that historically have been within the
 114 Authority's service area including: East Richmond Heights, North Richmond, Montalvin Manor, Tara Hills,
 115 and El Sobrante) (together the Member Agencies and County are hereinafter collectively referred to as
 116 "Franchise Agencies").

117 **RECITALS, DETERMINATIONS, AND FINDINGS**

118 This Agreement is entered into with reference to the following facts, circumstances, determinations and
 119 findings made by the Board Members of the Authority:

120 **WHEREAS;** the Legislature of the State of California, by enactment of the California Integrated Waste
 121 Management Act of 1989 (Act) (California Public Resources Code Section 40000 et seq.), has declared
 122 that it is in the public interest to authorize and require local agencies to make adequate provisions for
 123 Solid Waste management within their jurisdiction; and

124 **WHEREAS;** the State of California has found and declared that the amount of refuse generated in
 125 California, coupled with diminishing Disposal capacity and potential adverse environmental impacts
 126 from landfilling and the need to conserve natural resources, have created an urgent need for State and
 127 local agencies to enact and implement an aggressive integrated waste management program. The State
 128 has, through enactment of the Act, directed the responsible State agency, and all local agencies, to
 129 promote Diversion and to maximize the use of feasible waste reduction, re-use, Recycling, and
 130 Composting options in order to reduce the amount of refuse that must be Disposed; and

131 **WHEREAS,** the Authority and Member Agencies entered into a Joint Exercise of Powers Agreement
 132 dated April 2, 1991, ("JPA Agreement"), which JPA Agreement was amended by the parties thereto in
 133 March 6, 1995; and

134 **WHEREAS,** on January 1, 1994, the Authority and West County Resource Recovery, Inc. entered into a
 135 Service Agreement for Operation of an Integrated Resource Recovery Facility ("IRRF Service
 136 Agreement"); and

137 **WHEREAS,** Contractor, by means of the services and facilities of Golden Bear Transfer Station, Keller
 138 Canyon Landfill, West Contra Costa Sanitary Landfill and West County Resource Recovery, provides Post-
 139 Collection Services to the Authority through certain agreements between Contractor and the Authority;
 140 and

141 **WHEREAS**, these contracts for Post Collection Services are expiring effective December 31, 2013; and.

142 **WHEREAS**, In October 2012, the Authority solicited Requests for Qualifications and Statements of
143 Interest from companies in the solid waste and recycling industry for the provision of these Post-
144 Collection Services. Contractor submitted its response and after consideration of the numerous
145 proposals received, on December 12, 2012, the Authority Board of Directors directed Authority staff to
146 negotiate with Contractor for the provision of these services; and

147 **WHEREAS**; the Authority further declares its intent to approve and maintain reasonable rates for the
148 Post-Collection Services described in this Agreement; and

149 **WHEREAS**; the Authority selects Contractor to provide for the Post-Collection Services, after
150 undertaking a competitive request for proposals process and having determined that Contractor's
151 proposal provides the best overall value for the Authority rate payers, and that Contractor has the
152 requisite experience, qualifications, reputation, and capacity to carry out such services; and

153 **WHEREAS**; local agencies like the Authority and the Franchise Agencies have generally been held liable
154 under federal superfund laws for costs of cleaning up of Hazardous Waste sites that accepted Solid
155 Waste generated within municipalities' jurisdictions. Therefore the Authority is prudent to provide for
156 terms and conditions of its Solid Waste Disposal in accordance with this Agreement; and

157 **WHEREAS**; pursuant to its police powers, obtaining a long-term commitment for Disposal of Solid Waste
158 generated within the Authority in accordance with this Agreement is in the best interests of the public
159 health, safety and wellbeing of the citizens throughout the Authority and is fiscally prudent; and

160 **WHEREAS**; through enactment of the Act, the State of California also recognizes the important health
161 and safety consideration to long-term planning for local governments adequate Disposal needs. The
162 State requires local governments to make adequate provision for at least fifteen (15) years of Solid
163 Waste Disposal capacity to preserve the health, safety and wellbeing of the public; and

164 **WHEREAS**; this Agreement also advances the objectives of the federal government to encourage
165 environmentally sound Solid Waste management (Resource Conservation and Recovery Act of 1976
166 (RCRA), 42, U.S.C. Section 6941 *et. seq.*); and

167 **WHEREAS**; the Keller Canyon Landfill is designated to be the principal Landfill for Solid Waste generated
168 throughout the Authority; and

169 **WHEREAS**; the Parties agree that the goal of the non-disposal services performed under this Agreement
170 is to further the recycling programs and recycling activities in support the achievement of the recycling
171 rate goal of 75% established by AB 341. The parties agree that the 75% goal is a target and not a
172 guaranteed rate; and

173 **WHEREAS**; this Agreement helps the Authority achieve the following goals:

174 (1) Securing rate stability over the long term and financial protection from environmental Liabilities;

175 (2) Establishing service and performance standards to help assure that the Authority and all Franchise
176 Agencies meet their respective obligations under law and to protect and preserve the health,
177 safety, and financial assets of its citizens;

178 (3) Giving the Authority tools to monitor Contractor's compliance with Service terms, administer Solid
179 Waste, Recyclable Materials, Organic Materials, and C&D Material management programs, and
180 enforce the Authority's rights; and,

181 **NOW, THEREFORE**, in consideration of the mutual promises, covenants, guaranties, and conditions
182 contained in this Agreement and for other good and valuable consideration, the Parties agree as
183 follows:

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ARTICLE 1
DEFINITIONS

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187 Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings
188 specified in Exhibit 1 to this Agreement, which is attached hereto and incorporated by reference.

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ARTICLE 2 TERMS OF AGREEMENT

192 **2.1 Effective Date**

193 This Agreement becomes effective on the date that the latter of the Parties executes the Agreement or
194 the date that all of the Member Agencies have executed an amendment to their Collection Franchise
195 Agreement(s) at a minimum substantially in the form in exhibit 2.4.6, whichever is later. Except as
196 specifically provided herein, Contractor shall make all necessary preparations required to provide all
197 Services under this Agreement.

198 **2.2 Term**

199 The Term of this Agreement shall commence on January 1, 2014 and is set to expire on June 30, 2025.
200 Separately, and with respect to the County of Contra Costa, the term of the Agreement shall be until
201 October 13, 2023 and the County may, at its sole option, extend its participation in the Agreement
202 through the full term without any further changes required to the Agreement by providing no less than
203 thirty (30) days advanced notice in writing. The Parties may agree to extend this Agreement.

204 **2.3 Survival of Certain Provisions**

205 The following provisions shall survive the expiration or termination of this Agreement:

- 206 1) All representations and warranties;
- 207 2) All Indemnities and insurance requirements;
- 208 3) Obligations to pay any due and payable monetary amounts, or claims for those amounts,
209 including damages, any Disposal Rates, and payment of any amounts accrued and payable upon
210 termination of the Agreement in accordance with Section 7.2;
- 211 4) Obligations to submit and maintain Records and any reports for periods (or portions thereof)
212 concluded prior to the expiration or termination of this Agreement; and,
- 213 5) Any other rights and obligations of the Parties stated elsewhere in this Agreement which pertain
214 to operations conducted during the term of this Agreement including, but not limited to, the following:

4.2	Permits
4.3	Approved Processing Facility Specifications
4.4	Ownership of Authority Materials
4.13	Invoicing
4.14	Quarterly Report
4.16	Closure and Post-Closure of Landfill
6.1	Defense and Indemnification
6.2	Insurance Policies

8.02	Compliance with Law
8.08	Services Performed At Contractor's Sole Expense
8.13	Maintenance of Records
8.14	Right to Inspect Records
8.15	Compilation of Information for State Law Purposes
8.17	Dispute Resolution
8.22	Jurisdiction, Venue
8.23	Cost and Expenses

215 **2.4 Conditions to Effectiveness of Agreement**

216 **2.4.1 New Agreement Supersedes all Others**

217 Except as noted in this paragraph 2.4.1, this Agreement executed between Contractor and the Authority
 218 shall completely and fully supersede and invalidate any and all prior or existing contracts, agreements
 219 and any amendments or understandings between the Authority and Contractor (or specific entities of
 220 Contractor), except for provisions that survive expiration or termination of any of the following
 221 agreements: including the 1994 IRRF Service Agreement; the 2005 Agreement for the Transfer and
 222 Transportation of Franchised Solid Waste and County Area Waste from the Golden Bear Transfer
 223 Station; the 2010 Agreement for Organic Material Processing and Composting Services; the 2010
 224 Agreement for Disposal of Solid Waste (Keller Canyon Landfill); and the 2013 Amendment to Extend the
 225 Terms of Certain Service Agreements with the West Contra Costa Integrated Waste Management
 226 Authority. Except as specifically provided in the amendments referenced in Section 2.4.6 of this
 227 Agreement, nothing herein shall affect the validity or scope of any solid waste and recycling Collection
 228 Franchise Agreement to which Richmond Sanitary Service, Inc. is a party. 2.4.2 Release of Claims

229 Upon the execution of the Agreement, the Contractor and the Authority agree that they shall release
 230 and discharge each other from all claims they each might otherwise have against the other with respect
 231 to the Authority's assertion that it has the contractual flow control right to receive and direct all Solid
 232 Waste and Recyclables Collected for the Term of this Agreement pursuant to the 1994 amendment to
 233 Franchise Agency Collection Franchise Agreements with the Franchised Collector for Franchise Agencies
 234 in the Authority jurisdictional area. Nothing herein is intended to or shall operate as a waiver with
 235 respect to such claims or any other claims. The release in this paragraph 2.4.2 is limited solely to claims
 236 between Contractor and Authority and does not extend or apply to any claims of Contractor or
 237 Franchise Agencies.

238 **2.4.3 Environmental Review**

239 Prior to the effectiveness of this Agreement, the Parties shall have satisfied all requirements for
 240 environmental review under the California Environmental Quality Act, to the extent that it applies to this
 241 Agreement.

242 **2.4.4 Procurement Reimbursement**

243 Contractor shall pay the Authority, as reimbursement for the Authority's actual cost of procuring and
 244 negotiating this Agreement, not to exceed two hundred thousand dollars (\$200,000). Such payment
 245 shall be made January 30, 2014 or upon the Effective Date of this Agreement whichever is later. Failure

246 to timely make such payment may, in the Authority's sole discretion, constitute a default subject to the
247 provisions of Article 7 of this Agreement.

248 **2.4.5 Cost Baseline Study Reimbursement**

249 Contractor shall reimburse the Authority the actual cost, up to fifty thousand dollars (\$50,000), for
250 conducting a baseline review of the cost of existing collection programs and projections of the cost of
251 new collection programs provided to Franchise Agencies as part of Contractor's proposal for the services
252 covered under this Agreement. Such payment shall be made within the latter of thirty (30) days of the
253 Authority's execution of this Agreement or fifteen (15) days of the final report on such study being
254 issued to the Authority and Contractor.

255 **2.4.6 Execution of Amendments for Collection Services**

256 Prior to the effectiveness of this Agreement, the Franchise Agencies must have executed an amendment
257 to their Collection Franchise Agreement(s) substantially in the form presented in Exhibit 2.4.6. and as
258 outlined in the key elements below:

- 259 1. Implementation dates specified in this Agreement will remain unchanged as long as all Franchise
260 Agreement Amendments are approved no later than November 15, 2013. If one or more
261 Franchise Agreement Amendments are not approved on or before November 15, 2013, the
262 following shall apply:
 - 263 a. Franchise Agencies approving Collection Franchise Agreement amendments acceptable
264 to both parties (Contractor and the Franchise Agency) by November 15, 2013 will be
265 able to receive the benefits of the new post collection rates established in the Post-
266 Collection Agreement and the Franchise Agencies' collection rates will be adjusted by
267 the CPI provisions of the their Collection Franchise Agreement on January 1, 2014.
 - 268 b. Franchising Agencies not approving Collection Franchise Agreement amendments that
269 are acceptable to Contractor and Franchise Agency by November 15, 2013 will not
270 receive the benefits in terms of the new post-collection rates established in the Post-
271 Collection Agreement, but shall be required to implement any CPI adjustments as
272 required by the Collection Franchise Agreement that are scheduled for January 1,
273 2014. In the circumstance of Franchise Agencies not approving Collection Franchise
274 Agreement amendments that are acceptable to Contractor and Franchise Agency by
275 November 15, 2013, the current (2013) post-collection rates will apply in 2014 until the
276 new post collection rates are implemented within 30 days of the Collection Franchise
277 Agreement amendment is approved by that Franchise Agency. Neither Contractor nor
278 Authority will issue any credits to Franchise Agencies whose rates are not established by
279 January 1, 2014.
 - 280 c. With the exception of the specific services outlined in d. below, implementation dates
281 for the required services and associated hires in the post-collection agreement will be
282 delayed a month for each successive month past November 15, 2013. For example, if all
283 of the Franchise Agencies approve the Collection Franchise Agreement amendments by
284 December 1, the implementation dates will move one month. If the Member Agencies
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288 approve the required franchise amendments on December 16, 2013 the
289 implementation dates will move two months out.

290
291 d. By January 1, 2014 and regardless of whether all of the Franchise Agencies have
292 approved their franchise amendment by November 15, 2013, Contractor will allow for
293 the inclusion of food scraps in the mixed residential organics containers in Franchise
294 Agencies that do not already allow this and, allow for the inclusion of the expanded
295 recyclables accepted at curbside to be included in the curbside residential recycle
296 container.

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298

299 **ARTICLE 3**
300 **OBLIGATIONS OF THE AUTHORITY**

301 **3.1 Facility Designation**

302 The Authority shall direct all Solid Waste Collected by Franchise Agencies' Franchised Collector to be
303 delivered to the Approved Transfer Station and Disposed of at Keller Canyon Landfill (Landfill) (except as
304 necessitated by Section 4.12.1).

305 The Authority shall direct all Traditional and Specialty Recyclable Materials Collected by Franchise
306 Agencies' Franchised Collector to be delivered to and Processed at the Approved Recycling Materials
307 Processing Facility.

308 The Authority shall direct all Dry Material which is Collected separately from other Solid Waste by the
309 Franchise Agencies' Franchised Collector to be delivered to and Processed at the Approved Dry
310 Materials Processing Facility.

311 The Authority shall direct all Organic Materials Collected by Franchise Agencies' Franchised Collector to
312 be delivered to and Processed at the Approved Organic Materials Processing Facility.

313 The Authority shall direct all Construction and Demolition (C&D) Materials Collected by Franchise
314 Agencies' Franchised Collector to be delivered to and Processed at the Approved Construction and
315 Demolition Materials Processing Facility.

316 **3.2 No Tonnage Obligation or Limit on Waste Prevention**

317 Neither the Authority nor the Franchise Agencies are obligated to deliver any minimum specified
318 quantity of Solid Waste, Recyclable Materials, or Organic Materials to the Landfill or Approved
319 Processing Facilities, but the Authority is obligated to deliver any and all such franchised Solid Waste,
320 Recyclable Materials, Dry Materials, C&D Materials and Organic Materials to the Landfill or Approved
321 Processing Facilities. The Authority currently operates programs intended to reduce the amount of Solid
322 Waste for Landfill Disposal as well as to reduce the total amount of materials generated by the
323 community. Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the Authority
324 in cooperation with the Contractor, when necessary, from continuing and expanding these programs or
325 developing new programs having the goal of reducing the amount of material generated within the
326 Authority service area and managed under this Agreement. The Contractor shall have the right of first
327 refusal for such activities which includes, without limitation, Niche Services. This right of first refusal
328 shall not apply to studies, education, outreach, advertising, or other activities that do not involve the
329 Processing, Transportation, Disposal, handling, or other disposition of materials covered by this
330 Agreement.

331

332 **ARTICLE 4**
333 **OBLIGATIONS OF CONTRACTOR**

334 **4.1 Scope of Services**

335 **4.1.1 Solid Waste Transfer and Transport**

336 The Contractor shall receive the Solid Waste Collected under the Franchise Agency Collection Franchise
337 Agreements and directed to the Approved Transfer Facility by the Authority. Contractor shall load Solid
338 Waste into Transfer trailers in a manner that reasonably minimizes the volume of traffic between the
339 Approved Transfer Facility and Landfill or Approved Processing Facility. Contractor shall safely and
340 lawfully Transport all Solid Waste from the Approved Transfer Station to the Landfill or Approved
341 Processing Facility.

342 **4.1.2. Solid Waste Disposal**

343 Contractor shall receive, accept, and safely and lawfully Dispose of at the Landfill, the Authority-directed
344 Solid Waste delivered from the Approved Transfer Station in a manner that meets or exceeds all
345 requirements of Applicable Law including, but not limited to, the Resource Conservation and Recovery
346 Act (RCRA).

347 **4.1.3. Recyclable Materials Processing**

348 Contractor shall Process the Traditional Recyclable Materials Collected under the Collection Franchise
349 Agreements for all Franchise Agencies. The Approved Recycling Materials Processing Facility shall
350 separate the commingled Traditional Recyclable Materials into marketable commodity types, prepare
351 those commodities for market, and market those commodities for sale. Under no circumstances may
352 Contractor Dispose of any material Collected as Traditional Recyclable Material without first Processing
353 such material in a manner that maximizes the Recovery of marketable commodities.

354 **4.1.4. Dry Material Processing**

355 Contractor shall receive the Dry Material Collected under the Collection Franchise Agreements at the
356 Approved Transfer Facility and shall Transfer and Transport that Dry Material to the Approved Dry
357 Materials Processing Facility. Upon receipt at the Approved Dry Materials Processing Facility, Contractor
358 shall Process Dry Materials in a manner that Recovers no less than 50% of the Recyclable Material and
359 Organic Material constituents including use of fines generated in this processing as ADC. Contractor
360 shall sort the Recovered materials into marketable commodity types, prepare those commodities for
361 market, and market those commodities for sale. Contractor may meet and confer with the Authority
362 should moisture content of Recyclable Materials become a problem, however, the Parties acknowledge
363 that Contractor, as the Franchise Collector, has full control over the material that is included in this
364 program. Contractor shall engage the services of Cascadia Consulting Group as a subcontractor to
365 perform the services described in Tasks 1 through 3 of Exhibit 4.1.4 of this Agreement and the scope of
366 Cascadia's work shall include characterization of no less than ten (10) routes.

367 **4.1.5. Organic Materials and Organics Processing**

368 Contractor shall receive, accept, and safely and lawfully Process the Organic Materials collected under
 369 the Franchise Agencies' Collection Franchise Agreements at the Approved Organic Materials Processing
 370 Facility. This Processing shall include, at a minimum, removing obvious contaminants, pre-processing
 371 (i.e., chip and grind), and Composting the Organic Materials. Organic Materials shall be converted to
 372 products for beneficial use including Compost and mulch.

373 Contractor shall provide Franchise Agencies with finished Compost and mulch products upon request at
 374 no additional charge to the Franchise Agency at the Contractor's Composting facility. Franchise Agency
 375 will provide transportation to and from Contractor's facility. This shall be limited annually to one percent
 376 (1%) of the annual Organic Materials Tonnage Collected from that Franchise Agency and delivered to the
 377 Approved Organic Materials Processing Facility.

378 Except as provided below for the closed West Contra Costa Sanitary Landfill (WCCSL), under no
 379 circumstances may Contractor use unprocessed Organic Materials covered by this Agreement for
 380 Alternative Daily Cover (ADC), intermediate cover, slope stabilization, erosion control, or any other
 381 purpose at an active landfill. Such uses may be permitted at the closed/inactive WCCSL, to the extent
 382 that such use prevents the importation of material to the site for that purpose.

383 **4.1.6. Mixed Construction and Demolition Materials Processing**

384 Contractor, in its capacity as the Franchised Collector for each of the Franchise Agencies, receives
 385 customer calls for roll-off Services. The Authority will work with Franchise Agencies periodically during
 386 the term of the Agreement to provide educational materials and outreach to construction contractors to
 387 inform them about the availability of the Franchise Collector's C&D recycling program. Contractor shall
 388 train all customer service representatives to identify C&D boxes when work orders are placed for service
 389 and to clearly identify the work order as a C&D service. All loads identified and/or placed as orders for
 390 service shall be delivered by Contractor, in its capacity as the Franchised Collector, to the Approved
 391 Construction and Demolition Processing Facility.

392 Contractor shall receive from any Franchise Agency's Franchised Collector and pre-Process all identified
 393 C&D loads to remove contaminants and large dimensional/non-sizeable material (e.g., very large
 394 diameter tree trunks) or wet material (e.g., saturated sheet rock). Contractor shall then Process the
 395 remainder of each load, using its mixed C&D sorting line or other processes in a manner that maximizes
 396 the Diversion of material from the Landfill. The sorting line shall be equipped and staffed with sorters in
 397 a manner adequate to consistently achieve a seventy percent (70%) Diversion rate for the material from
 398 the Authority service area that is processed by this sorting line. Materials targeted for Diversion shall
 399 include, but are not necessarily limited to: porcelain, cardboard, green waste, untreated wood, ferrous
 400 and non-ferrous metals, concrete, brick, plastics, aggregate, wallboard, sheetrock, plaster, lath, asphalt,
 401 base rock, dirt/soil, shingles, and carpet/pad. The Parties acknowledge that a significant portion of the
 402 Diversion from this program is achieved by utilizing fines or unders from this process as ADC or other
 403 beneficial use at a Solid Waste Disposal site. In the event of a Change in Law eliminating or significantly
 404 reducing Diversion credit associated with Dry Material Processing or Mixed C&D Processing, the Parties
 405 shall meet and confer regarding appropriate modifications to the Diversion rate target defined herein.

4.1.7 Household Hazardous Waste Receiving, Processing and Disposal

Contractor shall contract with a vendor acceptable to the Authority for the operation of a permanent Household Hazardous Waste (HHW) drop-off facility (located at 101 Pittsburg Avenue, North Richmond) that shall serve the Franchise Agencies including unincorporated communities within and adjacent to the Authority's service area, subject to the Household Hazardous Waste Program Agreement between the Authority, Contractor, and the County. The types of materials accepted as well as the days and hours of operation shall be determined and may be subject to change at any time by the Authority Board of Directors with input from the Contractor, subject to reasonable implementation lead time. Initially, the days and hours of operation shall be from 9:00 a.m. to 4:00 p.m. Thursday, Friday, and the first Saturday of each month. The Contractor shall also provide a mobile collection service for residents at least 60 years old and for persons with disabilities. Nothing in this Agreement should be inferred as conferring third party beneficiary rights to such vendor and the Contractor shall have the right to replace such vendor at any time for convenience, subject to Authority approval of the replacement vendor. In order to comply with the Authority's and County's Household Hazardous Waste Elements (HHWE), the Authority, Contractor and County (if the County is not a voting member of the Authority) will agree on the types of materials accepted as well as the days and hours of operation the permanent Household Hazardous Waste (HHW) drop-off facility services provided under this agreement.

4.1.8 Recycling Coordinators

No later than December 1, 2013, and subject to the approval and execution of amendments to the Collection Franchises, the Contractor shall hire two (2) additional full time Recycling Coordinators who shall be Contractor employees dedicated to work exclusively within the Authority service area.

During the process of recruiting and hiring for the individuals that shall fill these positions, the Contractor shall accept input from the Authority and Franchise Agencies regarding desirable qualifications of the selected candidates. At a minimum, the selected candidates: 1) should have at least two (2) years of experience in a similar capacity, ideally as a recycling coordinator whose responsibilities included interacting with the public (including, but not limited to, residents, businesses, and community groups) and public agencies; 2) should be experienced in the management and update of websites and the use of social media for educational and marketing purposes; 3) at least one of the selected candidates must be fluent in the predominant secondary language of the service area (such as Spanish); and, 4) at least one of the coordinators should have a communications, business/economic development, or professional outreach background.

In the event that either: (1) , the Contractor fails to hire the two Recycling Coordinators by November 1, 2013; or, (2) in the event that such a position is ever vacant, during the Term of the Agreement, for more than three (3) months after the employment relationship between the Contractor and the employee is terminated, regardless of the reason, the Authority may, at its sole discretion, engage a third party to perform the functions of the Recycling Coordinator until such time as the Contractor hires the required personnel. The cost of such consultant shall be paid by the Contractor. The reimbursement of such costs by the Contractor shall be limited to eight thousand three hundred and thirty three dollars (\$8,333) per month (equivalent to one hundred thousand dollars (\$100,000) per year) per coordinator that has to be replaced by the third party. The monthly and annual reimbursement rates described in

446 this Section 4.1.8 will increase annually by the same percentage as the Material Specific portion of the
447 Rate as defined in Section 5.3.2.

448 The general scope of the Recycling Coordinators' duties includes those items identified and described in
449 Exhibit 4.1.9 (Public Education and Outreach). The specific educational and outreach priorities and
450 campaigns to be performed by the Recycling Coordinators shall be defined cooperatively between the
451 Contractor, the Recycling Coordinators, and the Authority with input from Franchise Agencies. These
452 priorities and campaigns shall be documented by the Recycling Coordinator in an annual education and
453 outreach plan (Annual Plan), including identifiable and measurable goals, to be presented to the
454 Authority. The Authority and Franchise Agency staff shall be invited to provide comments on the Annual
455 Plan. The Authority shall be responsible for reconciling any conflicting comments and making a formal
456 request for changes to the Annual Plan. The Recycling Coordinators shall make quarterly status
457 presentations collectively to the Authority and Franchise Agencies, documenting their progress against
458 the plan and goals and recommending modifications to the plan, as appropriate.

459 The Parties shall agree on an annual process for reviewing the performance of the Recycling
460 Coordinators, documenting performance problems associated with this Service, and resolving those
461 problems (including some ultimate provision for reassigning and replacing the staff person). In addition,
462 the Parties shall agree on the approach to dealing with serial or excessive vacancies in these positions,
463 including the possibility of contracting jointly with a third party specializing in performing these Services
464 or transferring the funding for the positions to the Authority.

465 **4.1.9 Public Education**

466 Beginning December 2013, the Contractor shall begin to provide the public education and outreach
467 Services described in Exhibit 4.1.9, Public Education and Outreach. Contractor understands the
468 significance and importance of public education and outreach activities in achieving the Authority's goal
469 of 75% recycling by 2020. Contractor further understands the diverse demographic and socio-economic
470 profile of the Authority's service area. Contractor shall conduct all public education and outreach
471 activities in a manner that provides for education and outreach in the predominant secondary language
472 in the Authority's service area. Contractor further understands the potential for an error in translation
473 that may make education ineffective, offensive, or otherwise alienate certain cultural groups. As such,
474 Contractor shall ensure such alternate language education is both linguistically and culturally
475 appropriate to the community. The Authority shall review and approve all such public education
476 materials prior to distribution..

477 **4.1.10 Cooperation with RFP and Transition to Next Contractor**

478 If applicable, before expiration or earlier termination of this Agreement, Contractor will take direction
479 from the Authority Contract Manager and/or subsequent contractor to assist in an orderly transition of
480 services from Contractor to Authority or subsequent contractor. In response to the Authority Contract
481 Manager's direction including to gather data necessary for the preparation of an RFP for replacement
482 services at the expiration or earlier termination of this Agreement, Contractor shall provide information
483 and data consistent with the requirements of Section 8.14 of this Agreement.

484 **4.1.11 Limitations to Scope**

485 The scope of this Agreement does not include Solid Waste, Organic Materials, Recyclable Materials,
486 C&D, and/or other materials generated in the Authority area that are not Collected by the Franchise
487 Agencies' Franchised Collectors.

488 **4.2 Permits**

489 **4.2.1 Securing Permits**

490 Contractor shall obtain and maintain, at Contractor's sole cost, all Permits required under Applicable
491 Law to perform Services and shall provide Services in compliance with such Permits. For the Landfill and
492 the Approved Processing Facilities owned by Contractor or an Affiliate, Contractor shall provide
493 Authority copies of Permits for all of the Approved Processing Facilities and shall demonstrate
494 compliance with the terms and conditions of Permits within ten (10) Calendar Days of request of
495 Authority. In its Quarterly Report or more frequently, as necessary, Contractor shall inform Authority of
496 Contractor's status of securing the issuance, revision, modification, extension or renewal of Permits that
497 are necessary to affect compliance with the terms of this Agreement. Within ten (10) Calendar Days
498 following Authority's request, Contractor shall provide the Authority with copies of any applications or
499 other correspondence that the Contractor submits in connection with securing Permits.

500 **4.2.2 Complying with Permits**

501 Contractor shall comply with all Permits, including any mitigation measures related to the operation and
502 maintenance of all of the Approved Processing Facilities at no additional cost to the Authority for
503 current permit and fee structure at the time of the execution date of the Agreement. Contractor is
504 solely responsible for paying any fines or penalties imposed for noncompliance with or Violation of
505 Permits or failure to obtain Permits.

506 **4.2.3 Hazardous Material Programs**

507 All of the Approved Facilities and the Landfill shall maintain a Hazardous Waste screening, identification,
508 and prevention protocol consistent with the Solid Waste Facility Permits for each. The Contractor shall
509 not knowingly deliver or Process Hazardous Waste to or at any of the Approved Facilities or Landfill,
510 with the exception of the Household Hazardous Waste Facility co-located with the Approved Recycling
511 Materials Processing Facility at 101 Pittsburg Avenue in North Richmond.

512 **4.3 Facility Specifications**

513 **4.3.1 Landfill Disposal**

514 Contractor shall provide Disposal Services at the Landfill in accordance with the Service standards
515 described in Section 4.19 and the following Service specifications:

- 516 (1) Operating, managing and maintaining the Solid Waste fill areas, including the placement,
517 burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and compaction

518 of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill
519 sequencing, side slopes configuration, and working face location and configuration;

520 (2) Providing, operating and maintaining all equipment, rolling stock, and supplies necessary for
521 operations, Closure, Post-Closure, and environmental monitoring;

522 (3) Operating, maintaining, and managing leachate and landfill gas management systems,
523 groundwater monitoring and management systems, storm water drainage and control systems,
524 treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements.

525 (4) Accepting delivery of Solid Waste from the Approved Transfer Station, subject to the limitations
526 of Section 4.5;

527 (5) Operating and maintaining the scale house and scale system and weighing Solid Waste delivered
528 from the Approved Transfer Station in accordance with Section 4.9;

529 (6) Directing on-site traffic to appropriate unloading areas in accordance with Section 4.8 and
530 providing a safe working environment for Landfill users, visitors, and employees including Sections
531 4.10 and 4.11; and,

532 (7) Safely managing the Solid Waste accepted at the Landfill, including, but not limited to, meeting
533 requirements of Section 4.11

534 **4.3.2 Approved Processing Facilities**

535 Contractor shall provide Processing services at the Approved Processing Facilities in accordance with the
536 Service standards described in Section 4.19 and the following Service specifications:

537 (1) Operating, managing, and maintaining the Processing areas;

538 (2) Providing, operating and maintaining all equipment, rolling stock, and supplies necessary for
539 operations and environmental monitoring;

540 (3) Operating, maintaining, and managing storm water drainage and control systems, treatment
541 facilities, buildings, on-site utilities, and any other required facility elements.

542 (4) Accepting delivery of Recoverable materials Collected under the Collection Franchise
543 Agreements, subject to the limitations of Section 4.5;

544 (5) Operating and maintaining the scale house and scale system and weighing all material delivered
545 under this Agreement in accordance with Section 4.9;

546 (6) Directing on-site traffic to appropriate unloading areas in accordance with Section 4.8 and
547 providing a safe working environment for facility users, visitors, and employees including Sections 4.10
548 and 4.11;

549 (7) Safely managing the materials accepted at the Approved Recyclable Materials Processing
550 Facility, including, but not limited to, meeting requirements of Section 4.11.

551 **4.4 Ownership of Authority Materials**

552 Once Solid Waste, Organic Materials, C&D Material, Dry Material, HHW, or Recyclable Material directed
553 by the Authority is received and accepted by Contractor ownership and the right to possession of said
554 materials shall Transfer directly from the Person delivering said materials to Contractor. Contractor may
555 retain, Recycle, Process, Dispose of and otherwise use such Solid Waste, Organic Materials, C&D, Dry
556 Materials, HHW, and Recyclable Materials in any lawful fashion or for any lawful purpose, except that
557 Contractor may not Dispose of otherwise marketable Recyclable Materials or Organic Materials without
558 the prior written approval of the Authority. This requirement for written approval excludes process
559 Overs and process Residue.

560 Both benefits and Liabilities resulting from ownership and possession of Authority-directed materials
561 shall accrue to Contractor with the exception that the annual City/County payments associated with
562 California curbside redemption value (CRV) made by the California Department of Resources Recycling
563 and Recovery (CalRecycle) shall accrue to the Franchise Agencies. The benefits and liabilities accruing to
564 contractor shall include all scrap values, all California Redemption Value (CRV) payments (excepting
565 City/County payments as described above), all Curbside Supplemental payments, all quality incentive
566 payments, all Administrative fees, all Processing payments, and all program distributions of unspent
567 program funds.

568 **4.5 Rejection of Unpermitted Waste at Landfill**

569 **4.5.1 Inspection**

570 Contractor shall use Standard Industry Practices to detect and reject Unpermitted Waste in a uniform
571 manner and shall not knowingly accept Unpermitted Waste at the Approved Processing Facilities or
572 Landfill. Contractor shall comply with the inspection procedure contained in its Permit requirements.
573 Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.

574 **4.5.2 Unpermitted Wastes Handling and Costs**

575 Contractor shall arrange for or provide handling, Transportation, and delivery of all Unpermitted Wastes
576 detected at the Approved Processing Facilities or Landfill to a Recycling facility or Landfill permitted in
577 accordance with Applicable Law. Contractor is solely responsible for making such arrangements or
578 provisions and for all associated costs thereof, subject to the remedies available under Section 4.5.3
579 below.

580 **4.5.3 Remedies for Rejected Materials**

581 If Unpermitted Waste is delivered to the Landfill, Contractor shall be entitled to pursue whatever
582 remedies, if any, it may have against Person(s) bringing that Unpermitted Waste to the Landfill. In no

583 event shall the Authority or Franchise Agencies be required to bear the cost of the proper handling or
584 remediation of Unpermitted Wastes which are delivered to the Landfill.

585 **4.6 Approved Facility and HHW Facility Days and Hours of Operation**

586 **4.6.1 Facilities Hours of Operation**

587 Contractor will coordinate the hours of operation of the Approved Facilities to receive Solid Waste,
588 Organic Material, C&D Material, and Recyclable Material from the Franchised Hauler from the Authority
589 service area.

590 **4.6.2 Approved HHW Facility Hours of Operation**

591 The Approved HHW Facility hours of operation are determined by mutual consent by the Authority's
592 Board of Directors and the Contractor and may be modified, by mutual consent, at any time during this
593 Agreement, following sixty (60) days advanced notification and adjustment of Rates to reflect the cost of
594 increased days and hours of service. The initial hours of operation for the Approved HHW Facility are
595 9:00 a.m. through 4:00 p.m. every Thursday and Friday and the first Saturday of every month. The
596 Authority Board of Directors has the right to reduce the future hours of HHW operations for cost control
597 measures. The Contractor will not unreasonably withhold consent for such cost control measures.

598 **4.7 Equipment and Supplies**

599 Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts,
600 maintenance supplies, and other consumables as appropriate and necessary to operate the Approved
601 Processing Facilities and Landfill. Contractor shall place the equipment in the charge of competent
602 operators. Contractor shall repair and maintain all equipment at its own cost and expense.

603 **4.8 Traffic Control and Direction**

604 Contractor shall construct and maintain all paved areas on Contractor's property that are required to
605 Transport Authority's Solid Waste, Recyclable Materials, and Organic Materials from the scale house at
606 each of the Approved Processing Facilities to the point of unloading at the each of the Approved
607 Processing Facilities. Contractor shall direct on-site traffic to appropriate unloading areas and provide a
608 safe working environment for all of the Approved Processing Facilities and Landfill users, visitors, and
609 employees. Contractor shall provide necessary signs and personnel to assist drivers to proper unloading
610 areas. Contractor shall maintain all signs at all of the Approved Processing Facilities and Landfill in a
611 clean and readable condition. The Contractor shall provide and maintain signs for the convenience of
612 vehicles using the Approved Processing Facilities and Landfill to facilitate safe and efficient traffic flow.

613 **4.9 Scale Operation**

614 **4.9.1 Maintenance and Operation**

615 Contractor shall maintain at least two (2) State-certified motor vehicle scales at the Landfill and at least
616 one (1) State-certified motor vehicle scale at each of the Approved Processing Facilities in accordance

617 with Applicable Law. Contractor shall provide documentary evidence of such certification within ten
618 (10) Calendar Days of Authority's request. Contractor shall link all scales at each Approved Processing
619 Facility and Landfill to a centralized computer recording and billing system and account for tracking all
620 incoming material by jurisdictions of origin and outgoing materials by destination. Contractor shall
621 operate those scales during the Approved Processing Facility receiving hours established in Section 4.6.
622 Contractor shall provide the Authority with system generated original reports that does not contain
623 proprietary confidential information.

624 **4.9.2 Vehicle Tare Weights**

625 Contractor shall promptly weigh the vehicle and determine its unloaded ("tare") weight(s). Contractor
626 shall record tare weight, hauler name, vehicle type (e.g. front-loader, transfer truck/trailer, side-loader,
627 etc.) and vehicle identification number for each and every vehicle with a stored tare weight in
628 Contractor's computer system. Within ten (10) Working Days of weighing, Contractor shall provide the
629 Authority with a report listing vehicle tare weight information. Contractor shall have the right to
630 request re-determination of tare weights of vehicles twice each Calendar Year. If there is reasonable
631 suspicion or evidence that tare weights are not accurate, Authority may, at any time and without
632 limitation, request re-determination of tare weights, in which case Contractor shall promptly re-
633 determine tare weights for requested vehicles. Contractor may update tare weights, at its own initiative
634 or at the request of the Authority, more frequently. This provision shall apply to all vehicles used to
635 deliver materials to each of the Approved Processing Facilities and Landfill.

636 **4.9.3 Substitute Scales**

637 If any facility scale is inoperable, being tested, or otherwise unavailable, Contractor shall use Reasonable
638 Business Efforts to weigh vehicles on the remaining operating scale. To the extent that all the scales are
639 inoperable, being tested, or otherwise unavailable, Contractor shall substitute portable scales until the
640 permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be
641 repaired as soon as possible and, in any event, within five (5) Working Days of the failure of the
642 permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours,
643 Contractor shall immediately obtain a temporary substitute scales(s).

644 **4.9.4 Estimates**

645 Pending substitution of portable scales or during power outages at any Approved Processing Facility or
646 the Landfill, Contractor shall estimate the Tonnage of the material delivered to the Approved Processing
647 Facility by utilizing the arithmetic average of each vehicle's recorded Tons of the subject material
648 delivered on its preceding three (3) deliveries, on the same day of the week, to the respective facility.

649 All information required by Section 4.9.7 shall continue to be recorded for each delivery to the Landfill
650 or the Approved Processing Facilities during any period the scales are out of service.

651 4.9.5 Testing

652 Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve
653 (12) months or upon Authority request.

654 4.9.6 Weighing Standards and Procedures

655 Contractor shall weigh and record inbound weights of all vehicles delivering materials to the Approved
656 Processing Facilities and Landfill when the vehicles arrive and weigh and record outbound weights of
657 vehicles for which Contractor does not maintain tare weight information. Contractor shall provide each
658 driver a receipt showing the date, time, origin, quantity (i.e. tons or yards), and material type that the
659 vehicle delivered to the Approved Processing Facility or Landfill.

660 4.9.7 Scale Records

661 Contractor shall maintain scale Records and reports that provide information including date of receipt,
662 inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of
663 origin of materials received, type of material, hauler identification and/or classification, type, weight,
664 and destination of material. Contractor acknowledges that the weights recorded in its scale system(s)
665 form the basis for Contractor's compensation under this Agreement and therefore shall be subject to
666 full disclosure to the Authority at all reasonable times.

667 4.10 Personnel

668 Contractor shall engage and train qualified and competent employees, including managerial,
669 supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for
670 operation of the Approved Processing Facilities and Landfill and to perform the Services required by this
671 Agreement.

672 4.11 Safety

673 The Contractor shall conduct the operations of all of the Approved Processing Facilities and Landfill in a
674 safe manner, in accordance with Applicable Law and insurance requirements provided in Article 6.

675 4.12 Alternative Facilities

676 If Contractor does not receive the materials at the Approved Processing Facilities or Landfill for reasons
677 other than Uncontrollable Circumstances then, following Authority approval given in the Authority's sole
678 discretion, Contractor shall: (i) accept the Authority's materials at another similarly-capable processing
679 facility or landfill owned by it or an Affiliate; or, (ii) arrange for the Authority's material to be Processed
680 or Disposed of at another similarly-capable processing facility or landfill not Owned by it or an Affiliate.
681 In either case, Contractor shall provide service through these alternate facilities at no additional cost. If
682 the Authority does not approve Contractor's first choice of an alternate processing facility or landfill,
683 Contractor shall have ten (10) Working Days to arrange for different alternate facilities. If Authority
684 rejects such alternate facilities based on reasonable public policy, environmental, or business concerns,

685 and Contractor proceeds to deliver such materials to the alternate facility(ies), then the Authority may
686 terminate this Agreement in accordance with Section 7.2.

687 If Contractor does not receive the materials at the Approved Processing Facilities or Landfill due to
688 Uncontrollable Circumstances, Contractor shall, to the extent it is legally able to do so in accordance
689 with Applicable Law, accept materials at another similarly-capable processing facility or landfill owned
690 by it or an Affiliate at no additional cost. If Contractor is unable to provide service through alternative
691 facilities owned by it or an Affiliate as a result of Uncontrollable Circumstances and such condition
692 persists for a period of five (5) or more Working Days, the Authority may, at its sole discretion, terminate
693 this Agreement in accordance with Section 7.2.

694 **4.13 Invoicing**

695 For all Franchised Collectors except Richmond Sanitary Service (Richmond Sanitary Service is expressly
696 exempt from this provision) on or before the tenth Working Day of each month, Contractor shall invoice
697 or otherwise charge the Franchise Agencies' Franchised Collectors in amounts equal to the Rate
698 multiplied by Tons of the Authority's Solid Waste, Organic Materials, C&D Materials, Dry Materials and
699 Recyclable Materials delivered by Franchised Collectors to the Landfill and Approved Processing
700 Facilities during the previous month. Copies of such invoices shall be provided to the Authority at the
701 same time as they are provided to the Franchised Collector. Invoices shall be in a form satisfactory to
702 the Authority and shall, at a minimum, separately list by material type the associated Tonnage, applied
703 Rate, and number of loads received. The Authority shall have no obligation for payment of such invoices
704 as the Franchised Collectors are authorized to collect from Customers the compensation provided for
705 herein.

706 **4.14 Quarterly and Annual Reports**

707 Records shall be maintained in forms and by methods that facilitate flexible use of data contained in
708 them to structure reports, as needed. Initially such format shall be Microsoft Excel compatible and in the
709 form provided in **Exhibit 4.14**. This format may be changed upon the request of the Authority Contract
710 Manager in consultation with Contractor. Reports are intended to compile recorded data into useful
711 forms of information that can be used to, among other things:

- 712 • Determine and set rates and evaluate the financial efficacy of operations;
- 713 • Evaluate past and expected progress towards achieving goals and objectives;
- 714 • Determine needs for adjustment to programs; and,
- 715 • Evaluate services.

716 Quarterly reports shall be submitted within thirty five (35) calendar days after the end of the report
717 quarter. The Contractor shall also submit an annual report containing a summary of all the details
718 described below for the entire Calendar Year. Annual reports shall be submitted before March 31
719 following the reporting year. All reports shall be submitted to and in a format acceptable to the
720 Authority Contract Manager via email with hardcopy provided upon request.

721 **4.14.1 Quarterly Reports**

722 Contractor shall include in the Quarterly Report, at a minimum, the number of loads and tons, by
 723 material type and by month, handled under this Agreement. Reports shall be organized to separately
 724 report material received from each jurisdiction, between Customer (e.g. Residential, Commercial, or
 725 Industrial) or Collection (e.g., side-loader, front-loader, roll-off) types, material types, and facilities.
 726 Recycling Tonnage reports shall characterize the material Processed and marketed; using facility-wide
 727 averages where impractical to separately characterize material from the Authority service area, and
 728 document the residue rates. Supporting documentation shall be provided using unaltered, system-
 729 generated formats, upon request by the Authority Contract Manager.

730 Quarterly reports shall present information on a monthly basis, by Franchise Agency and by sector (i.e.
 731 residential, multi-family, commercial, roll-off) and, at a minimum, include:

- 732 1. The number of loads and tons, by line of business (as identified in Sections 4.1.1 through 4.1.7),
 733 handled under this Agreement. This information shall be presented on both an inbound (i.e.
 734 collection vehicles) and outbound (i.e. transfer vehicles, commodities shipped, etc.) basis.
- 735 2. Number of new Customers, by service type and service level.
- 736 3. Transfer Station diversion report by commodity.
- 737 4. Landfill diversion report by commodity.
- 738 5. Processing Facility report regarding Composted or Processed product by commodity.
- 739 6. Special clean-up event tonnage Collected, Disposed and Recycled.
- 740 7. E-Waste and Bulky Items including number of collection events and units or tonnage by material
 741 type.

742 **4.14.2 Annual Report**

743 The Annual Report shall include:

- 744 1. **Service Level and Allocation Report.** Contractor shall provide the number of Customers
 745 subscribing to each collection service level authorized in the Franchise Agency Collection
 746 Franchises on the last day of each month of the report year. Contractor shall provide the basis
 747 for allocating tonnage in vehicles that serve multiple Franchise Agencies. The truck tonnage
 748 allocation shall include a list of vehicles, their assigned routes, and a description of how tonnage
 749 is allocated to each Franchise Agency.
- 750 2. Gross billings of the Rate authorized under this Agreement, reported by sector.
- 751 3. Status report on applications for renewals of existing permits or any new permits which may be
 752 required to continue operations at the Transfer Station, MRF, Processing Facility, or Disposal Site
 753 within existing permitted areas.
- 754 4. Listing of all trucks that have received a revised stored tare weight at any Approved Facility or
 755 Landfill during the preceding quarter. The listing shall including the date the revised tare weight

756 was established, truck number, license plate number, prior stored tare weight, revised stored
757 tare weight, and a brief explanation of any significant variance.

758 **4.15 Change in Applicable Law Affecting Rates**

759 Contractor acknowledges that waste management is fundamental to the protection of the public health,
760 safety, and the well-being of those within the Authority's service area. Contractor agrees that it shall
761 exercise due diligence in performing the Services described herein.

762 In the event of a Change in Law or a new judicial interpretation of Applicable Law, including, but not
763 limited to, Articles XIII C and D of the California Constitution by which a court of competent jurisdiction
764 sets aside, invalidate, or stays any portion of the Rates approved by Authority in accordance with this
765 Agreement, the parties desire to establish a process by which services may be provided under
766 alternative or revised rate structures, as follows. Contractor agrees to meet and confer with Authority to
767 discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.
768 Contractor agrees to continue to perform the Services on an interim basis as otherwise set forth herein,
769 and Authority and/or Contractor may take such other and/or urgency actions necessary to facilitate
770 Contractor's continuation of Services, while the Parties meet and confer to discuss the impact of such
771 change. In no event shall the interim period during which Contractor agrees to continue to perform the
772 Services last longer than ninety (90) days.

773 Nothing herein is intended to imply that California Constitution Articles XIII(C) or (D) apply to the Rates
774 established for Services provided under this Agreement. The foregoing paragraphs are merely intended
775 as a contractual allocation of risks between the Parties.

776 This Section shall survive the expiration or earlier termination of this Agreement and shall not be
777 construed as a waiver of rights by Authority to contribution or indemnity from third parties.

778 This provision is intended to be consistent with and limited by California Public Resources Code Section
779 40059.2.

780 **4.16 Closure and Post-Closure of Landfill**

781 Contractor shall safely operate, maintain, and manage (including fulfillment of State funding
782 requirements) the Landfill in compliance with Applicable Law not only during the Term but also
783 thereafter until and during the Landfill Closure and Post-Closure period(s). Contractor is solely
784 responsible, operationally and financially, for: (i) The appropriate Closure and Post-Closure activities of
785 the Landfill; and, (ii) The establishment and funding of any reserve funds required by Applicable Law for
786 the purposes of providing funds for the payment of costs of Closure of the Landfill (or any cell within the
787 Landfill) or Post-Closure activities relating to the Landfill.

788 Contractor shall not hold the Authority or Franchise Agencies responsible for paying any deficiencies in
789 required reserves. In addition, Contractor shall not hold the Authority or Franchise Agencies responsible
790 for making any payments if actual Closure and Post-Closure costs relating to the Landfill exceed the

791 amounts reserved by the Contractor for that purpose. This obligation survives expiration or termination
792 of this Agreement.

793 **4.17 Right to Enter Facility and Observe Operations**

794 The Authority Contract Manager may enter, observe, and inspect any of the Approved Processing
795 Facilities and/or Landfill during operations; may request to conduct studies or surveys of the Approved
796 Processing Facilities and/or Landfill; meet with the Approved Processing Facility and/or Landfill
797 manager(s) or his or her representatives at any reasonable time, provided that the Authority Contract
798 Manager and its representatives comply with Contractor's reasonable safety and security rules and do
799 not interfere with the work of the Contractor.

800 If the Contractor representative or facility manager is not at the Approved Processing Facility or Landfill
801 when the Authority Contract Manager visits without prior announcement, Contractor shall arrange for
802 the Authority Contract Manager to return for a visit of the complete facility within forty-eight (48) hours
803 of the original visit.

804 Upon Authority Contract Manager's request, Contractor shall make personnel available to accompany
805 Authority Contract Manager on inspections. Contractor shall ensure that its employees cooperate with
806 the Authority and respond to the Authority's reasonable inquiries. Contractor shall facilitate similar
807 observation and inspection at Approved Processing Facilities owned by it or an Affiliate upon Authority
808 request and within ten (10) Working Days of receiving such request.

809 **4.18 Provision of Emergency Services**

810 Subject to Permit restrictions, Contractor shall provide emergency services, as set forth in this Section,
811 at the Authority's request in the event of major accidents, disruptions, or natural calamities. Contractor
812 shall provide emergency services within twenty-four hours (24) of Authority oral notice followed by
813 Notice or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services
814 that exceed the Contractor's obligations under this Agreement include extending facility receiving hours
815 and increasing the types and quantities of permitted materials accepted at any of the Approved
816 Processing Facilities and Landfill, if applicable.

817 Contractor shall be paid for its direct costs, plus a net profit not to exceed fifteen percent (15%) of the
818 total payment to Contractor, in providing emergency services. Contractor may also request
819 reimbursement of any indirect costs which Contractor can demonstrate, to the satisfaction of the
820 Authority, are: i) directly required for or beneficial to the provision of emergency services; and/or, ii)
821 otherwise allowable and expected as reimbursement from an emergency management agency
822 including, but not limited to, the Federal Emergency Management Agency. The Authority shall not
823 unreasonably withhold consent to reimbursement of such indirect costs. Contractor shall document all
824 such costs in an invoice to the Authority. The Authority shall consider and conduct all necessary
825 investigations to assure the appropriateness of the costs and shall endeavor to do so in as prompt a
826 fashion as is accommodated by the conditions. Contractor shall cooperate fully with Authority's review,
827 providing any documents the Authority Contract Manager deems necessary in the review. Once

828 Authority is satisfied that all charges are reasonable and appropriate, Authority shall pay Contractor the
829 approved amount within thirty (30) days.

830 **4.19 Service Standards**

831 Contractor shall perform Services in accordance with Applicable Laws and regulations, Standard Industry
832 Practice, due diligence and specification, and other requirements of this Agreement.

833 **4.20 Modifications to Scope of Service**

834 **4.20.1 General**

835 Authority may request and Contractor shall perform additional services (including Niche and non-Niche
836 Services) for which it is qualified and permitted. Contractor may propose to the Authority modifications
837 to the scope of services for which Contractor believes the Parties shall jointly benefit. Contractor may
838 use subcontractors to perform the services (Niche and non-Niche Services), subject to the Authority's
839 approval of such subcontractor, which shall not be unreasonably withheld. The respective Rate for
840 service shall be increased or decreased, in accordance with this Section, to give effect to these
841 adjustments.

842 **4.20.2 Proposal for Modification of Services**

843 Within ninety (90) Calendar Days of Authority request for a proposal, Contractor shall present its
844 proposal to modify existing Services. At a minimum, the proposal shall contain a complete description
845 of the following:

- 846 (1) Methodology to be employed (including, but not limited to, changes to equipment, manpower,
847 and staffing);
- 848 (2) Equipment to be utilized (including, but not limited to, equipment number, types, capacity, and
849 age);
- 850 (3) Labor requirements (changes in number of employees by classification);
- 851 (4) Provision for program publicity/education/marketing (if appropriate);
- 852 (5) Estimate of the impact of the Service modification (including, but not limited to, increased
853 Diversion Tonnage, reduced costs, and increased public service); and,
- 854 (6) Contractor shall receive the then-current Rate, net of any avoided Governmental Fees applicable
855 to disposal of such material or offsets from any grants (or other similar funding), as compensation for
856 any Niche or non-Niche Services performed in response to a modification of service under this Section
857 4.20.

858 4.20.3 Authority's Review

859 If the Authority does not review and comment on, and approve or disapprove of the modification to the
860 scope of Services within ninety (90) Calendar Days of receiving the Contractor's proposal, the proposal
861 shall be deemed disapproved. The Authority and Contractor may mutually agree to extend the time
862 period for review due to the complexity of the scope of Service modification under consideration, the
863 time needed for the review or approval, or for other reasonable reasons.

864 The Authority may request the assistance of an independent third party to review the proposal. The
865 Contractor shall pay the reasonable costs of that review if the modification to the scope of Services is
866 initiated by the Contractor and such review is reasonably necessary, as determined by the Authority
867 Contract Manager. The Authority shall pay those costs if the modification to the scope of Services is
868 initiated by the Authority. The cost of that review shall be estimated in advance of the work, and
869 provided to the Contractor for comment and agreement to pay. Contractor's refusal to pay the
870 reasonable cost of review of a Contractor-initiated proposal shall be grounds for Authority rejection of
871 that proposal.

872 Contractor shall promptly provide operating and business Records requested by the Authority that are
873 reasonably required to verify the reasonableness and accuracy of the impacts associated with a
874 modification to the scope of Services. Contractor shall fully cooperate with the Authority's request and
875 provide Authority and its agent(s) copies of or access to Contractor's Records.

876 4.20.4 Approval of Modification to Scope of Services

877 Upon Authority approval or determination, Authority shall issue a notice approving the modification to
878 the scope of Service and documenting any change to the Rate, and approved change to Contractor's
879 obligations hereunder. The Parties shall prepare a written amendment to the Agreement documenting
880 any and all changes resulting from the modification to the scope of Services. No adjustment in Rates,
881 change in Contractor's obligations, or change in scope of Services shall become effective absent that
882 Authority approval or determination.

883 4.20.5 Authority's Remedies

884 If Contractor and Authority cannot agree in good faith on terms and conditions of Contractor providing
885 new Services within sixty (60) Calendar Days from the end of the Authority's review period described in
886 Section 4.20.3:

887 1) In the event that the subject services are: (a) not Niche Services; and/or, (b) the Authority desires to
888 have Contractor provide the requested new/additional services, the Authority and Contractor agree to
889 binding Arbitration limited to the remaining disputed issues that were identified in the 60-day period ;
890 or,

891

892 2) In the event that the subject services are Niche Services, the Authority may permit Persons other than
893 Contractor to provide those Niche Services at a location other than the Approved Processing Facilities
894 and Landfill only after Parties have exhausted the requirements of Sections: 3.2, 4.20.5(1) and 4.20.2(6)

895 **4.21 Triennial Review of 75% Recycling Goal**

896 The Authority and Contractor agree that the common goal of the Parties for this Agreement is to
897 facilitate the local achievement of the State's seventy-five percent (75%) recycling goal by the year 2020.

898 In January of 2016 and every three (3) years thereafter during the Term, Authority and Contractor shall
899 meet to review the current level of recycling (as measured by CalRecycle) being achieved within the
900 Authority's service area. The Franchise Agencies' staff and Franchise Collectors management shall also
901 be invited to the meetings. These meetings shall be called "Recycling Goal Meetings." One (1) week
902 prior to each Recycling Goal Meeting, each Party shall provide the other with its assessment of the
903 progress and performance towards achieving the seventy-five percent (75%) recycling goal by 2020. The
904 Parties shall meet to discuss their respective assessments and to cooperatively develop
905 recommendations for improvements or modernizations of programs, services, or the methods for
906 providing them. The objective of the Parties during these meetings shall be to identify continuous
907 improvement opportunities and formulate recommendations for implementing them within the existing
908 cost structure of the Agreement and Franchise Agency Collection Franchises.

909 The Authority Contract Manager and Contractor shall jointly develop a report to the Authority Board of
910 Directors advising the Board of Directors on the progress towards the diversion goal. In the event that
911 the Authority Contract Manager and Contractor are not in agreement about certain findings or
912 recommendations, each Party may submit their own, separate report specific to those issues. The
913 Authority Board of Directors shall review the report(s) at their April meeting in each year that a
914 Recycling Goal Meeting occurs and shall determine whether to proceed with Option A or Option B
915 below.

916 A. If Contractor's existing Recycling and Processing programs are on schedule towards achieving
917 the seventy-five percent (75%) recycling rate, or have achieved and have maintained seventy-five
918 percent (75%) recycling rate, Contractor shall continue to operate its existing Recycling and Processing
919 programs throughout Authority's service area. Notwithstanding the foregoing, the parties shall still hold
920 and attend the triennial Recycling Goal Meetings to discuss Contractor's programs, including but not
921 limited to the feasibility of increasing the rate of recycling within the Authority's service area beyond
922 seventy-five percent (75%).

923 B. If Contractor's existing Recycling and Processing programs are not on schedule towards
924 achieving seventy-five percent (75%) recycling rate, then within ninety (90) days after the Authority
925 Board of Directors meeting to consider the report, the Authority shall conduct a performance review of
926 the Contractor to determine whether programs and Services required under this agreement, including
927 the Enhanced Collection Services described in **Exhibit 2.4.6**, have been fully implemented in good faith
928 by the Contractor. Contractor shall fully cooperate with such performance review including providing
929 information and making management available for interviews with the Authority's staff or agents.

930 i. In the event that the Authority Board of Directors concludes that Contractor has failed
931 to fully implement programs in good faith, at a minimum, the frequency of the Recycling Goal
932 Meetings shall be annual until the plan has been fully implemented.

933 ii. In the event that the Authority Board of Directors conclude that Contractor has fully
934 implemented programs in good faith, the Authority may request and Contractor shall develop
935 and propose to Authority a plan for new or modified Recycling and Processing programs that are
936 designed to achieve the seventy-five percent (75%) recycling rate in the most reasonable, cost-
937 effective, and expedient manner possible. Contractor's proposal should identify any elements of
938 the program that Contractor believes would impact the Franchise Agencies' agreements with
939 the Franchised Collector(s). The Parties will review such a plan consistent with the requirements
940 of Section 4.20 of this Agreement.

941 The parties agree that the 75% goal is a target and not a contractually required or guaranteed recycling
942 rate put forth by Contractor as part of this Agreement. The intent of the performance review
943 referenced in Subsection 4.21.B shall be to determine whether Contractor has made good faith efforts
944 to implement the programs and services outlined in this Agreement.

945

946 **ARTICLE 5**
 947 **CONTRACTOR COMPENSATION**

948 **5.1 General**

949 The Contractor shall perform and pay all costs associated with all of its obligations, responsibilities, and
 950 duties under this Agreement. In consideration of its performance of these duties, the Contractor may
 951 charge and collect the Post Collection Rate for the Services provided under this Agreement from the
 952 Franchise Agencies' Franchised Collectors. This shall be the Contractor's only compensation allowed
 953 under this Agreement. Nothing in this Agreement should imply that the Authority or Franchise Agencies
 954 have any direct obligation to make payments to Contractor for services provided under this Agreement.

955 **5.2 Initial Rate**

956 **5.2.1 General**

957 The Contractor's initial compensation shall be a blended per-Ton Rate that is charged to the Franchise
 958 Agencies' Franchised Collectors on all Tons of material, regardless of type, delivered by these Franchised
 959 Collectors to the Contractor. The Rate that forms the basis of Contractor's compensation under this
 960 Agreement shall include:

- 961 1) The "material specific" portion of the Rate which is to compensate Contractor for the services
 962 provided under Sections 4.1.1 through 4.1.6 of this Agreement;
- 963 2) The "HHW" portion of the Rate which is to compensate Contractor for the services provided
 964 under Section 4.1.7 of this Agreement;
- 965 3) The "Authority" portion of the Rate which is to compensate Contractor for its payment of the
 966 Authority's operating expenses;
- 967 4) The "Recycling Rebate" portion of the Rate which confers the value of the Recyclable
 968 Materials Processed under this Agreement to the Franchise Agencies' rate payers; and
- 969 5) The "Governmental Fee" portion of the Rate which is to compensate Contractor for fees
 970 required by various regulatory agencies related to the use of the Landfill and Approved Facilities.

971 **5.2.2 Material Specific Portion of the Rate**

972 The initial "material specific" portion of the Rate shall be based on Contractor's calendar year 2014
 973 annual proposed cost of service of ten million two hundred fifty one thousand one hundred thirty five
 974 dollars (\$10,251,135), less the initial cost of governmental fees, as described in Section 5.2.6, of one
 975 million four hundred fifty four thousand six hundred thirty four dollars and sixty four cents
 976 (\$1,454,634.64).

977 The material specific portion of the initial Rate net of governmental fees shall equal sixty nine dollars
978 and fifty seven cents (\$69.57) per ton which is calculated as follows:

979 a) Eight million seven hundred ninety six thousand five hundred twenty four dollars and thirty six
980 cents (\$8,796,500.36);

981 b) Divided by the total annual Tonnage of all material types in the Franchise Agencies for which
982 Richmond Sanitary Service is the Franchised Collector, which is stipulated by the Parties for the
983 purposes of the initial Rate setting at one hundred twenty six thousand four hundred thirty four
984 (126,434) tons per year; and,

985 c) Rounded to the nearest penny.

986 **5.2.3 HHW Portion of the Rate**

987 The initial "HHW" portion of the Rate shall be based on the Parties jointly-estimated calendar year 2014
988 annual proposed cost of service of seven hundred ninety-one thousand one hundred forty-four dollars
989 (\$791,144). The HHW Portion of the Rate shall be shared with the City of El Cerrito and the portion paid
990 by the City of El Cerrito shall not be included in the Rate calculated under this Agreement. The portion
991 of the initial Rate funded under this Agreement is seven hundred twenty seven thousand eight hundred
992 seventy seven dollars (\$727,877).

993 The HHW portion of the initial Rate shall equal five dollars and seventy six cents (\$5.76) per ton which is
994 calculated as follows:

995 a) Seven hundred twenty seven thousand eight hundred seventy seven dollars (\$727,877);

996 b) Divided by the total annual Tonnage of all material types in the Franchise Agencies for which
997 Richmond Sanitary Service is the Franchised Collector, which is stipulated by the Parties for the
998 purposes of the initial Rate setting at one hundred twenty six thousand four hundred thirty four
999 (126,434) tons per year; and,

1000 c) Rounded to the nearest penny.

1001 **5.2.4 Authority Portion of the Rate**

1002 The initial "Authority" portion of the Rate shall be based on the Authority's estimated calendar year
1003 2014 annual proposed revenue requirement of one million dollars (\$1,000,000). The Authority portion
1004 of the Rate shall be shared with the City of El Cerrito and the portion paid by the City of El Cerrito shall
1005 not be included in the Rate calculated under this Agreement. The portion of the initial Rate funded
1006 under this Agreement is nine hundred twenty thousand thirty one dollars (\$920,031).

1007 The Authority portion of the initial Rate shall equal seven dollars and twenty eight cents (\$7.28) per ton
1008 which is calculated as follows:

1009 a) Nine hundred twenty thousand thirty one dollars (\$920,031);

1010 b) Divided by the total annual Tonnage of all material types in the Franchise Agencies for which
 1011 Richmond Sanitary Service is the Franchised Collector, which is stipulated by the Parties for the
 1012 purposes of the initial Rate setting at one hundred twenty six thousand four hundred thirty four
 1013 (126,434) tons per year; and,

1014 c) Rounded to the nearest penny.

1015 **5.2.5 Recycling Rebate Portion of the Rate**

1016 The initial "Recycling Rebate" portion of the Rate shall be based on the Contractor's proposed calendar
 1017 year 2014 annual proposed rebate value of seven hundred twenty two thousand three hundred twenty
 1018 dollars (\$722,320). This estimate is based upon a rebate value of forty dollars (\$40) per ton of
 1019 Traditional Recyclable Materials and not Specialty Recyclable Materials received under this Agreement,
 1020 multiplied by the Parties agreed-upon estimated annual tonnage of eighteen thousand fifty-eight
 1021 (18,058). The initial recycling rebate shall be used in the establishment of Rates for Calendar Years 2014
 1022 and 2015. The Recycling Rebate shall only be used in calculating the Rate charged to Richmond Sanitary
 1023 Service for the Franchise Agencies where they are the Franchised Collector.

1024 The Recycling Rebate portion of the initial Rate shall equal negative five dollars and seventy one cents (-
 1025 \$5.71) per ton which is calculated as follows:

1026 a) Negative seven hundred twenty two thousand three hundred twenty dollars (\$722,320);

1027 b) Divided by the total annual Tonnage of all material types in the Franchise Agencies for which
 1028 Richmond Sanitary Service is the Franchised Collector, which is stipulated by the Parties for the
 1029 purposes of the initial Rate setting at one hundred twenty six thousand four hundred thirty four
 1030 (126,434) tons per year; and,

1031 c) Rounded to the nearest penny.

1032 **5.2.6 Governmental Fee Portion of the Rate**

1033 The initial "Governmental Fee" portion of the Rate shall be based on the governmental fees in place at
 1034 the execution of this Agreement (as presented in the below table) and the stipulated basis for
 1035 extrapolating those fees to annual costs, as described herein.
 1036

Fee Description	Fee Amount (per ton)	Stipulated Basis (tons)	Annual Fee Amount	Material Type
Local Enforcement Agency – Golden Bear Transfer Station & West Contra Costa Sanitary Landfill	\$ 1.75	88,334	\$ 154,584.50	Solid Waste

City of Richmond Franchise Fee	\$ 1.50	88,334	\$ 132,501.00	Solid Waste Disposed
Host Mitigation Fees (IRRF)	\$ 3.38	18,058	\$ 62,661.26	All Tons
Host Mitigation Fees (APPROVED TRANSFER FACILITY)	\$ 3.38	88,334	\$ 306,518.98	Solid Waste Disposed
West Contra Costa Sanitary Landfill Recycling Fee – paid on all Processed Materials	\$ 0.91	20,042	\$ 18,639.06	Processed Material (for example C&D, organics, etc.)
Contra Costa County Solid Waste Fee (AB 939 at KCLF)	\$ 0.15	88,334	\$ 13,250.10	Solid Waste Disposed
AB 1220 Integrated Waste Management Fee at KCLF	\$ 1.40	88,334	\$ 123,667.60	Solid Waste Disposed
Contra Costa Bailey Road Surcharge (KCLF)	\$ 0.68	88,334	\$ 60,067.12	Solid Waste Disposed
Bailey Road Charge (KCLF)	\$ 0.32	88,334	\$ 28,266.88	Solid Waste Disposed
Contra Costa County Landfill Surcharge (KCLF)	25% of Gate Rate, net of taxes/fees	88,334 \$34.50 minus per ton fees X 0.25 / 1.25	\$ 564,454.26	Calculation

1037

1038

1039

Note:

1040

1) Chart estimates Governmental Fees by material type and Facility based on the SOI estimated tons.

1041

2) Host Mitigation Fees and the West Contra Costa Sanitary Landfill Recycling Fee are adjusted annually and adjusted fee amounts go into effect on January 1 of each year

1042

1043

1044

The Governmental Fee portion of the initial Rate shall equal eleven dollars and fifty one cents (\$11.51)

1045

per ton which is calculated as follows:

- 1046 a) One million four hundred fifty four thousand six hundred thirty four dollars and sixty four cents
1047 (\$1,454,634.64);
- 1048 b) Divided by the total annual Tonnage of all material types in the Franchise Agencies for which
1049 Richmond Sanitary Service is the Franchised Collector, which is stipulated by the Parties for the
1050 purposes of the initial Rate setting at one hundred twenty six thousand four hundred thirty four
1051 (126,434) tons per year; and,
- 1052 c) Rounded to the nearest penny.

1053 **5.2.7 Calculation of the Initial Rate**

1054 The initial Rate for the Franchise Agencies where Richmond Sanitary Service acts as the Franchised
1055 Collector shall be eighty eight dollars and forty cents (\$88.40) per ton, which is calculated by adding the
1056 Material Specific, HHW, Authority, Recycling Rebate, and Governmental Fee portions of the Rate
1057 together.

1058 **5.3 Annual Adjustments to the Rate**

1059 **5.3.1 General**

1060 The Rates for the first Rate Year ending December 31, 2014, are deemed established by the Parties
1061 mutual execution of this Agreement with no further action required. Unless and until the initial Rates set
1062 forth in Section 5.2 are adjusted by the Authority, the Contractor shall provide the Services required by
1063 this Agreement, charging no more and no less than the Rates authorized herein. No adjustment to the
1064 Rates shall be valid until the Authority Board of Directors takes official action in the form of a written
1065 resolution to adopt adjusted Rates. The Authority shall be responsible for considering annual
1066 adjustments to the Rate charged under this Agreement in a manner consistent with the requirements of
1067 this Section 5.3.

1068 Contractor shall submit its preliminary request for the adjustment of the Rate no later than September 1
1069 of each Calendar Year for the Rate effective January 1 of the following Calendar Year. The request shall
1070 be submitted in a format acceptable to the Authority Contract Manager. Contractor's request for the
1071 adjustment of the Rate shall document all calculations and include all supporting schedules,
1072 documentation of changes to Governmental Fees, and any other documentation or evidence
1073 determined by the Authority Contract Manager to be reasonably necessary to ensure that the
1074 calculation of the Rate adjustments has been performed in strict conformance to the requirements of
1075 this Section 5.3.

1076 The Authority's Board of Directors shall approve the Rate adjustment at its regularly-scheduled
1077 November meeting each year. If the adjustment to Rates cannot be considered and approved at that
1078 meeting due to a delay caused solely by the Authority, the Authority shall allow the Contractor to
1079 retroactively bill customers for the amount of the adjustment to the Rate for any period of said delay
1080 that is caused by the Authority. If the adjustment to Rates cannot be considered and approved at that
1081 meeting due to a delay caused in whole by Contractor's delay in submitting the request in a complete

1082 and accurate form, then prior Rates remain in effect until such adjustment is made and Contractor shall
1083 not be entitled to any revenue lost because of the delay.

1084 **5.3.2 Adjustment to Material Specific Portion of the Rate**

1085 The material-specific portion of the Rate (initially \$69.57 per ton) shall be adjusted annually, based on
1086 eighty-five percent (85%) of the average monthly change in the San Francisco-San Jose-Oakland All
1087 Urban Consumers CPI. The average monthly change shall be calculated by averaging the percentage
1088 change in the index values for the most recent July through June, compared to the values for the same
1089 month one year prior.

1090 For example, the average monthly change, using the fictional values presented in the table below, would
1091 equal one and sixteen hundredths percent (1.16%) and eighty-five percent (85%) of the average monthly
1092 change would equal ninety eight hundredths of a percent (0.98%).

1093

	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>
2011/ 2012	123.9	124.7	125.1	125.3	124.8	125.5	123.2	122.9	124.3	123.8	124.4	124.6
2012/ 2013	124.8	126.1	127.2	127.4	126.8	127.1	124.5	125.2	125.9	124.2	125.1	125.5
% Chg	0.73%	1.12%	1.68%	1.68%	1.60%	1.27%	1.06%	1.87%	1.29%	0.32%	0.56%	0.72%

1094
1095 When applied to the material specific portion of the initial Rate, this example would result in a revised
1096 material-specific portion of the Rate of seventy dollars and fifty three cents (\$70.53) per ton.

1097
1098 The maximum adjustment due to an increase in CPI to the material-specific portion of the blended Rate
1099 shall be four percent (4%) in each year of the Agreement; however, in the event that eighty-five percent
1100 (85%) of the average monthly change in the CPI exceeds four percent (4%) the Contractor shall be
1101 allowed to carryover the amount that exceeds four percent (4%) to the following Rate Year, provided
1102 that doing so does not cause the Rate adjustment for that following Rate Year to exceed four percent
1103 (4%). The minimum adjustment due to changes in CPI to the material-specific portion of the blended
1104 rate shall be zero percent (0%); however, in the event that eighty-five percent (85%) of the average
1105 monthly change in CPI results in a negative value, the Authority shall be allowed to carryover the
1106 negative amount to subsequent Rate Years, provided that doing so does not cause the Rate adjustment
1107 for that subsequent Rate Year to be less than zero percent (0%).

1108 **5.3.3 Adjustment to HHW Portion of the Rate**

1109 The Contractor and the Authority Contract Manager shall jointly prepare and submit a draft HHW Drop-
1110 off Services budget to the Authority Board of Directors for its review and approval. This draft budget
1111 shall be submitted no later than September 1 in each Calendar Year for the next Calendar Year's budget.
1112 The Authority Board of Directors may approve that budget as submitted or may request modifications to
1113 the budget, including requesting either an increase in service levels or a reduction or elimination of

1114 Services in order to reduce costs. Once approved, this budget shall serve as the revenue requirement for
 1115 the HHW portion of the Rate for the coming year. Contractor shall be entitled to an operating margin of
 1116 eleven and fifty five one hundredths percent (11.55%) for calendar year 2014 and fifteen percent (15%)
 1117 in all subsequent Rate Years.

1118 The revenue requirement for the HHW portion of the Rate shall be divided by the actual Tonnage of
 1119 Solid Waste, Recyclable Materials, C&D Materials, Organic Materials, and Dry Materials received by
 1120 Contractor from the Franchise Agencies' Franchised Collector in the most recently completed twelve
 1121 month period to determine the adjusted Rate.

1122 For example:

1123 If, the HHW revenue requirement was six hundred thousand dollars (\$600,000); and,

1124 If, the total tonnage received by Contractor from the Franchised Collector in the most recently
 1125 completed twelve month period is one hundred fifty thousand (150,000) tons;

1126 Then, the HHW portion of the Rate would be four dollars and zero cents (\$4.00) per ton.

1127 **5.3.4 Adjustment to Authority Portion of the Rate**

1128 No later than September 1 of each Calendar Year, the Authority shall establish a budget for their
 1129 operations and shall specifically identify the portion of that budget to be funded through the Rate. Once
 1130 approved, this budget shall serve as the revenue requirement for the Authority portion of the Rate.

1131 The revenue requirement for the Authority portion of the Rate shall be divided by the actual Tonnage of
 1132 Solid Waste, Recyclable Materials, C&D Materials, Organic Materials, and Dry Materials received by
 1133 Contractor from the Franchised Collector in the most recently completed twelve month period to
 1134 determine the adjusted Rate.

1135 For example:

1136 If, the Authority revenue requirement was nine hundred thousand dollars (\$900,000); and,

1137 If, the total tonnage received by Contractor from the Franchised Collector in the most recently
 1138 completed twelve month period is one hundred fifty thousand (150,000) tons;

1139 Then, Authority portion of the Rate would be six dollars and zero cents (\$6.00) per ton.

1140 **5.3.5 Adjustment to Recycling Rebate Portion of the Rate**

1141 When establishing the revenue requirement for the Recycling Rebate portion of the Rate for each Rate
 1142 Year of the Agreement, starting with 2016, the revenue requirement shall include adjusting the per-Ton
 1143 and annual Tonnage values considered in the establishment of the initial Recycling Rebate described in
 1144 Section 5.2.5 above.

1145 The initial per Ton value of negative forty dollars (-\$40) shall be adjusted to be twenty eight and
 1146 seventeen hundredths percent (28.17%) of the monthly average (for the most recent July through June)
 1147 low side of the "Official Board Markets", "Los Angeles" index for "Mixed Paper (2) – Export to China –
 1148 FAS", rounded to the nearest penny. That index value was 142 in November 2012 at the time of
 1149 Contractor's Proposal to the Authority.

1150 For example:

1151 If the index values for the preceding twelve months are: Jul – 148, Aug –
 1152 147; Sept – 144, Oct – 143, Nov – 141, Dec – 138, Jan – 138, Feb – 144,
 1153 Mar – 145, Apr – 148, May – 146, Jun – 149, then,

1154 Monthly Average = $\$144.25 \times 0.2817$ (stated percentage of OBM) =
 1155 \$40.64 Revised Per-Ton Rebate

1156 The initial annual Tonnage value shall be adjusted to reflect the actual total Tonnage of source
 1157 separated Residential single-stream Recyclable Materials collected by the Franchised Collector and
 1158 delivered to the Approved Recyclable Materials Processing Facility during the preceding twelve (12)
 1159 months.

1160 For example:

1161 If the Recyclables Tonnage values for the preceding twelve months are:
 1162 Jul – 1,448, Aug – 1,547; Sept – 1,443, Oct – 1,421, Nov – 1,494, Dec –
 1163 1,384, Jan – 1,652, Feb – 1,644, Mar – 1,715, Apr – 1,480, May – 1,346,
 1164 Jun – 1,549, then,

1165 Revised Annual Tonnage = 18,123

1166 The revised per-Ton rebate value is then multiplied by the revised
 1167 annual Tonnage value to arrive at the recycling rebate for the coming
 1168 Calendar Year. For example:

1169 18,123 Revised Annual Tonnage

1170 X 40.64 Revised Per-Ton Rebate Value

1171 -\$736,518.72 Revised Recycling Rebate Revenue Requirement

1172 The revenue requirement for the Recycling Rebate portion of the Rate shall be divided by the actual
 1173 Tonnage of Solid Waste, Recyclable Materials, C&D, Organic Materials, and Dry Materials received by
 1174 Contractor from the Franchise Agencies' Franchised Collector in the most recently completed twelve
 1175 month period to determine the adjusted Rate.

1176 For example:

1177 If, the Recycling Rebate revenue requirement was negative seven hundred thirty six thousand
1178 five hundred eighteen dollars and seventy two cents (-\$736,518.72); and,

1179 If, the total tonnage received by Contractor from the Franchised Collector in the most recently
1180 completed twelve month period is one hundred fifty thousand (150,000) tons;

1181 Then, the Recycling Rebate portion of the Rate would be negative four dollars and ninety one
1182 cents (-\$4.91) per ton.

1183 **5.3.6 Adjustment to Governmental Fee Portion of the Rate**

1184 When establishing the revenue requirement for the Governmental Fee portion of the Rate for each Rate
1185 Year of the Agreement, starting with 2015, the revenue requirement shall include adjusting the basis for
1186 any Governmental Fees which have changed in the prior year and annual Tonnage values considered in
1187 the establishment of the Governmental Fee portion of the Rate described in Section 5.2.6 above.

1188 When preparing its request for the adjustment of Rates, Contractor shall prepare a table, consistent
1189 with the table of Governmental Fees presented in Section 5.2.6 above identifying the amount of each
1190 fee, the revised basis for the fee using the prior twelve months actual operating results, and the revised
1191 projected annual fee amount. The revised basis for any Governmental Fee that is based on a percentage
1192 of revenue may not exceed the percentage adjustment calculated for the Material Specific portion of
1193 the Rate under Section 5.3.2, unless such revised basis is required by the governmental agency
1194 responsible for setting and/or adjusting such fee. The sum of the annual fee amounts shall serve as the
1195 revenue requirement for the Governmental Fee portion of the Rate.

1196 In the event that there is a change in any existing Governmental Fee or creation of any new
1197 Governmental Fee impacting the services provided under this Agreement and such change becomes
1198 known to the Parties after the Authority's approval of revised Rates, the Authority shall have the option
1199 of (1) revising the Rate outside of the schedule defined herein or (2) may postpone the adjustment of
1200 the Rate and allow Contractor to apply a surcharge to the following year's Rate in order to make up the
1201 change. The Authority shall have no obligation to make such out of schedule adjustments or allow such
1202 surcharges in the event that the cumulative remaining annual effect of such change is valued at less
1203 than twelve thousand five hundred dollars (\$12,500).

1204 In the event that Contractor knew or reasonably should have known of such change prior to the
1205 approval of revised Rates and Contractor fails to notify the Authority of such change prior to the
1206 adjustment of Rates, Contractor shall not be allowed to recover the cost associated with such change. In
1207 such case, Contractor may identify the revised Governmental Fee amount in the subsequent Rate
1208 adjustment requests, but such requests shall not include any surcharge, catch-up payments, or other
1209 recovery of costs incurred in the prior Rate period.

1210 The revenue requirement for the Governmental Fee portion of the Rate shall be divided by the actual
1211 Tonnage of Solid Waste, Recyclable Materials, C&D Materials, Organic Materials, and Dry Materials
1212 received by Contractor from the Franchised Collector in the most recently completed twelve month
1213 period to determine the adjusted Rate.

1214

1215 For example:

1216 If, the Governmental Fee revenue requirement was one million seven hundred thousand dollars
 1217 (\$1,700,000); and,

1218 If, the total tonnage received by Contractor from the Franchised Collector in the most recently
 1219 completed twelve month period is one hundred fifty thousand (150,000) tons;

1220 Then, Governmental portion of the Rate would be eleven dollars and thirty three cents (\$11.33).

1221 **5.3.7 Calculation of the Adjusted Rate**

1222 The adjusted portions of the Rate, as described in Sections 5.3.2 through 5.3.6, shall be added together
 1223 to determine the Rate for the following Rate Year. Using the example calculations provided in Sections
 1224 5.3.2 through 5.3.6 above, the revised adjusted per ton Rate would be calculated as:

- 1225 a) Revised Material Specific portion of the Rate = \$70.53; plus,
- 1226 b) Revised HHW portion of the Rate = \$4.00; plus,
- 1227 c) Revised Authority portion of the Rate = \$6.00; plus,
- 1228 d) Revised Recycling Rebate portion of the Rate = -\$4.91; plus,
- 1229 e) Revised Governmental Fee portion of the Rate = \$11.33; equals
- 1230 f) Revised Rate = \$86.95

1231 **5.4 Establishment of Post-Collection Rate**

1232 The Authority shall establish the Post-Collection Rate (PCR) amount for each Sector and collection
 1233 service level annually, based on the revised Rate (as calculated under Section 5.3). Contractor, through
 1234 the Franchise Collector's billing system, may include the PCR in the total monthly rate charged to
 1235 Customers based on the Authority-approved PCR for each collection service level. The PCR for each
 1236 collection service level shall be measured in gallons for cart service, cubic yards for bin service, and tons
 1237 for roll-off service. The PCR for each collection service level and Sector shall calculated and approved by
 1238 the Authority based on the approved per-ton Rate and applicable annual tonnage amounts. The
 1239 Authority may modify the structure of the PCR, for example among collection service levels within a
 1240 Sector and/or among Sectors, provided that Contractor does not object to the revised structure on the
 1241 demonstrable basis of Contractor's loss resulting from such restructuring. Contractor's objection must
 1242 be filed with the Authority either in writing in advance of or through formal public comment at the
 1243 meeting of the Authority Board of Directors where the establishment of the Rate and PCR are
 1244 considered.

1245 **5.5 Other Adjustments to Compensation**

1246 The Contractor may request the Authority's consideration of an adjustment to Contractor's
1247 compensation in the event of the following circumstances:

- 1248 • Enactment of new or changes to existing federal, State and local fees and surcharges mandated to
1249 be collected or paid by Contractor;
- 1250 • A Change in Law for which Contractor compliance is mandatory and that results in documented
1251 increases in the specific cost of providing Services pursuant to this Agreement; and,
- 1252 • Authority-requested changes in the scope of Services provided by the Contractor.

1253 The Authority shall consider such requests and shall not unreasonably deny an adjustment to Rates
1254 under the prescribed circumstances. In the case of the enactment of new or increased government or
1255 Franchise Agency fees and charges, the Authority shall approve the request as a pass-through out of
1256 schedule or during the next regularly scheduled adjustment.

1257 In the event of a special circumstances request for an adjustment to Rates, the Contractor shall
1258 document its estimate of the incremental change in costs associated with the special circumstance. The
1259 Authority may request additional information from the Contractor if the documentation provided is
1260 determined to be insufficient. The Authority may consider information provided by the Contractor along
1261 with information from other sources to estimate the cost associated with such a special circumstance. In
1262 the event the Contractor requests an interim Compensation adjustment in accordance with this Section
1263 and to the extent Contractor's Application is based on costs associated with Affiliated or Related Party
1264 Entities, Contractor shall provide all information requested by the Authority as part of its review of
1265 Contractor's application, including, but not limited to, all information from Related Parties requested by
1266 the Authority regarding any transaction between Contractor and any Related Party Entity or Affiliate
1267 relating to Contractor's performance under this Agreement.

1268 The following items shall not be considered in the adjustment of the Rate or PCR established under this
1269 Agreement:

- 1270 • Changes in the price of fuel;
- 1271 • Decreases in Recycling revenues (except as specifically contemplated in Section 5.3.5) due to
1272 changes in market conditions or any other factor from the sale of Recyclable Materials;
- 1273 • Increases in the costs of Solid Waste, Recyclable Materials, Organic Materials, or C&D Material
1274 Processing not incurred as a result of Changes in Law;
- 1275 • Increases in Transportation time and/or costs related to provision of Services provided under the
1276 Agreement;
- 1277 • Changes in the number of Customers due to changes in population or housing/business
1278 development or annexations;

- 1279 • Changes in Customer subscription levels (e.g., as Customers subscribe to Recycling and Organics
1280 Collection Services they may be able to reduce Solid Waste Collection, resulting in a potential
1281 revenue loss to the Contractor);
- 1282 • Changes in the volume or composition of materials;
- 1283 • Changes in the Approved Processing Facilities used to perform Services, unless those changes to
1284 facilities are the direct result of an Authority directed change in scope; or,
- 1285 • Cost for providing Enhanced Collection Services described in Exhibit 2.4.6, provided that nothing in
1286 this Agreement shall prohibit the Franchised Collector from recovering such costs under the
1287 provisions of their contract with the Franchising Agency(ies).
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ARTICLE 6 INDEMNITY, INSURANCE, AND PERFORMANCE BOND

6.1 Defense and Indemnification

Contractor shall hold harmless, defend and indemnify Authority and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the active negligence or willful misconduct of the Authority (including the Persons described in the definition of Authority in Exhibit 1). However, if a final judgment or resolution of any Action allocates Liability by determining that any portion of Liability is attributable to a wrongful or active negligent act, error or omission of the Authority, the Authority shall pay those allocated portions of Liabilities and of defense costs.

6.1.1 Agreement Defense

Contractor shall defend, at its sole cost and expense, with counsel approved by the Authority, the Authority (including the Persons described in the definition of Authority in Exhibit 1) in any Actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the Authority (including the Persons described in the definition of Authority in Exhibit 1) that result or are claimed to have resulted directly or indirectly by Contractor's negligent performance or non-performance of this Agreement, including the following:

- (1) **Contractor negligence or misconduct:** the wrongful, willful or negligent act, error or omission, or the misconduct of the Contractor (including the Persons described in the definition of Contractor in Exhibit 1);
- (2) **Failure to comply with Applicable Law:** Contractor's failure or alleged failure to comply with Applicable Law or any alleged Violation thereof, including any Actions in connection with its Permits;
- (3) **Breach of representation:** Contractor's breach of any representation, warranty or covenant made in this Agreement; or,
- (4) **Challenges to Agreement:** legal challenge to the authority of the Authority to enter into this Agreement or to contract out Services, regardless of the legal theory advanced or relied upon by any interested third party, including any appeals necessary to validate that authority or the Agreement.

Authority reserves the right to retain, at its sole cost and expense, co-counsel and Contractor shall direct Contractor's counsel to assist and take direction from such co-counsel with respect to Authority's defense.

1321 **6.1.2 Agreement Indemnification**

1322 Contractor shall indemnify, release, and hold harmless, at its sole cost and expense, the Authority
 1323 (including the Persons described in the definition of Authority in Exhibit 1) from and against all Liabilities
 1324 paid, incurred or suffered by, imposed upon or asserted against, the Authority (including the Persons
 1325 described in the definition of Authority in Exhibit 1) that result or are claimed to have resulted directly
 1326 or indirectly by Contractor's performance or non-performance of this Agreement, including the items
 1327 listed in preceding Section 6.1.1, whether or not those Liabilities are litigated, settled or reduced to
 1328 judgment and whether or not those Liabilities are caused in part by any wrongful or negligent act, error
 1329 or omission of any Person indemnified under this Agreement. However, if a final judgment or resolution
 1330 of any Action allocates Liability by determining that any portion of Liability is attributable to a wrongful
 1331 or active negligent act, error or omission of the Authority (including the Persons described in the
 1332 definition of Authority in Exhibit 1), the Authority shall pay those allocated portions of Liabilities and of
 1333 defense costs

1334 **6.1.3 Unpermitted Waste Defense and Indemnification**

1335 Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel
 1336 approved by the Authority, the Authority (including the Persons described in the definition of Authority
 1337 in Exhibit 1) in any Actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or
 1338 asserted against, the Authority that result or are claimed to have resulted directly or indirectly from the
 1339 presence, Disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted
 1340 Waste or petroleum to, in, on, at, or under the Landfill or Approved Processing Facilities, whether:

- 1341 (1) in one or more instance,
 1342 (2) threatened or transpired,
 1343 (3) Contractor is negligent or otherwise culpable, or
 1344 (4) those Liabilities are litigated, settled, or reduced to a final judgment.

1345 For purposes of this Indemnity, Liabilities includes, in addition to those included in Exhibit 1, Liabilities
 1346 arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and
 1347 implementation of any removal, remedial, response, Closure, Post-Closure or other plan, regardless of
 1348 whether undertaken due to government directive or action, such as remediation of surface or ground
 1349 water contamination and replacement or restoration of natural resources.

1350 The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e)
 1351 and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify
 1352 the Authority from liability in accordance with this Section.

1353 **6.1.4 Environmental Indemnity**

1354 Contractor shall defend, indemnify, and hold the Authority harmless against and from any and all claims,
 1355 suits, losses, penalties, damages, and liability for damages of every name, kind and description, including

1356 attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in
 1357 handling Unpermitted Waste.

1358 **6.1.5 HHW Services Indemnity and Insurance**

1359 Contractor shall require its HHW services Subcontractor to fully indemnify, defend, and hold harmless
 1360 both the Authority and Contractor from and against any and all liability, loss, damage, expense, costs
 1361 (including without limitation costs and fees of litigation) of every nature arising out of or in connection
 1362 with HHW services Subcontractor's performance of activities, operations, and final disposal or recycling
 1363 associated with the Household Hazardous Waste Facility, except such loss or damage which was caused
 1364 by the active negligence or willful misconduct of the Authority or Contractor. Furthermore, the
 1365 subcontractor shall maintain certificates of insurance for Professional and Pollution Legal Liability
 1366 naming both the Authority and Contractor as an additional insured, to the extent available, in the
 1367 minimum amounts of three million dollars (\$3,000,000) per occurrence and five million dollars
 1368 (\$5,000,000) in the aggregate. In the event that the HHW services Subcontractor is unable to meet the
 1369 required minimum insurance amounts, then Contractor shall take all reasonable actions to provide an
 1370 equivalent indemnity of the Authority in the interim, while the Authority and Contractor meet and
 1371 confer to develop an alternative that adequately protects the Authority.

1372 **6.2 Insurance Policies**

1373 **6.2.1 Types and Amounts; Deductibles and Self-Insured Retentions**

1374 As of January 1, 2014, Contractor shall secure and maintain, and enter into agreements to cause its
 1375 Subcontractors, if any, to secure and maintain or provide that Subcontractors are insureds under
 1376 Contractor's policies, in full force and effect the types and amounts of insurance coverage, together with
 1377 related specified deductibles and endorsements, listed in Exhibit 6.2 or required by Applicable Law,
 1378 whichever is greater, in a form acceptable to Authority.

1379 The Contractor must declare to Authority any self-insured retentions. Authority at its sole discretion
 1380 may (i) approve them; or, (ii) require Contractor to reduce or eliminate them as respects the Authority,
 1381 its officials and employees; or to procure a bond or letter of credit guaranteeing payment of losses and
 1382 related investigations, claim administration and defense expense.

1383 If any third Person makes a claim against Contractor or any Subcontractors exceeding the amount of any
 1384 deductibles, self-insured reserves, letters of credit, or bonds guaranteeing payment thereof, Contractor
 1385 shall promptly Notify the insurer, bond surety or letter of credit provider and Authority thereof.

1386 **6.2.2 Required Provisions**

1387 **(i) Primary.** Policies shall always be primary with respect to the Contractor's Services and the
 1388 Authority, the Authority's Affiliated employees, the Board of Directors, officers, officials, agents,
 1389 assigns and volunteers (Authority insureds).

1390 **(ii) Additional insureds.** Authority insureds must be included as additional insureds by endorsement
1391 under the Comprehensive General, Automobile Liability, Environmental Impairment Liability Policies
1392 and any other pollution policies secured by Contractor. A copy of the endorsement or evidence of
1393 blanket or contractual additional insured status must be submitted with the certificate(s) of insurance.

1394 **(iii) Excess, not contributory.** Insurance coverage written specifically for the Authority must be
1395 considered excess and not contributory and any insurance or self-insurance maintained by Authority
1396 insureds is in excess of Contractor's insurance and shall not contribute with it.

1397 **(iv) Separate application.** All insurance must apply separately to each insured against whom a claim is
1398 made or suit is brought, except with respect to the limits of the insurer's liability.

1399 **(v) No special limitations.** Coverage shall contain no special limitations on the scope of protection
1400 afforded to Authority insureds, except in cases of fraud perpetrated by the Authority.

1401 **(vi) Reporting provisions.** Any failure to comply with reporting provisions of policies shall not affect
1402 coverage provided to Authority insureds.

1403 **(vii) Waiver of subrogation.** Insurer, including workers compensation and general liability policy
1404 insurers, by endorsement must waive all rights of subrogation against Authority insureds for losses
1405 arising from performance of Services by Contractor, except for the sole negligence of the Authority.

1406 **B. Insurers.** Contractor shall procure insurance from insurers approved by Authority Risk Manager,
1407 an admitted company in California and authorized to do business there, having not less than size
1408 category VII and a rating of A or better ("A-VII") by A.M. Best Company, Inc.

1409 **C. Endorsements; Notices to Authority of Cancellation.** Policies must bear endorsements in
1410 substantially the form provided in Exhibit 6.2, providing that coverage shall not be suspended, voided,
1411 canceled by either Party, reduced in coverage or limits, not renewed, or otherwise changed or modified
1412 except after prior written notice by e-mail, to the Authority thirty (30) Calendar Days in advance, or if
1413 the reason for cancellation is non-payment of premiums, ten (10) Calendar Days in advance.
1414 Endorsements shall not contain mere "best effort" modifiers or relieve the insurer from its responsibility
1415 to give the Authority notice.

1416 **D. Evidence of Coverage.** As of January 1, 2014, Contractor shall provide certificates of insurance
1417 and original endorsements required under this Agreement, signed by an authorized representative of
1418 the insurance company and including the signatory's company affiliation and title. Upon Authority's
1419 request, Contractor shall provide, or cause to be provided, to the Authority documentation acceptable
1420 to the Authority verifying that the individual signing those documents are authorized by the insurer to
1421 bind coverage on the insurer's behalf. At that time and thereafter simultaneously with renewal of the
1422 policies, Contractor shall file with the Authority a certificate of insurance and endorsements, in form and
1423 substance satisfactory to the Authority (including type and amount of coverage, effective dates, and
1424 expiration dates) signed or counter-signed by an authorized officer of the broker, certifying that the
1425 coverage has not lapsed and shall remain in effect at all times during the term of the policy.

1426 **E. Contractor Compliance.** Contractor shall comply with all requirements of policies and the
1427 insurers. Carrying insurance shall not relieve Contractor from any obligations under this Agreement.
1428 Nothing in this Agreement may be construed as limiting in any way the extent to which the Contractor
1429 may be held responsible for payments of damages to Persons or property resulting from Contractor's or
1430 any Subcontractors' performance of Services.

1431 **F. Worker's Compensation.** Contractor shall provide workers' compensation coverage as required
1432 by State law, and prior to January 1, 2014 pursuant to this Agreement, Contractor shall file the following
1433 statement with the Authority.

1434 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer to be
1435 insured against liability for workers' compensation or to undertake self-insurance in accordance with the
1436 provisions of that code, and I shall comply with such provisions before commencing any Services
1437 required by this Agreement.

1438 The Person executing this Certificate on behalf of Contractor affirmatively represents that she/he has
1439 the requisite legal authority to do so on behalf of Contractor, and both the Person executing this
1440 Agreement on behalf of Contractor and Contractor understand that the Authority is relying on this
1441 representation in entering into this Agreement."

1442 **6.3 Performance Surety**

1443 Within seven (7) Calendar Days of the Authority's notification to Contractor that the Authority has
1444 executed this Agreement, Contractor shall file with the Authority a letter of credit or a performance
1445 bond, payable to the Authority, securing the Contractor's performance of its obligations under this
1446 Agreement and such bond shall be renewed annually if necessary so that the performance bond is
1447 maintained at all times during the Term. The surety shall be in the amount of two million dollars
1448 (\$2,000,000) and shall be used to secure the performance of the Contractor's Post-Collection Services
1449 obligations under the Agreement. The bond shall be executed as surety by a corporation authorized to
1450 issue surety bonds in the State of California that has a rating of A or better in the most recent edition of
1451 Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the
1452 Authority.

1453

ARTICLE 7
DEFAULT BY CONTRACTOR AND TERMINATION

1454
1455

1456 **7.1 Contractor Default**

1457 Each of the following shall constitute an event of default by Contractor (“Contractor Default”), under
1458 this Agreement:

1459 **7.1.1 Service Defaults**

1460 **(1) Failure to Perform.** Contractor’s failure to perform any duty or obligation in whole or in part for
1461 more than one (1) consecutive Working Day or more than five (5) total Working Days in any Calendar
1462 Year. A failure to perform may also include Contractor’s failure to fully implement the Recycling,
1463 Composting, other Processing, and education and outreach programs required under this Agreement
1464 which may be determined as part of the performance review described in Section 4.21.

1465 **(2) Uncured Breach.** Contractor fails or refuses to perform any of its obligations under this
1466 Agreement; the Authority Contract Manager notifies the Contractor in writing that a specific failure or
1467 refusal has occurred which shall, unless corrected, in its opinion, give the Authority a right to
1468 terminate this Agreement; and the Contractor does not correct the breach within twenty (20)
1469 Calendar Days of receiving the Authority Contract Manager’s Notice thereof. However, if the breach is
1470 not capable of cure within twenty (20) Calendar Days, Contractor shall promptly provide the Authority
1471 Contract Manager a Notice explaining why Contractor believes it needs additional time to effectuate a
1472 cure, together with a schedule therefore, and shall diligently proceed to cure the breach within that
1473 schedule, whereupon Authority, at its sole discretion, may (a) accept Contractor’s schedule of cure, or
1474 (b) make a written demand that Contractor cure the default within an alternative reasonable time
1475 period set by Authority.

1476 **(3) Repeated Breach.** Contractor fails or refuses to perform any of its obligations under this
1477 Agreement repeatedly or habitually, as documented in writing, whether or not specific instance of
1478 failure or refusal has been previously cured.

1479 **(4) Failure to Comply With Applicable Law.** Contractor fails to comply with Applicable Law that is
1480 material to this Agreement. This does not constitute a default if: a) after notice of violation or non-
1481 compliance the Contractor is actively disputing its compliance with Applicable Law before any court or
1482 administrative agency; or, b) after exhaustion of all appeals, a final judgment in favor of Contractor is
1483 reached.

1484 **(5) Criminal Activity.** The occurrence of any Criminal Activity related to this Agreement by any
1485 employee, supervisor, manager, officer, or director of Contractor, except that Contractor may cure the
1486 breach by terminating any and all individuals involved in the Criminal Activity within five (5) Working
1487 Days of a notice from the Authority Contract Manager.

1488 **7.1.2 Performance Assurance Defaults**

1489 **(1) Failure to Provide Insurance.** Contractor fails to provide insurance in accordance with Section
1490 6.2, or Guaranty Agreement in accordance with Section 8.20;

1491 **(2) Failure to Provide Assurances of Performance.** Contractor fails to timely provide assurances of
1492 performance in accordance with Section 8.16;

1493 **(3) Failure to Pay Authority.** Contractor fails to timely pay Authority any amounts due and owing
1494 to Authority, including procurement reimbursement in accordance with Section 2.4.4, reimbursement
1495 of costs for alternative services in accordance with Section 7.3 and liquidated damages in accordance
1496 with Section 8.19;

1497 **(4) Transfer, Assignment.** Contractor Assigns this Agreement without Authority approval required
1498 by Section 8.5;

1499 **(5) Seizure, Attachment.** Any asset used to provide Services is seized, attached, or levied upon
1500 (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and
1501 fully perform Services, and which cannot be released, bonded, or otherwise lifted within forty-eight
1502 hours (48), excepting weekends and Holidays;

1503 **(6) Insolvency, Bankruptcy, Liquidation.** Contractor files a voluntary claim for debt relief under any
1504 applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or
1505 shall consent to the appointment of or taking of possession by a receiver, liquidator, Assignee (other
1506 than as a part of a transfer of assets no longer used to provide Services or backup Services), trustee
1507 (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator
1508 (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of
1509 Contractor's property, or shall make any general Assignment for the benefit of Contractor's creditors,
1510 or shall fail generally to pay Contractor's debts as they become due or shall take any action in
1511 furtherance of any of the foregoing. The foregoing notwithstanding, nothing herein shall or is intended
1512 to affect the jurisdiction and authority of any trustee or receiver in connection with bankruptcy
1513 proceedings pursuant to the federal Bankruptcy Act or any similar or successor statute.

1514 A court, having jurisdiction, enters a decree or order for relief in respect of the Agreement, in any
1515 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or
1516 hereafter in effect, or Contractor consents to or fails to oppose any proceeding, or that court enters a
1517 decree or order appointing a receiver, liquidator, Assignee, custodian, trustee, sequestrator,
1518 administrator (or similar official) of the Contractor or for any part of the Contractor's operating
1519 equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

1520 **7.1.3 Miscellaneous**

1521 **(1) False Representations; Breach of Representations or Warranties.** Contractor makes a
1522 representation, certification, or warranty in this Agreement or pursuant to this Agreement which
1523 Contractor knows, or in the course of diligently conducting business and providing Services should

1524 have known, is untrue as of the date thereof. Contractor makes a representation or fails to make a
 1525 disclosure, whether within this Agreement or otherwise, to the Authority in connection with, or as a
 1526 material inducement to, entering into this Agreement or any future amendment to this Agreement,
 1527 which representation or failed disclosure is false or misleading in any material respect when made.

1528 **(2) Default under Guaranty Agreement.** Any default occurs under Section (24) of the Guaranty
 1529 Agreement, which default for failure to pay the Guaranty listed in item (24)(a) thereof is not timely
 1530 cured as provided therein, and which default for breach listed in item (24)(c) thereof continues for the
 1531 period provided therein.

1532 **7.2 Right to Suspend or Terminate Agreement**

1533 **7.2.1 Termination Events**

1534 Authority may terminate this Agreement in the following events:

1535 **(1) Contractor Default:** the repeated occurrence of an uncured material Contractor Default;

1536 **(2) Failure to Perform Core Obligations:** If after exhausting the remedies available in Sections 4.18
 1537 and/or 8.12, for whatever reason, Contractor is unable to perform its core obligations under this
 1538 Agreement for a period of thirty (30) Calendar Days beyond the timeline described in Section 8.12.;

1539 **(3) Contractor's use of non-approved Alternative Facility:** the Contractor provides services
 1540 through an alternative facility contrary to the direction of the Authority as required in Section 4.12.

1541 **(4) Assignment of Guaranty Agreement Without Consent:** the Guarantor Assigns the Guaranty
 1542 Agreement without consent required by Section (3) of the Guaranty Agreement despite the Authority
 1543 Board of Directors action denying Authority consent, and on or before fifteen (15) Calendar Days
 1544 thereafter, the Guarantor does not provide Authority with a substitute Guarantor or alternative
 1545 financial credit support satisfactory to Authority.

1546 **7.2.2 Notice**

1547 Notice of termination may be effective no sooner than:

1548 (1) Immediately or upon other period stated by Authority with respect to Contractor Defaults
 1549 described in Section 7.1.2 (including, but not limited to, Failure to Provide Insurance) and, to the
 1550 extent permitted by Applicable Law, Section 7.1.2 (Insolvency, Bankruptcy, Liquidation);

1551 (2) Two (2) Working Days after giving Contractor a Notice with respect to a Contractor Default
 1552 described in Section 7.1.1 (Failure to Perform); and,

1553 (3) Fifteen (15) Working Days after giving Contractor a Notice with respect to all other Contractor
 1554 Defaults or termination events.

1555 **7.2.3 Contractor's Obligations Upon Expiration or Termination**

1556 **(1) Pay Outstanding Amounts.** Contractor shall pay Authority any amounts, including liquidated or
 1557 compensatory damages, then accrued and payable, net of any amounts due from Authority in
 1558 accordance with Section 4.13.

1559 **(2) Indemnities.** Contractor shall meet its obligations under any Indemnifications including any
 1560 such obligations and Indemnifications that survive the termination of this Agreement.

1561 **7.3 Right to Perform**

1562 In the events described in items (1) (Contractor Default) and (3) (Assignment of Guaranty Agreement
 1563 Without Consent) of Section 7.2.2, the Authority, at its sole discretion, may perform and complete, by
 1564 contract or otherwise, Services or a portion thereof (other than operating the Approved Processing
 1565 Facilities and Landfill which are the property of Contractor) and incur all expenses necessary for full and
 1566 timely provision of Services.

1567 **7.4 All Other Available Remedies**

1568 If Authority suspends or terminates this Agreement, it may exercise remedies of damages and any other
 1569 available remedies at law and in equity (including specific performance). Contractor acknowledges that
 1570 Authority's remedy of damages for a breach of this Agreement by Contractor in accordance with this
 1571 Section may be inadequate for reasons including:

1572 (i) The urgency of timely, continuous and high-quality waste management Service under this
 1573 Agreement, including, but not limited to, Disposal of wastes which constitute a threat to public health;

1574 (ii) The long time and significant investment of money and personnel (both Authority staff, elected
 1575 Authority officials and private consultants, including procurement consultants, Diversion consultants,
 1576 and procurement counsel) required to structure a competitive procurement; draft a request for
 1577 proposal; advertise the procurement and solicit proposals; distribute the Request for Proposal, hold
 1578 pre-proposal meetings and respond to proposers questions about the procurement; revise documents
 1579 based on solicited proposer comment; evaluate proposals; and finalize and award this Agreement;
 1580 and,

1581 (iii) The Authority's reliance on Contractor's technical waste management expertise.

1582 Consequently, Authority is entitled to all available equitable remedies, including injunctive relief.

1583 Compensatory damages include amounts equal to any Authority's Reimbursement Costs or other money
 1584 Contractor has previously paid to the Authority but that are subsequently Recovered from the Authority
 1585 by a trustee in bankruptcy as preferential payments or otherwise and Authority's Reimbursement Costs
 1586 of re-procuring an agreement for services to replace Services if this Agreement is terminated due to
 1587 Contractor Default.

1588 **7.5 Authority's Remedies Cumulative**

1589 The Authority's rights to seek dispute resolution in accordance with Section 8.17, suspend or terminate
1590 this Agreement in accordance with Section 7.2, to perform under Section 7.3, or to seek other available
1591 remedies under Section 7.4, are not mutually exclusive. Exercise of one remedy is not an election of
1592 remedies but is cumulative with any other remedies under this Agreement.

1593 **7.6 Waiver**

1594 The Authority's waiver of any breach or Contractor Default shall not be deemed to be a waiver of any
1595 other breach or Contractor Default including ones with respect to the same obligations under this
1596 Agreement; provided however, that nothing herein abrogates applicable statutes of limitations for any
1597 claims which were or could have been brought. The Authority's decision not to demand damages shall
1598 not be deemed a waiver of any Contractor breach under this Agreement. The Authority's subsequent
1599 acceptance of any damages or other money paid by Contractor shall not be deemed to be a waiver by
1600 the Authority of any pre-existing or concurrent breach or Contractor Default; provided however, that
1601 nothing herein abrogates applicable statutes of limitations for any claims which were or could have
1602 been brought .

1603 Contractor acknowledges that it is solely responsible for providing Services and except as provided
1604 below in this paragraph, by this Agreement irrevocably and unconditionally waives defenses to the
1605 payment and performance of its obligations under this Agreement based upon failure of consideration;
1606 contract of adhesion; impossibility or impracticability of performance; commercial frustration of
1607 purpose; or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen
1608 fact, event, or contingency that may be a basic assumption of Contractor with regard to any provision of
1609 this Agreement; provided, however that Contractor does not waive defenses to impossibility or
1610 impracticability of performance; commercial frustration of purpose; or the existence, non-existence,
1611 occurrence or non-occurrence of any unforeseeable fact, event, or contingency that may arise during
1612 the Term of this Agreement. Contractor does not waive any defenses of Uncontrollable Circumstances at
1613 any time.

1614

1615 **ARTICLE 8**
1616 **OTHER AGREEMENTS OF THE PARTIES**

1617 **8.1 Relationship of Parties**

1618 The Parties intend that Contractor shall perform the Services required by this Agreement as an
1619 independent Contractor engaged by the Authority and not as an officer or employee of the Authority,
1620 nor as a partner of or joint venturer with the Authority. No employee or agent of Contractor shall be or
1621 shall be deemed to be an employee or agent of the Authority. Contractor shall have the exclusive
1622 control over the manner and means of conducting Services, and all Persons performing those Services,
1623 except for prescriptive requirements in this Agreement established by the Authority or Authority's right
1624 to change the scope of Services in accordance with Section 4.20. Contractor is solely responsible for the
1625 acts and omissions of its officers, employees, subcontractors, and agents, none of whom is deemed an
1626 officer, employee, subcontractor, or agent of the Authority. Neither Contractor nor its officers,
1627 employees, subcontractors, or agents shall obtain any rights to retirement benefits, workers'
1628 compensation benefits, or any other benefits that accrue to the Authority employees. Contractor
1629 expressly waives any claim it may have or acquire to those benefits and shall defend and indemnify the
1630 Authority if any of its officers, employees, subcontractors, or agents make claims for such benefits.

1631 **8.2 Compliance with Law**

1632 Contractor shall perform, and shall cause any Contractors or subcontractors to perform, all Services in
1633 accordance and compliance with Applicable Law, whether or not referenced specifically in the text of
1634 this Agreement and regardless of whether specified Service obligations may be stated less stringently
1635 than Applicable Law. If any provision of this Agreement is more stringent than Applicable Law,
1636 Contractor must comply with that provision.

1637 Reference in this Agreement to particular provisions or requirements of Applicable Law shall not be
1638 construed to limit Contractor's obligation to comply with all provisions of Applicable Law. They are
1639 deemed to include reference to implementing rules and regulations. They are intended to facilitate
1640 Contractor's satisfaction of its performance obligations and Authority's administration and specific
1641 enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with
1642 other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any
1643 Applicable Law specifically referenced or cited in this Agreement is modified, amended or repealed, that
1644 reference or citation shall be deemed to refer to that amendment or modification, or to any re-codified
1645 or substituted Applicable Law.

1646 **8.3 Governing Law**

1647 This Agreement shall be governed by, and construed and enforced in, accordance with the Applicable
1648 Laws of the State, without giving effect to the State's principles of conflicts of laws.

1649 **8.4 Further Assurances**

1650 Each Party shall execute and deliver any instruments and to perform any acts as may be necessary or
1651 reasonably requested by the other in order to give full effect to this Agreement.

1652 **8.5 Assignment**

1653 **8.5.1 Assignment by Authority**

1654 The Authority may Assign this Agreement individually or jointly to any Member Agency (excluding the
1655 City of El Cerrito), the County of Contra Costa, a successor joint powers authority, or other public entity
1656 succeeding to a majority of the Authority's service area obligations. In any Assignment, the Authority
1657 Board of Directors shall take such actions as may be necessary to ensure that the Assignee has the legal
1658 authority to accept the Assignment and undertake the Authority's obligations.

1659 **A. Assignment by Member Agency Withdrawal**

1660 In the event a Member Agency, other than the City of El Cerrito, seeks to withdraw from the Authority
1661 before the end of the Agreement's Term, the Member Agency's withdrawal is conditioned upon its
1662 consent to Assignment of this Agreement. The act of withdrawal shall also operate as the Authority's
1663 consent to Assignment of its respective rights and obligations under this Agreement to the withdrawing
1664 Member Agency. Any additional terms and conditions of withdrawal as well as the details of assuming
1665 the specific obligations of this Agreement shall be governed by the provisions of the Authority's Joint
1666 Powers Agreement, as amended, and the decisions of the Authority Board of Directors.

1667 **B. Assignment by Dissolution**

1668 In the event the Authority seeks to dissolve before the end of the Agreement's Term, such dissolution is
1669 conditioned upon the agency(ies) or successor joint power authority's individual or collective
1670 acceptance of Assignment of this Agreement as well as the respective obligations of the Authority. The
1671 Assignee'(s) individual or collective consent to Assignment shall effectuate such dissolution of the
1672 Authority. The Authority Board of Directors shall take such actions as may be necessary to ensure its
1673 obligations hereunder are properly assumed by the Assignee Member Agencies.

1674 **8.5.2 Assignment by Contractor**

1675 **A. Permitted Assignments**

1676 Contractor shall have the right to Assign this Agreement to any other company which is owned and
1677 controlled by Republic Services, Inc., provided that: (i) such company is qualified to do business in
1678 California, and assumes in writing all of Contractor's obligations under this Agreement prior to, or
1679 concurrently with, such Assignment; and, (ii) the corporate guaranty described in Section 8.20 remains
1680 in full force and effect and that such Assignment shall have no adverse impact on the Rates charged or
1681 quality services provided under this Agreement. Contractor shall not otherwise Assign its rights nor
1682 delegate or otherwise transfer its obligations under this Agreement to any other Person without the
1683 prior written consent of the Authority, provided consistent with the requirements of this Section 8.5.2.

1684 Any such assignment made without the written consent of Authority shall be void and the attempted
1685 assignment shall constitute a breach of this Agreement.

1686 **B. Assignment Defined**

1687 For the purpose of this section when used in reference to Contractor, "Assignment" shall include, but
1688 not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets
1689 dedicated to Service under this Agreement to a third party; (ii) a sale, change or other transfer of
1690 outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may
1691 result in a change of control of Contractor; (iii) any dissolution, organization, consolidation, merger, re-
1692 capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement,
1693 liquidation or other transaction to which results in a change of Ownership or control of Contractor; (iv)
1694 any Assignment by operation of law, including insolvency or bankruptcy, making Assignment for the
1695 benefit of creditors, writ of attachment for an execution being levied against this agreement,
1696 appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event
1697 of a probate proceeding; and, (v) any combination of the foregoing (whether or not in related or
1698 contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or
1699 change of control of Contractor.

1700 Contractor acknowledges that this Agreement involves rendering a vital service to the Authority's
1701 residents and businesses, and that the Authority has selected Contractor to perform the Services
1702 specified Herein based on: (i) effective and responsible fashion, at all times in keeping with applicable
1703 environmental laws, regulations, and best management practices, and (ii) Contractor's obligations to the
1704 Authority under this Agreement. The Authority has relied on each of these factors, among others, in
1705 choosing Contractor to perform the Services to be rendered by Contractor under this Agreement.

1706 **C. Contractor Request for Assignment**

1707 If Contractor requests the Authority's consideration of and consent to an Assignment, the Authority may
1708 reasonably deny or approve such requests. No request by Contractor for consent to any Assignment
1709 need be considered by Authority unless and until Contractor has met the following requirements:

1710 i. Contractor shall pay Authority its reasonable expenses for attorney's fees and
1711 investigation costs necessary to investigate the suitability of any proposed Assignee, and to review and
1712 finalize any documentation required as a condition for approving any such Assignment. An initial,
1713 retainer deposit payment to reimburse such costs shall be made in the amount of one hundred
1714 thousand dollars (\$100,000) to the Authority by Contractor or the proposed assignee along with
1715 Contractor's formal request for the Authority's consideration of an Assignment. Authority shall draw
1716 against the retainer for its actual reasonable costs of the Assignment review. In the event such costs
1717 exceed the deposit amount, Contractor shall make the additional payment, beyond the initial deposit
1718 amount, upon approval of the assignment. In the event that the actual costs of the review are less than
1719 the retainer deposit amount, such unused portion of the retainer shall be returned upon the conclusion
1720 of the review of the Assignment.

1721 ii. Contractor shall furnish Authority with audited financial statements of the proposed
1722 Assignee's operations for the Immediately preceding three (3) operating years.

1723 iii. Contractor shall furnish Authority with satisfactory proof: (i) that the proposed Assignee
1724 has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the
1725 sale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the
1726 proposed Assignee has not suffered any significant citations or other censure from any federal, State, or
1727 local agency having jurisdiction over its Solid Waste management operations due to any significant
1728 failure to comply with State, federal, or local Environmental Laws and that the Assignee has provided
1729 Authority with a complete list of such citations and censures; (iii) that the proposed Assignee has at all
1730 times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the
1731 proposed Assignee conducts its Solid Waste management practices in accordance with sound Solid
1732 Waste management practices in full compliance with all federal, State, and local laws regulating the
1733 collection and Disposal of Solid Waste including Hazardous Materials; and, (v) of any other information
1734 required by Authority to ensure the proposed Assignee can fulfill the terms of this Agreement in a
1735 timely, safe, and effective manner.

1736 Under no circumstances shall Authority be obligated to consider any proposed Assignment if Contractor
1737 is in default at any time during the period of consideration.

1738 **8.6 Binding on Successors**

1739 The provisions of this Agreement shall inure to the benefit of and be binding on the successors and
1740 permitted Assigns of the Parties.

1741 **8.7 Parties in Interest**

1742 Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any
1743 Persons other than the Parties to it and their representatives, successors and permitted Assigns.

1744 **8.8 Services Performed At Contractor's Sole Expense**

1745 Contractor shall perform Services solely for the compensation expressly provided for Herein.

1746 **8.9 Notices and Communication**

1747 Parties must present and express all reports, demands, requests, directions, selections, option exercises,
1748 orders, requests, proposals, reviews, comments, acknowledgments, approvals, consents, waivers,
1749 certifications and other communications made to each other under this Agreement in writing.

1750 Parties must provide Notices at the address provided in this Section below, in any of the following
1751 manners:

1752 (1) Personal delivery to a representative of the Parties, with signed receipt,

1753 (2) Deposit in the United States mail, first class postage prepaid (certified mail, return receipt
 1754 requested), or

1755 (3) Deposit with a commercial delivery service providing delivery verification.

1756 If to Authority: West Contra Costa Integrated Waste Management Authority
 1757 Executive Director
 1758 1 Alvarado Square
 1759 San Pablo, CA 94806

1761 With Copy to: West Contra Costa IWMA Counsel
 1762 Meyers Nave
 1763 555 12th Street, Suite 1500
 1764 Oakland, CA 94607

1766 If to Contractor: Area President
 1767 Republic Services, Inc.
 1768 3260 Blume Drive, 2nd Floor
 1769 Richmond, CA 94806

1771 With a copy to: Timothy Benter
 1772 Vice President & Deputy General Counsel
 1773 Republic Services, Inc.
 1774 18500 North Allied Way
 1775 Phoenix, AZ 85054

1777 With an additional copy to:
 1778 Scott W. Gordon
 1779 Law Offices of Scott W. Gordon, APC
 1780 1990 North Calif. Blvd., Suite 620
 1781 Walnut Creek, CA 94596

1783 Parties may change their address upon written Notice to the other Party.

1784 **8.10 Authority Contract Manager**

1785 The Authority has designated staff, the Authority Contract Manager, to be responsible for the
 1786 monitoring and administration of this Agreement. Contractor shall meet and confer with the Authority
 1787 Contract Manager to resolve differences of interpretation and implement and execute the requirements
 1788 of this Agreement in an efficient, effective, manner that is consistent with the stated objectives of this
 1789 Agreement.

1790 From time to time the Authority Contract Manager may designate other agents of the Authority or
 1791 Franchise Agencies to work with Contractor on specific matters. In such cases, those individuals should
 1792 be considered designates of the Authority Contract Manager for those matters to which they have been
 1793 engaged. Such designates shall be afforded all of the rights and access granted thereto. In the event of a

1794 dispute between the Authority Contract Manager's designate and Contractor, the Authority Contract
1795 Manager's determination shall be conclusive.

1796 In the event of dispute between the Authority Contract Manager and the Contractor regarding the
1797 interpretation of or the performance of Services under this Agreement, the Authority Contract
1798 Manager's determination shall be conclusive except where such determination results in a material
1799 impact to the Contractor's revenue and/or cost of operations. In the event of a dispute between the
1800 Authority Contract Manager and the Contractor results in such material impact to the Contractor,
1801 Contractor may appeal the determination of the Authority Contract Manager to the Authority Board of
1802 Directors, whose determination shall be conclusive. For the purposes of this section, "material impact"
1803 is an amount equal to or greater than thirty thousand dollars (\$30,000).

1804 **8.11 Duty of Contractor Not To Discriminate**

1805 In the performance of all work and Services under this Agreement, Contractor shall not discriminate
1806 against any Person on the basis of that Person's race, color, religion, national origin, ancestry, age,
1807 physical handicap, medical condition, religion, marital status, sex or sexual orientation. Contractor shall
1808 comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination
1809 in employment.

1810 **8.12 Force Majeure**

1811 Neither Party is deemed in breach or default of its duties, obligations (other than a payment obligation
1812 at the time due and owing), responsibilities or commitments under this Agreement to the extent that
1813 the breach or default is due to an Uncontrollable Circumstance, provided the Party exerted Reasonable
1814 Business Efforts to prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

1815 The Party experiencing an Uncontrollable Circumstance and relying thereon shall give Immediate Notice
1816 thereof to the other Party, including describing performance under this Agreement for which it seeks to
1817 be excused; the expected duration of the Uncontrollable Circumstance; the extent Services may be
1818 curtailed; any requests or suggestions to mitigate the adverse effects of the Uncontrollable
1819 Circumstance; or any consequent adjustment of Rates in accordance with Section 5.

1820 Notwithstanding that Contractor's failure to timely and fully provide Services due to Uncontrollable
1821 Circumstances does not constitute a Contractor Default, following the continuance of the failure for
1822 ninety six (96) hours, Authority may at its sole discretion temporarily secure alternative services limited
1823 to the duration of the Force Majeure event. Following the continuance of that failure for thirty (30)
1824 Calendar Days, the Authority and Contractor shall meet and confer in good faith to determine
1825 alternative means to provide services.

1826 **8.13 Maintenance of Records**

1827 Contractor shall maintain Records at each of the Approved Processing Facilities and Landfill or elsewhere
1828 at the Contractor's offices located within the County.

1829 In order to determine the reasonableness of proposed changes in Service requested by Authority or
1830 Contractor, Contractor must maintain accurate, detailed financial and operational information in a
1831 consistent format and to make that information reasonably available to the Authority in a timely
1832 fashion. This Section is intended to effectuate these requirements. Contractor shall maintain accurate
1833 and complete accounting Records containing the underlying financial and operating data relating to and
1834 showing the basis for computation of all costs associated with providing Services. The accounting
1835 Records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP), which
1836 shall be consistently applied. The Parties acknowledge that the Contractor's accounting procedures do
1837 not produce accounting Records that separate the financial and operational data related to specific
1838 services provided to the Authority, but rather the accounting Records are consolidated financial and
1839 operational data for all Services provided by Contractor or at the Approved Processing Facilities.

1840 Contractor shall retain all Records required to be maintained by this Agreement at least throughout the
1841 Term.

1842 Contractor shall retrieve Records specifically directed to be retained in accordance with this Agreement
1843 and make them available to the Authority within fifteen (15) Calendar Days of Authority Contract
1844 Manager's direction.

1845 Contractor shall retrieve Records that are material, in the sole opinion of the Authority Contract
1846 Manager, to determining the cost of compliance with changes in governmental fees or regulations;
1847 verifying payment of governmental fees or taxes; determining cost impact related to modifications to
1848 scope of Services or new waste management programs or economic incentives; or determining an
1849 adjustment to the Disposal Rate as provided for in Section 5, and make them available to the Authority
1850 Contract Manager within fifteen (15) Calendar Days of the Authority Contract Manager's direction. If
1851 Contractor is not required to maintain those Records under this Agreement, then the Authority Contract
1852 Manager and Contractor shall meet and confer in good faith to reach agreement on reasonable
1853 assumptions that are necessary to make determinations at issue.

1854 **8.14 Right to Inspect Records**

1855 Upon no less than one (1) Working Day's notice and without interference from Contractor's operations,
1856 the Authority, its auditors and other agents selected by the Authority, shall have the right, at its sole
1857 cost, during regular business hours as described in Section 4.6, to conduct on-site inspections of Records
1858 and to make and retain copies of any Records that are reasonably necessary to: (1) determine the cost
1859 of compliance with changes in governmental fees or regulations (in accordance with Section 5); (2)
1860 verify payment of governmental fees or taxes (in accordance with Section 5); (3) determine cost of
1861 modifications to scope of Services (in accordance with Section 4.20); or (4) determine cost of new
1862 programs or economic incentives (in accordance with Section 4.20). Contractor shall cooperate with the
1863 Authority Contract Manager, its auditors and other agents selected by the Authority, and shall make
1864 those Records available to the Authority Contract Manager, and Contractor shall provide the Authority
1865 Contract Manager copies of those Records (which the Authority may retain) at the Authority Contract
1866 Manager's request; provided however that notwithstanding the foregoing, Contractor shall not be
1867 required to provide to Authority any Records containing or consisting of:

- 1868 i) Trade secret confidential business information or documents (e.g. customer lists) with
1869 respect to any non-Authority users of the Approved Facilities or Landfill
- 1870 ii) Cost of service information which is not otherwise provided for in this Agreement
- 1871 iii) Proprietary processes, patents, or other intellectual property

1872 If the Authority Contract Manager so reasonably requests, Contractor shall make specified personnel
1873 available to assist the Authority Contract Manager in accessing Records.

1874 **8.15 Compilation of Information for State Law Purposes**

1875 Contractor shall compile information on amounts of Solid Waste delivered to the Landfill and Organic
1876 Materials, Recyclable Materials, Dry Materials, and C&D delivered to Approved Processing Facilities and
1877 the Landfill and other information, which the Authority may reasonably request, in order to meet its
1878 obligations under the Act.

1879 **8.16 Right to Demand Assurances of Performance**

1880 If Contractor:

- 1881 (i) Is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or
1882 other concerted job action that affects Contractor’s performance under this Agreement;
- 1883 (ii) Appears in the judgment of the Authority to be unable to regularly pay its bills as they become
1884 due; or
- 1885 (iii) Is the subject of a civil or criminal proceeding brought by a federal, State, regional, or local
1886 agency for Violation of an Applicable Law with respect to Services;

1887 Such that the Authority reasonably believes such event has placed Contractor's ability to perform
1888 under this Agreement in substantial jeopardy, or

- 1889 (iv) If Authority disagrees with Contractor’s estimate of Landfill capacity required to meet
1890 Contractor’s warranty in accordance with subsection J of Section 9.2 or of remaining capacity,
1891 considering Contractor’s Disposal obligations to both Authority and other Persons, as contained in the
1892 Quarterly Report or otherwise, then following dispute resolution in accordance with Section 8.17 that
1893 concludes either of Contractor’s estimates is erroneous, at its option and in addition to all other
1894 remedies it may have, the Authority may demand from Contractor written assurances of timely and
1895 proper performance of this Agreement. Assurances include reduction or elimination of deductibles or
1896 self-insured retention with respect to insurance or procuring a bond or letter of credit guarantying or
1897 in size sufficient to cover payment of losses and related investigations, claim administration and
1898 defense expenses. If Contractor fails or refuses to provide reasonable assurances by the date required
1899 by the Authority no less than fifteen (15) Calendar Days after Notice, that failure or refusal shall
1900 constitute a Contractor Default in accordance with Section 7.1.2.

1901 **8.17 Dispute Resolution**

1902 **8.17.1 Informal Resolution**

1903 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
1904 time during the term of this Agreement, the provisions of Section 8.17 shall apply. Either Party shall give
1905 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
1906 meet and confer in good faith to resolve any dispute that may arise in a cooperative and mutually
1907 satisfactory manner. The Parties shall attempt to resolve their disputes informally to the maximum
1908 extent possible.

1909 **8.17.2 Mediation**

1910 In the event the Parties cannot resolve such dispute within thirty (30) Days of such notice, either Party
1911 may propose the appointment of a mediator for advice and non-binding mediation, and the other Party
1912 shall attend such mediation. If the mediator is unable, within thirty (30) Days thereafter, to reach a
1913 determination as to the matter in dispute in a manner acceptable to the Parties hereto, then either
1914 Party may refer the matter to a Court of competent jurisdiction.

1915 **8.17.3 Arbitration Valuation Items**

1916 For the purposes of this Agreement, disputes over “Arbitration Valuation Items” means monetary
1917 disputes the value of which are less than five hundred thousand dollars (\$500,000) alleged to be due or
1918 owed by either Party. If mediation is unsuccessful, disputes concerning Arbitration Valuation Items shall
1919 be referred to binding arbitration.

1920 **8.17.4 Binding Arbitration**

1921 Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure Section
1922 1280 et. seq., pursuant to the AAA Commercial Arbitration Rules or the then-current JAMS Streamlined
1923 Arbitration Rules, and the terms of this Section. The provisions of the California Discovery Act shall
1924 apply. The Parties shall determine by mutual agreement whether the AAA or JAMS proceedings are to
1925 be used. Provisions of the California Discovery Act shall apply to the arbitration proceedings. In the
1926 event of any inconsistency, the terms of this Section shall control. The arbitration shall be administered
1927 by JAMS and conducted in the County of Contra Costa. If the proceeding is pursuant to AAA Commercial
1928 Rules, the arbitrator selection process shall apply. If the JAMS rules are employed, and the Parties are
1929 unable to select an arbitrator by mutual agreement, JAMS shall select a qualified arbitrator from its
1930 panel. If JAMS is unwilling or unable to (a) serve as the provider of arbitration or (b) enforce any
1931 provision of this arbitration clause, the Parties may mutually designate another arbitration organization
1932 with similar procedures to serve as the provider of arbitration. If the Parties cannot agree on the
1933 arbitration organization, the Presiding Judge of the Contra Costa County Superior Court shall designate
1934 such an organization upon the petition of either Party.

1935 (1) The arbitrator shall be independent of, and unaffiliated with, each Party and shall not
1936 ever have been an employee of either Party, under contract with either Party in the past five (5) years or
1937 have acted as an arbitrator for such Party within the past five (5) years.

1938 (2) Within twenty (20) days after initiation of the arbitration, if not previously done so
1939 under the terms of this Agreement, the Parties shall simultaneously submit to each other and the
1940 arbitrator their respective best or final offer for the item subject to the valuation dispute, with such
1941 supporting information as is reasonably necessary to support such suggested value. If the two (2)
1942 valuations so submitted differ by less than or equal to ten percent (10%) of the higher of the two (2), the
1943 average of the two (2) shall become the agreed-upon and binding amount for purposes of this
1944 Agreement and the arbitration shall not be continued. If the two (2) valuations differ by more than ten
1945 percent (10%) of the higher of the two (2), then the arbitrator shall make a determination of the
1946 relevant value and submit such determination to both Parties. This third valuation will then be averaged
1947 with the closer of the two (2) previous valuations and the result shall be the relevant value. In no event
1948 shall the arbitrator award, on a *quantum meruit* or other basis, an amount that is greater than any
1949 amount set forth in this Agreement. The final arbitrated value shall be binding on the Parties.

1950 (3) The arbitrator shall have the authority and power to award costs, but not including
1951 attorneys' fees, to the prevailing Party. The American Rule shall apply with respect to attorneys fees,
1952 with each Party to bear its own attorneys fees.

1953 (4) By agreeing to binding arbitration for Arbitration Valuation Items, the Parties irrevocably
1954 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

1955 Acknowledgement of waiver of rights to trial by jury if proceeding with binding arbitration pursuant to
1956 Section 8.17.4 of this Agreement:

1957

1958

1959

1960

1961

Authority

[Contractor]

1962 **8.17.5 Pendency of Dispute**

1963 During the pendency of any dispute under Section 8.17, all applicable time periods directly related to
1964 the dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any
1965 matters other than those directly related to the dispute and such tolling shall not entitle a Party to
1966 breach, default, or fail to perform its obligations under this Agreement. In addition, the pendency of any
1967 dispute shall not stay or affect the Authority's remedies under this Agreement.

1968 **8.18 Criminal Activity of Contractor**

1969 **8.18.1. Notice of Convictions or Pleas**

1970 The Contractor shall Immediately Notify the Authority upon the occurrence of any Convictions or Pleas
 1971 with respect to its management, employees, or representatives and use Reasonable Business Efforts to
 1972 Immediately Notify the Authority with respect to Contractor or any of its representatives.

1973 **8.18.2 Contractor Cure**

1974 Upon the occurrence of any Convictions or Pleas, the Contractor shall do or cause to be done both of the
 1975 following:

1976 (i) As soon as permitted under Applicable Law, terminate from employment or remove from office
 1977 the offending employee who is an individual, or, with respect to a employee that is the Contractor or
 1978 an Affiliate, the individual or individuals responsible for the Criminal Activity; and

1979 (ii) Immediately eliminate the participation by that employee who is an individual or, with respect
 1980 to an employee that is the Contractor or Affiliate of the individual or individuals responsible for the
 1981 Criminal Activity, or in any position of influence.

1982 Should Contractor be unable to terminate the offending employee, said individual(s) shall be replaced in
 1983 their capacity as relative to this Agreement.

1984 **8.18.3 Authority Remedies**

1985 Subject to Section 7.1.1, the Authority, at its sole discretion, may terminate the Agreement upon thirty
 1986 (30) Calendar Days Notice to the Contractor, or may impose those other sanctions (which may include
 1987 financial sanctions, temporary suspensions or any other condition deemed appropriate short of
 1988 termination) as it shall deem proper, if the following events are continuing at the end of those thirty (30)
 1989 Calendar Days:

1990 (i) the Contractor or any Affiliate fails to comply with its obligations under Section 7.1.1; or,

1991 (ii) Criminal Activity with respect to this Agreement.

1992 (iii) Criminal Activity involving managers and officers directly responsible for the performance of
 1993 services under this Agreement.

1994 Contractor must be given the opportunity to present to Authority Contract Manager evidence in
 1995 mitigation during the preceding Notice period and Authority must consider that evidence.

1996 **8.18.4 Prohibited Transfers**

1997 The Contractor shall not hire or transfer from any Affiliate any employee, officer or director of an
 1998 Affiliate who is the subject of any Criminal Activity as an employee under this Agreement and shall not
 1999 allow its Affiliates to do so.

2000 **8.19 Liquidated Damages**

2001 **8.19.1 General**

2002 The Parties acknowledge that Authority incurred considerable time and expense procuring this
 2003 Agreement in order to secure an improved level of service quality and increased Authority satisfaction.
 2004 Therefore, consistent and reliable Services are of utmost importance to the Authority, Franchise
 2005 Agencies, and Customers. Authority has considered and relied on Contractor's representations as to its
 2006 quality of service commitment in entering into this Agreement, and Contractor's breach of its Service
 2007 obligations referenced in this Section above represents a loss to the Authority. The Parties further
 2008 recognize that quantified standards of performance are necessary and appropriate to ensure quality,
 2009 consistent and reliable Service, and if Contractor fails to meet Service obligations, Authority shall suffer
 2010 damages (including inconvenience, anxiety, frustration, potential political pressure, criticism and
 2011 complaint by Generators, lost time for the Authority and the Board of Directors, deprivation of the
 2012 benefits of the Agreement and loss of bargain) in subjective ways and in varying degrees of intensity
 2013 that are incapable of measurement in precise monetary terms, and that it is and shall be impracticable
 2014 and extremely difficult to ascertain and determine the value thereof. In addition, in event of breach or
 2015 Contractor Default, urgency of protecting public health and safety may necessitate that Authority enter
 2016 into emergency or short term arrangements for Services without competitive procurement at prices
 2017 substantially greater than Hereunder, and the monetary loss resulting there from is impossible to
 2018 precisely quantify. Lastly, termination of this Agreement for Contractor Default and other remedies
 2019 provided hereunder are, at best, a means of future correction and not remedies that make the Authority
 2020 whole for past breaches and Contractor Defaults. Therefore, the Parties agree that the liquidated
 2021 damages listed in Exhibit 8.19 represent a reasonable estimate of the amount of damages, considering
 2022 all of the circumstances existing on the date of this Agreement, including the relationship of the sums to
 2023 the range of harm to Authority that reasonably could be anticipated and anticipation that proof of
 2024 actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically
 2025 confirms the accuracy of the statements made above and the fact that each Party had ample
 2026 opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision
 2027 at the time that this Agreement was made.

2028 **8.19.2 Service Performance Standards; Liquidated Damages for Failure to Meet**
 2029 **Standards**

2030 Contractor shall pay (as liquidated damages and not as a penalty) the amounts set forth in Exhibit 8.19.
 2031 The Authority Contract Manager may determine the occurrence of events giving rise to liquidated
 2032 damages through the investigation or observation or investigation of complaints by Customers or any
 2033 other party. These performance standards shall consider both effort (e.g., number of meetings with
 2034 Customers to offer new programs) and results (e.g., Tons of material Recycled). In addition, these
 2035 liquidated damages shall be in addition to any other remedy the Authority and/or Franchise Agencies

2036 may have, which may include, but are not necessarily limited to: a determination of breach of contract,
2037 termination of the agreement, or litigation.

2038 Prior to assessing liquidated damages, Authority Contract Manager shall give Contractor Notice of its
2039 intention to do so. The Notice shall include a brief description of the incident(s) and non-performance.
2040 For events where there is a cure opportunity noted in Exhibit 8.19, Contractor shall have the
2041 opportunity to cure such incident(s) and/or non-performance, consistent with the schedules defined
2042 therein, and, if Contractor does so, no liquidated damages shall be assessed. The Authority Contract
2043 Manager may review (and make copies at its own expense) all information in the possession of
2044 Contractor relating to incident(s) and non-performance. The Contractor may, within ten (10) Calendar
2045 Days after receiving the Notice, request a meeting with Authority Contract Manager. Upon Contractor's
2046 request, the Authority Contract Manager shall present evidence of non-performance. Such evidence
2047 shall be provided in writing and through testimony of its employees and others relevant to the
2048 incident(s) and non-performance. Authority Contract Manager shall provide Contractor with a written
2049 explanation of his or her determination on each incident(s) and non-performance prior to authorizing
2050 the assessment of liquidated damages. Subject to the limits of "material impact" described in Section
2051 8.10, with respect to the cumulative amount of any liquidated damages assessed during the preceding
2052 twelve month period the decision of Authority Contract Manager shall be final and Contractor shall not
2053 be subject to, or required to exhaust, any further administrative remedies.

2054 **8.19.3 Amount**

2055 Authority may assess liquidated damages for each Calendar Day or event, as appropriate, that
2056 Contractor is determined to be liable in accordance with this Agreement in the amounts specified in
2057 Exhibit 8.19, subject to a rule of reason regarding when Contractor should have known or been notified
2058 by the Authority Contract Manager, as appropriate.

2059 **8.19.4 Payment of Liquidated Damages**

2060 Contractor shall pay any liquidated damages assessed by Authority Contract Manager within ten (10)
2061 Calendar Days after they are assessed. If they are not paid within that period, Authority may proceed
2062 against the Performance Surety.

2063 **8.19.5 Administrative Nature of Liquidated Damages**

2064 The assessment of liquidated damages as described in this Section 8.19 shall be an administrative
2065 function within the sole discretion of the Authority Contract Manager and shall not be subject to appeal.
2066 In the event that the liquidated damages assessed by the Authority Contract Manager exceed the
2067 monetary limits of the Authority Contract Manager's administrative discretion, as described in Section
2068 8.10, Contractor may appeal the Authority Contract Manager's decision to the Authority's Board of
2069 Directors and their determination shall be conclusive.

2070 **8.20 Guaranty of Contractor's Performance**

2071 The Guarantor has agreed to guaranty Contractor's performance of this Agreement including
2072 Contractor's Indemnification obligations Hereunder pursuant to a Guaranty Agreement in substantially

2073 the form attached as Exhibit 8.20. The Guaranty Agreement is being provided concurrently with
2074 Contractor's execution of this Agreement.

2075 **8.21 Exercise of Discretionary Actions**

2076 Parties shall exercise any approval, disapproval, consent, option, discretion, election, opinion, judgment,
2077 or choice under this Agreement, make a requirement under this Agreement or interpret this Agreement
2078 ("Discretionary Action") reasonably and in writing. Any mediator or court must find the Party's exercise
2079 to be reasonable. Recognizing the essential public health and safety protections this Agreement serves,
2080 where this Agreement specifically provides that the exercise of any Discretionary Action is in each
2081 respective Party's independent, sole, exclusive, or absolute discretion, control, or judgment, the other
2082 Party shall not question or challenge the other Party's exercise thereof. Parties shall, nevertheless,
2083 exercise their rights and remedies in good faith in accordance with Applicable Law.

2084 Unless otherwise provided in this Agreement, Authority's Discretionary Actions shall be deemed
2085 disapproved or denied, as the case may be, if Authority has not otherwise taken that Discretionary
2086 Action within three (3) weeks of Contractor's request.

2087 **8.22 Jurisdiction, Venue**

2088 To the extent permitted by Applicable Law and subject to choice of venue laws, venue is appropriate in
2089 courts sitting in Contra Costa County, California. For cases adjudicated in Federal Court, the appropriate
2090 venue is the United States District Court for the Northern District of California.

2091 The site of any other hearing or action, whether mediation, arbitration, or non-judicial, of whatever
2092 nature or kind regarding this Agreement, shall be conducted in the County of Contra Costa, California, or
2093 as otherwise mutually agreed upon by the Parties.

2094 **8.23 Costs and Expenses**

2095 Each Party, regardless of the decision of the court, shall pay their own expenses incurred in the process
2096 of adjudication.
2097

2098 **8.24 Golden Bear Franchise Agreement**

2099 Nothing in this Agreement shall or is intended to apply to, supersede or affect the Exclusive Franchise
2100 Agreement Between the City of Richmond and Golden Bear Transfer Services, Inc., dated June 28, 2004
2101 as it may be amended from time to time ("Richmond-Golden Bear Agreement") in any way.
2102 Furthermore, with respect to Contractor's representation and warranty set forth in section 9.1 of this
2103 Agreement, Contractor represents and warrants that its entry into this Agreement is not a breach of the
2104 Richmond-Golden Bear Agreement, so long as all Solid Waste is being directed by the Authority to the
2105 Golden Bear Transfer Station, the Approved Transfer Facility, for handling and transport to other
2106 facilities, including without limitation Newby Island or Keller Canyon Landfill. The Authority agrees that
2107 it shall direct and continue to direct such Solid Waste to the Golden Bear Transfer Station. Such
2108 direction of Solid Waste to Golden Bear Transfer Station is limited only by the provisions set forth in
2109 Sections 4.12 and 8.12.

2110

ARTICLE 9

REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

9.1 Accuracy of Representations

The Contractor has made, and the Authority is relying on the accuracy of, certain representations in its response to the Authority's requirements regarding its: corporate authorization to enter the Agreement; ability to do so without causing a breach of any agreement or Violation of any Applicable Law or judicial decision subject to the provisions in section 8.24; current or pending litigation; regulatory compliance with regard to the Landfill and Approved Processing Facilities; and, ability to provide the proposed Services in accordance with the permitted capacity of the Landfill and Approved Processing Facilities.

The Contractor understands that the Authority and Franchise Agencies are relying upon the accuracy of the Contractor's representations with regard to the legal and regulatory matters described above as well as with regard to the Contractor's operational plans and costs for implementing the Services described Herein. would be in default of this Agreement, pursuant to Section 7.1.3, in the event that the Authority or Contractor were to determine that any material representation made as an inducement to or explanation of the costs incurred by Contractor under this Agreement was inaccurate.

9.2 Representations and Warranties Regarding Negotiation of Agreement

This Agreement contains all material and required terms to be effective and there shall be no conditions precedent, conditions subsequent, or other conditions or qualifications required or imposed by the Authority or any Franchise Agency, including without limitation, any other or different amendments or modifications to Franchise Agency Collection Franchise Agreements for purposes of that Franchise Agency's approval and execution of the Agreement.

A. Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of California and is qualified to do business in the State.

B. Authority and Authorization. The Contractor has full legal right, power and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

C. Statements and Information. That portion of the Contractor's Proposal compiled, drafted, made or otherwise delivered by the Contractor, Subcontractors and Affiliates is correct and complete in all material respects at the time originally submitted by Contractor to the Authority.

D. No Conflicts. Neither the execution or delivery by the Contractor of this Agreement, the performance by the Contractor of its Service obligations, nor the fulfillment by the Contractor of the terms and conditions of this Agreement: (1) conflicts with, violates or results in a breach of any Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority. or any

2146 agreement or instrument to which the Contractor or any of its Affiliates is a Party or by which the
2147 Contractor or any of its Affiliates' properties or assets are bound, or constitutes a default thereunder.

2148 **E. No Approvals Required.** No approval, authorization, license, permit, order or consent of, or
2149 declaration, registration or filing with any governmental or administrative authority, commission, board,
2150 agency or instrumentality is required for the valid execution and delivery of this Agreement by the
2151 Contractor, except those as have been duly obtained from its Board of Directors.

2152 **F. No Litigation.** As of January 1, 2014 there is no action, suit, proceeding or investigation, at law or in
2153 equity, before or by any court or governmental authority, commission, board, agency or instrumentality
2154 pending or, to the best of the Contractor's knowledge, threatened, against the Contractor wherein an
2155 unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely
2156 affect the performance by the Contractor of its obligations under this Agreement or in connection with
2157 the transactions contemplated by this Agreement, or which, in any way, would adversely affect the
2158 validity or enforce ability of this Agreement or any other agreement or instrument entered into by the
2159 Contractor in connection with the transactions contemplated by this Agreement.

2160 **G. Due Diligence.** Contractor has made an independent investigation, examination and research
2161 satisfactory to it of the conditions and circumstances surrounding the Agreement and best and proper
2162 method of providing Services (including Service types) and labor, equipment and materials for the
2163 volume of Services to be provided. Contractor agrees that it shall make no claim against the Authority
2164 based on any estimates, statements or interpretations made by any officer, employee, agent or
2165 consultant of the Authority in connection with the procurement of this Agreement which proves to be in
2166 any respect erroneous.

2167 **H. Compliance with Applicable Law.** Contractor further represents and warrants that it has fully
2168 complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the
2169 course of procuring this Agreement.

2170 **I. Ability to Perform.** Contractor warrants that it possesses the business, professional and technical
2171 capabilities to provide Services; has secured and maintains in full force and effect Permits; and
2172 possesses the equipment, facility and employee resources required to fully and timely perform Services.

2173 **J. Capacity.** Contractor warrants that as of January 1, 2014 it has capacity at the Landfill and the
2174 Approved Processing Facilities to perform the services required under this Agreement throughout the
2175 Term and that it shall maintain that capacity through the Term.

2176

2177 **ARTICLE 10**
 2178 **MISCELLANEOUS PROVISIONS**

2179 **10.1 Exhibits**

2180 If any provisions contained in the text of Articles 1 through 10 are inconsistent or conflict with any
 2181 Exhibits to this Agreement, then the provisions of the text shall govern.

2182 **10.2 Section Headings**

2183 Any captions or headings following the Exhibit, Section, subsection, paragraph and Article numbers and
 2184 preceding the operative text of this Agreement is for convenience of reference only and do not control
 2185 or affect the scope, intent, meaning, construction, interpretation, or effect of this Agreement.

2186 **10.3 Interpretation and Construction**

2187 **10.3.1 Drafting**

2188 This Agreement must be interpreted and construed reasonably and neither for nor against either Party,
 2189 regardless of the degree to which either Party participated in its drafting. Contractor acknowledges that
 2190 it determined to participate in the procurement of this Agreement upon its own choice and initiative
 2191 and during the course of that procurement Authority solicited Contractor's comments, exceptions and
 2192 proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at
 2193 arms length and with advice of their respective attorneys, and no provision Herein is construed against
 2194 the Authority solely because it prepared this Agreement in its executed form.

2195 **10.3.2 Gender and Plurality**

2196 Words of the masculine gender include correlative words of the feminine and neuter genders, and vice
 2197 versa. Words importing the singular number mean and include the plural number, and vice versa,
 2198 unless the context demands otherwise.

2199 **10.3.3 Font**

2200 Any underlined, italicized, bold-faced, upper captioned or other font style are for ease of reading and
 2201 contract administration only and do not imply relative importance or unimportance of any provision of
 2202 this Agreement.

2203 **10.3.4 References to Parts**

2204 References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified
 2205 otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to
 2206 "subsections" refers to the subsection contained in the same Section in which the reference occurs,
 2207 unless otherwise provided.

2208 **10.3.5 Examples**

2209 Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent or conflicts
2210 with the text that it illustrates, the text governs.

2211 **10.3.6 Specifics No Limitation on Generalities**

2212 The mention of any specific duty or liability imposed upon the Contractor may not be construed as a
2213 limitation or restriction of any general liability or duty imposed upon the Contractor by this Agreement
2214 or Applicable Law.

2215 **10.4 Amendment**

2216 The Parties may change, modify, supplement, or amend this Agreement only upon written agreement
2217 duly authorized and executed by both Parties. However, wherever reports, forms, or other documents
2218 are attached to this Agreement in substantially the form provided in the Exhibits, the Authority
2219 Representative and Contractor Representative may edit and revise them upon their agreement or
2220 otherwise provided in the related sections of this Agreement, evidenced in writing *unless* this
2221 Agreement or Applicable Law specifically requires approval of the Authority Board of Directors pursuant
2222 to resolution or otherwise.

2223 **10.5 Severability**

2224 If any clause, sentence, provision, subsection, Section, or Article of this Agreement or Exhibit to this
2225 Agreement (an Agreement Provision) is ruled unconstitutional, illegal, invalid, non-binding, or
2226 unenforceable by any court of competent jurisdiction, then the Parties shall:

2227 (1) Promptly meet and negotiate a substitute for those Agreement Provisions and any related
2228 amendments, deletions, or additions to other provisions of this Agreement, which together effect the
2229 Parties' original intent to the greatest extent allowable under Applicable Law; and,

2230 (2) If necessary or desirable to accomplish preceding item (1), apply to the court that made that
2231 ruling for a judicial construction of the substituted Agreement Provision and any amendments,
2232 deletions, or additions to this Agreement. Contractor shall pay Authority half of the Direct Costs of
2233 that application within twenty (20) Calendar Days of Authority's request if Contractor or a third Person
2234 other than the Authority instituted proceedings resulting in the ruling.

2235 The unconstitutionality, illegality, invalidity, non-binding nature, or unenforceability of any Agreement
2236 Provision shall not affect any of the remaining provisions of this Agreement. This Agreement shall be
2237 construed and enforced as if that Agreement Provision did not exist.

2238 **10.6 Costs of Enforcing Agreement**

2239 Contractor shall pay to the Authority the Authority's Costs, including attorneys' fees, reasonably
2240 incurred by or on behalf of the Authority enforcing payment or performance of Contractor's obligations
2241 under this Agreement if non-payment or non-performance results in a Contractor Default.

2242 **10.7 Authority**

2243 Authority warrants that the officers listed below have been duly authorized by the Authority to execute
2244 this Agreement on behalf of the Authority. Contractor warrants that the individuals listed below have
2245 been duly authorized by the Contractor to execute this Agreement on behalf of the Contractor.

2246 The Authority and Member Agencies represent and warrant that the Authority and Member Agency
2247 negotiating team consisting of representatives from the Cities of Richmond, Pinole, Hercules and San
2248 Pablo, and the Authority Executive Director each and collectively have the full right and authority from
2249 the Authority Board or the Member Agencies' city councils, as the case may be, to negotiate fully and in
2250 good faith a mutually acceptable Agreement.

2251 **10.8 Counterparts**

2252 This Agreement may be executed in any number of counterparts, some of which may not bear the
2253 signatures of all Parties to this Agreement. Each counterpart, when so executed and delivered, is
2254 deemed to be an original and all counterparts, taken together, shall constitute one and the same
2255 instrument; *provided, however*, that in pleading or proving this Agreement, it shall not be necessary to
2256 produce more than one (1) copy (or sets of copies) bearing the signature of the Contractor or Authority.

2257 IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the latter of the
2258 date written below.

2259 **West Contra Costa Contractor**
2260 **Integrated Waste Management Authority**

2261

2262 By: _____ By: _____

2263 Executive Director Area President

2264 Approved as to Form: Approved as to Form:

2265 _____

2266 Attorney Contractor Legal Counsel

2267

2268 Attest:

2269 _____

2270 Authority Clerk

EXHIBIT 1 DEFINITIONS

- 2271
2272
- 2273 For purposes of this Agreement, unless a different meaning is clearly required, the following words and
2274 phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be
2275 capitalized throughout this Agreement:
- 2276 **“Act”** means the California Integrated Waste Management Act of 1989 set forth in PRC Section 40000,
2277 *et seq.*
- 2278 **“Actions”** means all actions including claims, demands, causes of action, suits, mediation, arbitration,
2279 hearings, investigations, inquiries and proceedings, whether legal, judicial, quasi-judicial, governmental
2280 or administrative in nature and whether threatened, brought, instituted or settled.
- 2281 **“Affiliate”** means all businesses (including corporations, limited and general partnerships, and sole
2282 proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect
2283 Ownership interests or common management shall be deemed to be “Affiliated with” Contractor and
2284 included within the term “Affiliates” as used Herein. An Affiliate shall include a business in which
2285 Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect
2286 Ownership interest in Contractor and/or a business which is also Owned, controlled, or managed by any
2287 business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of
2288 determining whether an indirect Ownership interest exists, the constructive Ownership provisions of
2289 Section 318(a) of the Internal Revenue code of 1986, as in effect on the date of this Agreement, shall
2290 apply; provided, however, the (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in
2291 Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be
2292 disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect
2293 Ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded
2294 and percentage interests shall be determined on the basis of the percentage of voting interest or value
2295 which the Ownership interest represents, whichever is greater.
- 2296 **“Authority Contract Manager”** means the Authority’s Executive Director or his/her designee who is
2297 responsible for the administrative management of this Agreement.
- 2298 **“Agreement”** means this Agreement between the Authority and Contractor, including all exhibits,
2299 schedules and attachments, which are incorporated in this Agreement by reference, as this Agreement
2300 may be amended and supplemented.
- 2301 **“Alternative Daily Cover (ADC)”** means cover material used to cover compacted Solid Wastes in a
2302 landfill, other than Organic Materials and other than at least six (6) inches of earthen material, placed on
2303 the surface of the active face of the refuse fill area at the end of each operating day to control vectors,
2304 fires, odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of
2305 Regulations as may be amended from time to time.

2306 **“Applicable Law”** means all laws, statutes, rules, regulations, guidelines, Permit conditions, Permits,
2307 Actions, determinations, orders, approvals or requirements of the United States, State, regional or local
2308 government authorities, agencies, boards, commissions, courts or other bodies having applicable
2309 jurisdiction, that from time to time apply to or govern Services or the performance of the Parties'
2310 respective obligations under this Agreement, *including* any of the foregoing which concern health,
2311 safety, fire, environmental protection, labor relations, mitigation conditions and monitoring plans in
2312 accordance with environmental impact statements, conditional use permits; building codes, zoning,
2313 non-discrimination; and the Transfer or Disposition of Solid Waste, Organic Materials, and Recyclable
2314 Materials, and including but not limited to:

2315 (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C.
2316 Section 9601 *et seq.*);

2317 (2) the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 *et seq.*);

2318 (3) the Clean Air Act, (42 U.S.C. Section 7401 *et seq.*); and the California Clean Air Act (Health and
2319 Safety Code Sections 39000 *et seq.*);

2320 (4) the Emergency Planning and Community Right to Know Act, (42 U.S.C. Section 11001 *et seq.*)

2321 (5) the Occupational Safety and Health Act, (29 U.S.C. Section 651 *et seq.*), including the Solid
2322 Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts
2323 257 and 258); and the California Occupational Safety and Health Act (California Labor Code,
2324 Division 5, Parts 1-10, Section 6300 *et seq.*);

2325 (6) the California Hazardous Waste Control Act, (California Health & Safety Code, Section 25100 *et*
2326 *seq.*);

2327 (7) California Hazardous Materials Release Response Plan and Inventory Act (California Health &
2328 Safety Code Section 25500 *et seq.*);

2329 (8) the Carpenter-Presley-Tanner Hazardous Substance Account Act, (California Health & Safety
2330 Code Section 25300 *et seq.*);

2331 (9) California Underground Storage Tank Act, (California Health & Safety Code, Section 25280 *et*
2332 *seq.*);

2333 (10) the Clean Water Act (33 U.S.C. Section 1251 *et seq.*) and the Porter-Cologne Water Quality
2334 Control Act, (California Water Code Section 13000 *et seq.*);

2335 (11) the Safe Drinking Water and Toxic Enforcement Act “Proposition 65” , (California Health and
2336 Safety Code Section 25249.5 *et seq.*);

2337

- 2338 (12) California Public Resources Code Sections 45300-04, 45700, California Health & Safety Code
2339 Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273);
- 2340 (13) Title 14 California Code of Regulations;
- 2341 (14) Title 22 California Code of Regulations;
- 2342 (15) Title 23 California Code of Regulations, Chapter 15, Sections 2510-2610; and
- 2343 (16) Title 27 California Code of Regulation.
- 2344 Any other government required rules, laws, statutes, regulations, guidelines, or policies which are
2345 imposed upon Contractor and not discretionary, governing the provision of the Services outlined within
2346 this Agreement.
- 2347 **“Approved Construction and Demolition Processing Facility”** means the West Contra Costa Sanitary
2348 Landfill Organic Materials Processing Facility located at 1 Parr Blvd. in Richmond, California, which was
2349 selected by the Contractor and approved by the Authority as the site for the performance of services
2350 under Section 4.1.6 of this Agreement. Change in facility designation for the performance of such
2351 services shall require written authorization of the Authority Contract Manager.
- 2352 **“Approved Dry Materials Processing Facility”** means the Newby Island Resource Recovery Park located
2353 at 1601 Dixon Landing Road in Milpitas California, which was selected by the Contractor and approved
2354 by the Authority as the site for the performance of services under Section 4.1.4 of this Agreement.
2355 Change in facility designation for the performance of such services shall require written authorization of
2356 the Authority Contract Manager.
- 2357 **“Approved Household Hazardous Waste (HHW) Facility”** means the West County HHW Collection
2358 Facility at 101 Pittsburg Avenue in North Richmond, California which is used by the Contractor as the site
2359 for accepting and managing household hazardous waste from residents and conditionally exempt small
2360 quantity generators within the Authority’s service area as well as the surrounding unincorporated
2361 communities of Crockett, Kensington, Port Cost and Tormey pursuant to the terms of an agreement
2362 between the Authority, Contractor and the County.
- 2363 **“Approved Organic Materials Processing Facility”** means the West Contra Costa Sanitary Landfill
2364 Organic Materials Processing Facility located at 1 Parr Blvd, Richmond, California, which was selected by
2365 the Contractor and approved by the Authority as the site for the performance of services under Section
2366 4.1.5 of this Agreement. Change in facility designation for the performance of such services shall require
2367 written authorization of the Authority Contract Manager.
- 2368 **“Approved Processing Facility(ies)”** means the Approved Organic Materials Processing Facility,
2369 Approved Construction and Demolition Processing Facility, Approved Transfer Station, and/or the
2370 Approved Recyclable Materials Processing Facility.
- 2371 **“Approved Recyclable Materials Processing Facility”** means West County Resource Recovery Facility
2372 located at 101 Pittsburg Ave, Richmond, California or the Newby Island Resource Recovery Park located

2373 at 1601 Dixon Landing Road in Milpitas, CA which were selected by the Contractor and approved by the
 2374 Authority as the locations for the performance of services under Section 4.1.3 of this Agreement.
 2375 Change in facility designation for the performance of such services shall require written authorization of
 2376 the Authority Contract Manager.

2377 **“Approved Transfer Station”** means the Golden Bear Transfer Station owned by the Contractor and
 2378 located 1 Parr Blvd, in Richmond California, which was selected by the Contractor and approved by the
 2379 Authority as the site for the performance of services under Section 4.1.1 of this Agreement.

2380 **“Assign or Assignment”** means:

2381 (i) selling, exchanging or otherwise transferring effective control of management of the Contractor
 2382 (through sale, exchange or other transfer of outstanding stock or otherwise);

2383 (ii) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then
 2384 outstanding common stock of the Contractor;

2385 (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-
 2386 issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction
 2387 which results in a change of Ownership or control of Contractor;

2388 (iv) any Assignment by operation of law, including insolvency or bankruptcy, making Assignment for
 2389 the benefit of creditors, writ of attachment of an execution, being levied against Contractor,
 2390 appointment of a receiver taking possession of any of Contractor’s tangible or intangible
 2391 property;

2392 (v) any combination of the foregoing (whether or not in related or contemporaneous transactions)
 2393 which has the effect of any that transfer or change of Ownership or control of Contractor.

2394 **“Authority”** means the West Contra Costa Integrated Waste Management Authority, its Board of
 2395 Directors, staff, and/or agents.

2396 **“Calendar Year”** means a successive period of twelve (12) months commencing on January 1 and ending
 2397 on December 31.

2398 **“CCR”** means California Code of Regulations.

2399 **“Change in Law”** means the occurrence of any event or change in Applicable Law as follows:

2400 (1) the adoption, promulgation, repeal, modification, amendment or other change in Applicable Law
 2401 or change in judicial or administrative interpretation thereof occurring after January 1, 2014, *other*
 2402 *than* laws with respect to taxes based on or measured by net income, or any unincorporated
 2403 business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by the
 2404 Authority) or employment taxes; or

2405 (2) any order or judgment of any federal, State or local court, administrative agency or governmental
2406 body issued after January 1, 2014 and the order or judgment is not also the result of the willful
2407 misconduct or negligent action or inaction of the Party relying thereon or of any third party for
2408 whom the Party relying thereon is directly responsible; or

2409 (3) the imposition by a governmental authority or agency of any new or different material conditions
2410 in connection with the issuance, renewal, update or modification of any Permit after the date of
2411 this Agreement; or

2412 (4) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or
2413 renewal of, or the suspension, interruption or termination of, any Permit after the date of this
2414 Agreement; *provided* the failure to issue or the suspension or termination of any Permit is not the
2415 result of negligent action or inaction of the Party relying thereon or any third party for whom the
2416 Party relying thereon is directly responsible.

2417 **“Closure”** means closure of the Landfill or portions of the Landfill in accordance with Applicable Law,
2418 including all planning, design, regulatory approvals, plan implementation, construction and monitoring.

2419 **“Collection Franchise Agreement(s)”** refers to the franchise agreements between the Franchise
2420 Agencies and their Franchised Collector, either individually or collectively.

2421 **“Commercial”** shall mean of, from or pertaining to non-Residential premises where business activity is
2422 conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and
2423 industrial operations, but excluding businesses conducted upon Residential property which are
2424 permitted under applicable zoning regulations and are not the primary use of the property.

2425 **“Compost”** means a controlled biological decomposition of organic materials that are Source Separated
2426 from the municipal Solid Waste stream, or which are separated at a centralized facility.

2427 **“Compostable Food Ware”** means a subset of Organic Material, Compostable Food Ware is a product
2428 capable of Composting as of the Effective Date and labeled in accordance with California law, or is
2429 consistent with the timeline and specifications of ASTM D6400 and D6868, without regard to material
2430 type. The Parties’ intention is to maximize composting of such materials; as new commodities become
2431 available, and as long as materials are compostable in a commercially feasible and reasonable manner,
2432 they will be considered to be Organic Material.

2433 **“Compost Product”** means the product resulting from Composting, the controlled biological
2434 decomposition of organic materials, that are source separated from the municipal solid waste stream, or
2435 which are separated at a centralized facility.

2436 **“Contractor”** means West County Resource Recovery, Inc., West Contra Costa Sanitary Landfill, Inc.,
2437 Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. and Keller Canyon Landfill Company,
2438 Inc. organized and operating under the laws of the State of California. For purposes of Indemnities,
2439 Contractor shall include Contractor’s employees, officers, agents, subcontractors and consultants
2440 performing or responsible for performing Services; provided that only signatory Contractors,

2441 corporations, are obligated to provide Indemnities and its employees, officers, agents, subcontractors,
2442 and consultants shall not be liable therefore as individuals.

2443 **“Contractor Default”** has the meaning provided in Section 7.1.

2444 **“Construction and Demolition (C&D) Materials”** includes but is not limited to concrete, cinder blocks,
2445 brick, mortar, wood, glass and other material removed and discarded during the alteration, renovation,
2446 remodeling, repair, construction or demolition of pavements, houses, commercial buildings or
2447 structures which can be separated from Solid Waste for the purpose of reuse, Processing or re-
2448 manufacture.

2449 **“Conviction”** means a Plea, criminal Conviction, permanent mandatory or prohibitory injunction, or a
2450 final judgment or order from a court or regulatory agency of competent jurisdiction with respect to
2451 Criminal Activity.

2452 **“Criminal Activity”** means, but is not limited to:

2453 (1) any criminal offense in connection with obtaining, attempting to obtain, procuring or performing a
2454 public or private agreement related to Solid Waste, Organic Materials, or Recyclable Materials
2455 Services of any kind (including collection, hauling, Transfer, Processing, Composting, or Disposal),
2456 including this Agreement; or

2457 (2) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency; or

2458 (3) fraud, embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification
2459 or destruction of Records, obstruction of justice, knowingly receiving stolen property, theft, or
2460 misprision (failure to disclose) of a felony; or

2461 (4) unlawful Disposal of Hazardous or Designated Waste; or

2462 (5) Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market
2463 allocation, and of unfair and anti-competitive trade practice laws, including with respect to
2464 inflation of waste collection, hauling or Disposal fees.

2465 **“Day”** means calendar day.

2466 **“Designated Waste”** means non-Hazardous Material which may pose special Disposal problems because
2467 of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal
2468 sites, or Class III Disposal sites pursuant to a variance issued by the California Department of Health
2469 Services or pursuant to applicable Permits. Designated Waste consists of those substances classified as
2470 Designated Waste by the State, in CCR Title 23, Section 2522.

2471 **“Direct Costs”** means the sum of:

2472 (1) payroll costs directly related to the Contractor’s performance, or supervision of any obligation
2473 pursuant to the provisions of this Agreement, or Authority’s administration and enforcement of

2474 this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave,
 2475 holidays, retirement, workers compensation insurance, federal and State unemployment taxes
 2476 and all medical and health insurance benefits, plus

2477 (2) the costs of materials, Services, direct rental costs and supplies, plus

2478 (3) the reasonable costs of any payments to subcontractors necessary to and in connection with the
 2479 performance under or administration and enforcement of this Agreement; plus

2480 (4) any other cost or expense which is directly or normally associated with the task performed.

2481 Such Direct Costs are to be substantiated by (i) a certificate signed by the principal financial officer of
 2482 the Contractor or the authorized representative of the Authority or his or her designee, as the case may
 2483 be, setting forth the amount of the cost and the reason why the cost is properly chargeable to the
 2484 Authority or the Contractor, as the case may be, and representing that the cost is an arm's length and
 2485 competitive price, if there are competitive prices, for Service or materials supplied; and (ii) if the
 2486 Authority or the Contractor requests, as the case may be, additional back-up documentation as may be
 2487 available to reasonably substantiate any Direct Cost, including invoices from suppliers and
 2488 subcontractors. Direct Costs excludes Non-Allowable Costs.

2489 **"Disposal or Dispose** (or other variation thereof)" means the final Disposition of Solid Waste in
 2490 accordance with this Agreement at the Landfill.

2491 **"Diversion or Divert"** means to Divert from landfill Disposal or transformation through source reduction,
 2492 reuse, Recycling, Composting, or other means within the meaning of the Public Resources Code Section
 2493 41780.

2494 **"Diversion Goal Meeting"** means a triennial meeting, described in Section 4.21 of this Agreement,
 2495 between the Authority and Contractor, where the parties assess the progress towards achieving a
 2496 seventy five percent (75%) Diversion goal by 2020. Nothing in this definition is to be interpreted as a
 2497 75 % diversion guarantee.

2498 **"Dry Material"** means discarded material which is placed for Collection by the Generator as Solid Waste,
 2499 but is Collected separately from other Generator's Solid Waste by a Franchised Collector for the purpose
 2500 of Diversion. This material is generally characterized as having a large amount of Recoverable paper,
 2501 cardboard, and plastic and having fifteen percent (15%) or less by weight of Organic Materials.

2502 **"Food Scraps"** means materials that shall decompose and/or putrefy including: (i) all kitchen and table
 2503 food waste; (ii) animal or vegetable waste that is generated during or results from the storage,
 2504 preparation, cooking or handling of food stuffs; (iii) discarded paper that is contaminated with Food
 2505 Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) non-Recyclable paper or
 2506 contaminated paper. Food Scraps are a subset of Organic Materials.

2507 **"Franchise Agency(ies) or Franchising Agencies"** means the County of Contra Costa and the cities of
 2508 Hercules, Pinole, Richmond and San Pablo, collectively.

- 2509
- 2510 **“Franchised Collector”** means the company given the exclusive or limited right, by a Franchise Agency,
2511 to Collect Solid Waste, Organic Materials, and/or Recyclable Materials within the physical jurisdiction of
2512 that agency.
- 2513 **“Generator”** means any Person whose act or process produces Solid Waste or Unpermitted Waste or
2514 other material that becomes part of the overall waste stream.
- 2515 **“Goods or Services”** means subcontracted Goods or Services used in providing Services, specifically
2516 labor, equipment, and supplies related to furnishing Services.
- 2517 **“Governmental Fees”** are federal, state or local fees or general or special taxes, including a business
2518 license tax, imposed on Solid Waste management and handling facilities, including the Landfill and any
2519 and all Approved Processing Facilities pursuant to this Agreement. Governmental Fees do not include
2520 any costs imposed upon or incurred by the Landfill or Approved Processing Facility(ies) in connection
2521 with a governmentally required repair, remediation and improvement of the subject facility, except to
2522 the extent that such requirement is the result of a Change in Law under this Agreement.
- 2523 **“Gross Receipts”** shall mean total cash receipts collected from Customers by the Contractor for the
2524 provision of Services pursuant to this Agreement, without any deductions. Gross Receipts do not include
2525 revenues from the sale of Recyclable Materials.
- 2526 **“Guarantor”** means Republic Services, Inc.
- 2527 **“Guaranty Agreement”** is the agreement in substantially the form attached as Exhibit 8.21 executed by
2528 the Guarantor.
- 2529 **“Hazardous Materials or Hazardous Waste”** are materials that by reason of their quality, concentration,
2530 composition or physical, chemical or infectious characteristics may cause or significantly contribute to
2531 an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard
2532 to human health or the environment when improperly treated, stored, Transported or Disposed of or
2533 otherwise mismanaged; or any waste which is defined and/or regulated as a Hazardous Waste, toxic
2534 waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, and:
- 2535 (1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated
2536 under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and
2537 Safety Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely
2538 Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety
2539 Code (the California Hazardous Waste Control Act), California Health and Safety Code Section
2540 25100 *et seq.*, including 23 CCR Sections 2521 and 2522;
- 2541 (2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et*
2542 *seq.*, as amended (including amendments thereto made by the Solid Waste Disposal Act
2543 Amendments of 1980),

- 2544 (3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as
 2545 amended, and related federal, State and local laws and regulations, including the California Toxic
 2546 Substances Account Act, California Health and Safety Code Section 25300 et seq.;
- 2547 (4) materials regulated under the Comprehensive Environmental Response, Compensation and
 2548 Liability Act, 42 U.S.C. 9601, et seq.;
- 2549 (5) materials regulated under any future additional or substitute federal, State or local laws and
 2550 regulations pertaining to the identification, Transportation, treatment, storage or Disposal of toxic
 2551 substances or Hazardous Waste; and
- 2552 (6) Any substance the presence of which at the Landfill is prohibited by Applicable Law.
- 2553 If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous
 2554 Waste adopt conflicting definitions of "Hazardous Waste", for purposes of collection, Transportation,
 2555 Processing and/or Disposal, the broader, more restrictive definition is employed for purposes of this
 2556 Agreement.
- 2557 **"Holidays"** are defined as New Year's Day, Martin Luther King Holiday, President's Holiday, Easter
 2558 Sunday, Memorial Day, Fourth of July, Labor Day, Columbus Day, Thanksgiving Day, and Christmas Day.
- 2559 **"Household Hazardous Waste"** means any Hazardous Waste generated incidental to owning or
 2560 maintaining a place of residence, excluding any Hazardous Waste generated in the course of operation
 2561 of a business concern at a residence, in accordance with Section 25218.1 of the California Health and
 2562 Safety Code.
- 2563 **"Immediate or Immediately"** means within twelve (12) hours.
- 2564 **"Indemnities or Indemnification"** means all defense and Indemnities under this Agreement.
- 2565 **"Landfill"** means Keller Canyon Landfill which is owned and operated by Contractor and located in
 2566 Contra Costa County at 901 Bailey Road, Pittsburg, CA.
- 2567 **"Liabilities"** means all Liabilities, including:
- 2568 (1) Actions;
- 2569 (2) Awards, judgments and damages, both: (i) actual damages, whether special and consequential, in
 2570 contract or in tort, such as natural resource damages, damage for injury to or death of any Person;
 2571 and damage to property; and (ii) punitive damages;
- 2572 (3) Contribution or indemnity claimed by Persons other than the Parties;
- 2573 (4) Injuries, losses, debts, liens, Liabilities;
- 2574 (5) Costs, such as response remediation and removal costs;

- 2575 (6) Interest;
- 2576 (7) Fines, charges, penalties, forfeitures; and
- 2577 (8) Expenses such as attorney’s and expert witness fees, expenditures for investigation and
2578 remediation, and costs incurred in connection with defending against any of the foregoing or in
2579 enforcing Indemnities.

2580 **“Medical Waste”** means those waste materials that have disease transmission potential and are
2581 classified as Hazardous Wastes by the State Department of Health Services, including pathological and
2582 surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades,
2583 tubing, bottles, drugs, patient care items that as linen or personal or food service items from
2584 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or
2585 with known infectious diseases, where “Infectious Waste” means biomedical waste generated at
2586 hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical
2587 industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are
2588 identified in the California Health and Safety Code Section 25117.5;

2589 **“Member Agencies”** means the cities of El Cerrito, Hercules, Pinole, Richmond and San Pablo,
2590 collectively. The City of El Cerrito is a Member Agency as defined in the Authority’s Joint Powers
2591 Agreement, however is not covered by or included in this Agreement.

2592 **“Niche Service(s)”** means performance of additional post-collection materials Recovery services or
2593 activities that are:

2594 (1) Specific recovery methods or programs;

2595 (2) Solely targeting Recovery of certain materials within the municipal waste stream (e.g., mattress
2596 recovery); or,

2597 (3) that individually and in the aggregate of all Niche Services requested represent less than the
2598 percentages in the associated time line of the total waste stream Tons delivered by the Franchise
2599 Collector(s) as follows:

2600 i) For calendar years 2015 through 2017 the maximum percentage shall be two and one half
2601 percent (2.5%); and,

2602 ii) For calendar years 2018 through the remaining Term of this Agreement, including any
2603 extensions, the maximum percentage shall be five percent (5%).

2604 **“Niche Services”** does not include, without limitation, processes and methodologies that are designed to
2605 capture and process all or significant portions of the post-collection municipal solid waste stream,
2606 including use of waste material as feedstock for waste conversion or destruction technologies such as
2607 autoclaving or plasma arc gasification. Niche Services are limited to the post-collection waste stream
2608 materials and do not conflict with Franchise Collection Agreements.

2609 **“Non-Allowable Costs”** include the following:

2610 (1) fines, penalties, assessments and other amounts paid for Violations or noncompliance with
2611 Applicable Law or in settlement of claims or allegations of noncompliance with Applicable Law;

2612 (2) any costs of indemnifications, including Indemnification, Liabilities, or any mediation, arbitration
2613 or judicial proceeding, whether formal or informal;

2614 (3) any contributions or donations to any Person (including charitable, non-profit, service or other
2615 community groups, and elected officials), including cash, property and services in kind;

2616 (4) lobbying costs, whether cash, property or services in kind, such as:

2617 -costs incurred in any direct or indirect attempt to influence the outcome of any federal, State
2618 or local election, referendum, initiative or similar process by citizen electorate or vote upon
2619 resolutions, ordinances or other action items by elected officials (including members of the
2620 Authority Board of Directors, city council, or a county board of supervisors), through cash
2621 contributions, endorsements, publicity or other action;

2622 -establishing, administering, contributing to, or paying the expense of a candidate, political
2623 party, campaign, political action committee, or other Person or organization established for the
2624 purpose of influencing the outcomes of elections or vote, including votes on resolutions,
2625 ordinances or other actions by elected bodies such as the Authority Board of Directors, city
2626 council, or a county board of supervisors;

2627 -attempts to influence (i) the introduction of federal, State or local legislation or (ii) the
2628 enactment or modification of any pending federal, State or local legislation through
2629 communication with any member or employee of Congress, a State legislature or local
2630 governing body, or by preparing, distributing or using publicity;

2631 -legislative liaison activities when those activities are carried on in support of, or in knowing
2632 preparation for, an effort to engage in unallowable activities; and

2633 (5) costs of preparing documentation, including cost, financial and accounting books and Records,
2634 upon request of Authority or any accountant, auditor, financial analyst or consultant retained by
2635 Authority, incurred to substantiate Direct Costs, or allocation thereof.

2636 **“Notice”** means a Notice given in accordance with Section 8.9.

2637 **“Organic Materials”** means those Yard Trimmings and Food Scraps which are specifically accepted at
2638 the Approved Organic Materials Processing Facility. No Discarded Material shall be considered to be
2639 Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

2640 **“Overs”** means portion(s) of Organic Material that is/are not suitable for composting. Also called
2641 compost-overs, these are large, woody parts of the compost pile that have not completely broken down

2642 during the composting process. Overs also include plastics and other non-compostable items in the
2643 Organic Material. Overs comprise approximately 7.5 percent of the Organic Material composted.

2644 **“Ownership”** has the meaning provided under the constructive Ownership provisions of Section 318(a)
2645 of the Internal Revenue Code of 1986 *except* that (1) ten percent (10%) is substituted for fifty percent
2646 (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; (2) Section 318(a)(5)(C) is disregarded;
2647 (3) Ownership interest of less than ten percent (10%) is disregarded; and, (4) percentage interests is
2648 determined on the basis of the percentage of voting interest or value which the Ownership interest
2649 represents, whichever is greater.

2650 **“Party or Parties”** refers to the Authority and Contractor, individually or together.

2651 **“Permits”** means applicable federal, State, Authority, other local or regional governmental unit Permits,
2652 orders, licenses, approvals, authorizations, consents and entitlements that are required under
2653 Applicable Law to be obtained or maintained by Contractor in order to perform the Services, as renewed
2654 or amended from time to time.

2655 **“Person(s)”** includes an individual, firm, association, organization, partnership, corporation, trust, joint
2656 venture, the United States, the State, local governments and municipalities and special purpose districts
2657 and other entities.

2658 **“Pleas”** means the Contractor or any of its representatives has pled “guilty” or entered a Plea of “*nolo*
2659 *contendere*” or “no contest” to Criminal Activity relating to this Agreement.

2660 **“Post-Closure”** means Post-Closure of the Landfill or portions of the Landfill in accordance with
2661 Applicable Law, including all maintenance and monitoring.

2662 **“Post-Collection Rate” or “PCR”** means the maximum amount Contractor, through the Franchise
2663 Collector’s billing system, may charge Customers based on their Sector and collection service level which
2664 are established in the manner described in Section 5.4. Contractor may, in its sole discretion, charge any
2665 amount up to and including the maximum Post-Collection Rate approved by the Authority for the
2666 Customer’s collection service level. The Post-Collection Rate is distinct from the Rate.

2667 **“Process(ing)”** means to prepare, treat, or convert through some special method.

2668 **“PRC”** means the California Public Resources Code.

2669 **“Quarterly Report”** is described in Section 4.14.

2670 **“Rate(s)”** means the maximum amount, expressed as a dollar unit per ton, approved by the Authority as
2671 initially established in Section 5.2 and annually adjusted consistent with the requirements of Section 5.3
2672 of this Agreement. The Rate is established to provide the basis for calculating the allowable Post-
2673 Collection Rate(s). The components of the Rate, as described in Section 5.2, have been established and
2674 the initial Rate and its components are presented in Section 5.

2675 **“RCRA”** means the Resource Conservation and Recovery Act (42 U.S.C. Section 6900 *et. seq.*).

- 2676 **“Reasonable Business Efforts”** means those efforts a reasonably prudent business Person would expend
2677 under the same or similar circumstances in the exercise of that Person’s business judgment, intending in
2678 good faith to take steps calculated to satisfy the obligation that that Person has undertaken to satisfy.
- 2679 **“Records”** means all ledgers, books of account, invoices, vouchers, canceled checks, logs,
2680 correspondence and other Records or documents evidencing or relating to Rates, Tonnages, satisfaction
2681 of Contractor’s obligations under this Agreement and performance of the terms of this Agreement,
2682 damages payable under this Agreement and Contractor Defaults, including those Records described in
2683 Sections 4.3, 4.4, 4.14, 4.17, 4.18, 8.14, 8.15 and 10.1.
- 2684 **“Recovered Material”** means Recyclable Materials, Organic Materials, C&D materials, and Dry Materials
2685 that are Recovered.
- 2686 **“Recovery or Recover or Recovered (or other variations thereof)”** means the picking, pulling, sorting,
2687 separating, classifying and Recovery of Recyclable Materials from Solid Waste whether by manual or
2688 mechanical means, after acceptance of the materials and before marketing of Recovered Materials,
2689 including Recycling, material reuse and Recovery, mulching, Composting, land application or
2690 transformation.
- 2691 **“Recycle(ing)”** means the process of sorting, cleansing, treating and reconstituting materials that would
2692 otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the
2693 form of raw materials for new, reused or reconstituted products.
- 2694 **“Recyclable Materials”** means materials that are reused, remanufactured, or processed. This definition
2695 is inclusive of both Traditional Recyclable and Specialty Recyclable Materials.
- 2696 **“Residential”** shall mean of, from, or pertaining to a single-family premises or multi-family premises
2697 including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks,
2698 cooperative apartments, and yacht harbors and marinas where residents live aboard boats.
- 2699 **“Residue”** means Solid Waste remaining as non-marketable commodities following Processing of
2700 Recyclable Materials.
- 2701 **“Services”** mean all obligations of Contractor under and in accordance with this Agreement to
2702 Authority.
- 2703 **“Solid Waste”** means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes,
2704 including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes,
2705 discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and
2706 other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as
2707 that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste”
2708 does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive
2709 waste, medical waste, Recyclable Materials, Dry Material, C&D Materials, or Organic Materials.
- 2710 **“Specialty Recyclable Materials”** means Recyclable Materials that are not specified as Traditional
2711 Recyclable Materials that can be Collected by the Franchised Collector for purposes of Recycling by any

- 2712 Person, including the Authority or the Franchised Collector. For example, Specialty Recyclable Materials
2713 include, but are not limited to, large pieces of scrap metal, mattresses, C&D material, pallets, tires,
2714 plastic film, carpet, used motor oil, and used motor oil filters.
- 2715 **“Standard Industry Practice”** means (1) the then-current development and operations practices and
2716 standards of the northern California Solid Waste management industry with respect to Recovery,
2717 Diversion, Transfer, Transport and Disposal Services, and (2) the then-current development, operations,
2718 Closure, and Post-Closure practices and Solid Waste Association of North America (or any successor
2719 organization) Manager of Landfill Operations standards in meeting Contractor’s obligations under this
2720 Agreement for Recovery, Diversion, and Disposal Services.
- 2721 **“State”** means the State of California.
- 2722 **“Subcontractors”** includes any Person that provides Goods or Services to Contractor, whether pursuant
2723 to formal, written agreement or merely in fact; subcontract means any arrangement, formal or informal,
2724 written or otherwise, between Contractor and a Subcontractor for providing Goods or Services. In no
2725 case shall the Contractor’s use of a Subcontractor confer upon that subcontractor any third party
2726 beneficiary rights under this Agreement.
- 2727 **“Term”** is defined in Section 2.2.
- 2728 **“Ton(nage)”** means a short Ton of two thousand (2,000) standard pounds where each pound contains
2729 sixteen (16) ounces.
- 2730 **“Traditional Recyclable Materials”** means Recyclable Materials which are included in the Processing
2731 and marketing plan of the Approved Recyclable Materials Processing Facility. The initial list of
2732 Traditional Recyclable Materials includes: All mixed paper, cardboard, #1 - #7 plastic beverage and food
2733 containers, mixed rigid plastic packaging and other food containers, glass containers (no Pyrex,
2734 windows, or mirrors), aluminum cans, tin cans, small pieces of scrap metal, plastic bags (properly
2735 bagged together), all mixed plastics, paper cartons, and milk and juice cartons.
- 2736 **“Transfer(ing) (or other variations thereof)”** means transferring Solid Waste at the Golden Bear Transfer
2737 Station, if any, from Residential Collection vehicles, Commercial Collection vehicles and self-haulers into
2738 Transfer Vehicles.
- 2739 **“Transfer Vehicle”** means a tractor and trailer designed to haul Solid Waste from any Transfer Station to
2740 the Landfill.
- 2741 **“Transport(ation)”** means the Transportation of Solid Waste, Organic Materials, and/or Recyclable
2742 Materials from any Transfer Station to the Landfill in accordance with Section 4.1.8.
- 2743 **“Uncontrollable Circumstance(s)”** means any act, event or condition, whether affecting (i) Services or
2744 (ii) either Party, that is beyond the reasonable control of the Party relying thereon and not the result of
2745 willful or negligent action or inaction of that Party (other than the contesting in good faith or the failure
2746 in good faith to contest that action or inaction), which materially and adversely affects the ability of
2747 either Party to perform any obligation under this Agreement, comprised of:

- 2748 (1) An act of nature, landslide, lightning, earthquake, fire, tsunami, flood, or other natural disaster
 2749 (excluding reasonably anticipated weather conditions within the jurisdictional Service Area of the
 2750 Authority), explosion, sabotage, terrorism, , war, blockade or insurrection, riot, civil disturbance,
 2751 or other similar catastrophic events;
- 2752 (2) The failure of any appropriate federal, State or local public agency or private utility having
 2753 operational jurisdiction in the area in which the Landfill or Approved Processing Facility is located
 2754 to provide and maintain utilities, services, water, sewer or power transmission lines thereto;
- 2755 (3) A Change in Law other than a Change in Law excluded in item (ii) below; and
- 2756 (4) Strikes, work stoppages or other labor disputes or disturbances of Persons other than Contractor
 2757 or any Affiliates performing Services;
- 2758 **Uncontrollable Circumstances** *excludes*, without limitation:
- 2759 (i) Either Party's own breach of its obligations under this Agreement;
- 2760 (ii) Adverse changes in the financial condition of either Party or any Change in Law with respect to
 2761 any taxes based on or measured by net income, or any unincorporated business, payroll, franchise
 2762 or employment taxes;
- 2763 (iii) Strikes, work stoppages or other labor disputes or disturbances lasting longer than ninety-six (96)
 2764 hours affecting Contractor or any Affiliates performing Services, or Contractor's or Affiliates'
 2765 inability to hire adequate numbers of personnel who are competent and skilled in the work to
 2766 which they are assigned;
- 2767 (iv) The failure of the Contractor to secure Permits necessary for Services; and,
- 2768 (v) As to the Contractor, the failure of any facilities and/or equipment to perform in accordance with
 2769 any warranties, unless caused by Uncontrollable Circumstances.
- 2770 **"Unpermitted Waste"** means wastes or other materials that the Landfill may not receive under their
 2771 Permits, including:
- 2772 (1) All materials that the Landfill is not permitted to accept;
- 2773 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely
 2774 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which
 2775 may be Hazardous Materials if it contains more than one percent (1%) asbestos;
- 2776 (3) Ash residue from the incineration of solid wastes, including Solid Waste, infectious waste
 2777 described in Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as
 2778 defined by Title 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or
 2779 Disposal of Sewage Sludge) and agricultural wastes;

- 2780 (4) Hazardous Materials;
- 2781 (5) Medical Waste;
- 2782 (6) Liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids,
2783 including cannery and food Processing wastes, landfill leachate and gas condensate, boiler
2784 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,
2785 rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e., unclassified
2786 sludge less than B), and those liquid wastes that may be Hazardous Wastes;
- 2787 (7) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the
2788 State Health and Safety Code, and any waste that contains a radioactive material, the storage or
2789 Disposal of which is subject to any other state or federal regulation;
- 2790 (8) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed
2791 from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not
2792 meeting certain quality criteria (i.e., unclassified sludge less than "B"); and/or
- 2793 (9) Designated Waste, but only if not permitted at the Landfill under Applicable Law, including
2794 Permits.
- 2795 This definition shall be promptly amended to reflect any applicable changes in permits or Applicable
2796 Law.
- 2797 **"Violation"** means any Notice, assessment or determination of non-compliance with Applicable Law
2798 from any Regulatory Agency to Contractor, after the exhaustion of all appeals and judicial processes, if
2799 applicable, whether or not a fine or penalty is included, assess, levied or attached, where Regulatory
2800 Agency means any federal, State or local governmental agency that regulates Transfer, Transportation
2801 and Disposal of Solid Waste, including California Department of Transportation, California Department
2802 of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, California Air Resources Board,
2803 regional water quality management districts, California Department of Toxic Substances, CalRecycle, the
2804 Local Enforcement Agency, federal and State Environmental Protection Agencies and other federal or
2805 State health and safety department, applicable to Services.
- 2806 **"Working Days or Work Day** (or other variations thereof)" means each day of the week excepting
2807 Saturdays, Sundays, and Holidays.
- 2808 **"Yard Trimmings"** means materials that shall decompose and/or putrefy, including, but not limited to,
2809 green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead
2810 trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings
2811 are a subset of Organic Materials.

**EXHIBIT 2.4.6
ENHANCED COLLECTION SERVICES AND
COLLECTION FRANCHISE AGREEMENT
AMENDMENT**

AMENDMENT TO FRANCHISE AGREEMENT

BETWEEN

**CITY OF [insert] [or] CONTRA COSTA COUNTY AND
RICHMOND SANITARY SERVICE, INC.**

This Amendment to the Franchise Agreement is entered into effective [date] by and between the [City of [insert], a municipal corporation (“City”), [County of Contra Costa, a subdivision of the state of California (“County”), and Richmond Sanitary Service, Inc., a California corporation and subsidiary of Republic Services, Inc. (“Contractor”).

RECITALS

1. On [date], the [City][County] and Contractor entered into a Franchise Agreement for an exclusive right to provide collection and disposal services within the [City][County], and the Franchise Agreement has since been amended several times.

2. On [date], West County Resource Recovery, Inc., Richmond Sanitary Service, Inc., West Contra Costa Sanitary Landfill, Inc., Keller Canyon Landfill, Inc. and Golden Bear Transfer Services, Inc. and the West Contra Costa Integrated Waste Management Authority (“Authority”) authorized execution of an Agreement for Enhanced Recycling Services, Post-Collection Recycling, and Disposal Services (hereinafter “Post-Collection Agreement”) governing the handling of waste and recyclables collected in the franchise areas served by the Contractor.

3. The Authority is a joint powers agency created by the Cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo (individually and collectively referred to herein as “Member Agencies”) in a Joint Exercise of Powers Agreement dated April 2, 1991, and as amended.

4. Pursuant to the Post-Collection Agreement, Contractor agrees to specific enhancements of its collection services within the County and Member Agencies for which it is the current franchisee collector (“Franchise Agencies”), by providing weekly recycling and organic materials collection to residential customers; weekly mixed residential organics services; weekly or source separated commercial recyclable and organic materials collection and processing; routing of commercial customers for dry load collection and processing; expansion of recyclable materials accepted curbside; and two full-time recycling coordinators to

2852 exclusively serve the Authority’s service area with certain new services beginning on the start
2853 dates specified herein (hereinafter collectively referred to as “Enhanced Collection Services”).

2854 5. The [Cities/County], through the [Authority Joint Powers Agreement/County-
2855 Authority Contract], and the 1994 Exhibit to the City/County Franchise Agreement entitled
2856 “Requirements for Franchise Agreements and Covenants Made A Part of Franchise
2857 Agreements,” authorize the Authority to direct the waste stream for processing and disposal to
2858 designated facilities, and the Post-Collection Agreement exercises that authority on behalf of the
2859 [City/County].

2860 6. The initial Enhanced Collection Services rate adjustments being approved for
2861 residential and commercial customers shall be the sole means of compensation due to Contractor
2862 for providing the Enhanced Collection Services, with the exception of any annual CPI-
2863 adjustments provided for herein to which the Enhanced Collection Services are subject to.

2864 **AGREEMENT**

2865 In consideration of the above and the promises and other provisions in this Amendment,
2866 the Parties agree to amend the Franchise Agreement as follows effective [DATE], 2013.

2867 1. For the remaining term of the Franchise Agreement between [City/County] and the
2868 Contractor, Contractor shall provide the following Enhanced Collection Services at the agreed-
2869 upon compensation as set forth below:

2870 a. Weekly Recycling and Organic Materials Collection. No later than October 31,
2871 2014, Contractor shall convert the every-other-week collection program for all residential
2872 recyclable materials and organic materials to a weekly collection program. Such weekly
2873 recycling and organic materials collection will apply to both single family and multi-family
2874 customers. For commercial customers, no later than October 31, 2014, Contractor shall convert
2875 all commercial recyclable materials cart customers from every-other-week to weekly collection
2876 and shall service all cart and bin commercial recycling containers weekly, at a minimum.

2877 b. [Pinole, Hercules and Contra Costa County only] Mixed Residential Organics.
2878 Beginning January 1, 2014, in addition to yard waste, all residential customers including those in
2879 Pinole, Hercules and the County Franchise area, will be allowed to place food scraps and food-
2880 soiled paper, into their green waste containers upon the [City/County’s] request. Contractor
2881 shall be responsible for distributing education and outreach collateral (e.g. stickers, mailers, food
2882 pails, etc.) purchased with Authority grant funding, at no additional charge to the Authority, the
2883 City/County, or customers.

2884 c. Source Separated Commercial Recyclable Materials Collection and Processing.
2885 Beginning January 1, 2014, Contractor shall offer commercial customers (including multi-family
2886 customers receiving service in carts and bins) recyclable materials collection from carts and bins
2887 ranging from one to six cubic yards in capacity, and shall offer such service up to three times per
2888 week, at the customer’s request.
2889
2890
2891

2892 d. Source Separated Commercial Organic Materials Collection and Processing.
 2893 Prior to April 1, 2014, Contractor shall identify, educate, and sign up restaurants, institutional
 2894 kitchens, and food processors for source separated organic materials collection service.
 2895 Beginning April 1, 2014, Contractor shall commence collection service for commercial source
 2896 separated organics accounts that have signed up for such service. Commercial organic materials
 2897 accepted under this program shall include all compostable food waste and food soiled paper.
 2898 Prohibited materials under this program shall include hazardous materials, metals, glass,
 2899 ceramics, and plastics (except certain compostable bio-plastic bags and food service ware
 2900 specified by Contractor). Contractor shall provide such customers the option of using sixty-five
 2901 (65) gallon carts and one or two cubic yard bins, at the customer's request. Collection of source
 2902 separated commercial organic materials shall be provided up to three times per week, at the
 2903 customer's request. This service shall be provided at no additional charge to customers who
 2904 subscribe to garbage service.
 2905

2906 e. Routing of Commercial Customers for Dry Load Collection and Processing.
 2907 Beginning December 1, 2013, Contractor shall commence a review of commercial customer
 2908 accounts and waste characterization with the purpose of identifying customers where the primary
 2909 constituents of their garbage containers are dry and recyclable. The goal for this program is to
 2910 identify a sufficient volume of material for one full-time equivalent route. No later than March
 2911 1, 2014, Contractor shall have completed this review and shall submit a report to the Authority
 2912 identifying the customers who have been selected for the dry routing program. No later than
 2913 May 1, 2014, Contractor shall have implemented the dry material collections from customers.
 2914 All material collected under this program shall be processed in a manner that maximizes the
 2915 recovery of materials, and no material collected under this program shall be disposed of prior to
 2916 processing without written approval from the Authority as may be required in Section 4.4 of the
 2917 Post-Collection Agreement.
 2918

2919 f. Expansion of Recyclable Materials Accepted Curbside. Beginning January 1,
 2920 2014, Contractor shall accept the following new or additional recyclable materials curbside:
 2921

- 2922 i. #1-#7 plastic beverage and food containers;
- 2923 ii. Mixed rigid plastic packaging and other food containers;
- 2924 iii. Scrap metal;
- 2925 iv. Plastic film and wrapping (properly bagged);
- 2926 v. All mixed plastics;
- 2927 vi. Milk and juice cartons.

2928
 2929 g. Recycling Coordinators. By December 1, 2013, Contractor shall hire two full-
 2930 time recycling coordinators dedicated to work exclusively within the Authority service area.
 2931 Responsibilities of the recycling coordinators include, but are not limited to, supervising,
 2932 coordinating, and implementing all approved public education and outreach activities and
 2933 recycling and diversion programs; serving as liaisons between the Authority, [City/County], and
 2934 Contractor; interacting with residents, businesses, community groups, and public agencies. The
 2935 full scope of the recycling coordinators' duties are set forth in Exhibit 4.1.9 of the Post-
 2936 Collection Agreement. Public education and outreach materials prepared by Contractor shall be
 2937 subject to the review and approval of [City/County].

2938 2. Implementation dates specified in Sections 1.a and 1.c through 1.e. will remain
2939 unchanged as long as all Franchise Agreement amendments are approved no later than
2940 November 15, 2013. If one or more Franchise Agreement Amendments are not approved on or
2941 before November 15, 2013, the following shall apply:

2942 a. Franchise Agencies approving franchise amendments by November 15, 2013,
2943 containing provisions substantially in the form included as Exhibit 2.4.6 of the Post-Collection
2944 Agreement will be able to implement the new reduced post-collection rates established in the
2945 Post-Collection Agreement on January 1, 2014.

2946 b. Franchise Agencies not approving franchise amendments by November 15, 2013,
2947 containing provisions substantially in the form included as Exhibit 2.4.6 of the Post-Collection
2948 Agreement will not be allowed to implement the new post-collection rates established in the
2949 Post-Collection Agreement on January 1, 2014. In this circumstance, the current (2013) post-
2950 collection rates will continue to apply in 2014 until thirty (30) days after the franchise
2951 amendment is approved by that Franchise Agency.

2952 c. With the exception of the specific services outlined in section 2.d below,
2953 implementation dates for the other Enhanced Collection Services in sections 1.a and 1.c through
2954 1.e will be delayed one month for each successive month past November 15, 2013. For
2955 example, if all of the Member Agencies approve their respective franchise amendments between
2956 November 16 and December 15, the implementation dates will be delayed one month.

2957 d. Regardless of whether all of the Member Agencies have approved their franchise
2958 amendments by November 15, 2013, Contractor will begin implementing the following
2959 Enhanced Collection Service by December 1, 2013: 1.g (recycling coordinators). In addition,
2960 Contractor will begin implementing the following Enhanced Collection Services by January 1,
2961 2014: 1.b (food scraps in the mixed residential organics containers in jurisdictions that do not
2962 already have this in place); and 1.f (acceptance of the expanded list of recyclables in the curbside
2963 recycling carts placed out for collection).

2964 3. The Contractor's sole compensation for any costs associated with providing Enhanced
2965 Collection Services shall be the revenue derived from the initial collection rate adjustment(s)
2966 approved by the [City/County] which would go into effect at the same time as the new post-
2967 collection rates discussed in Sections 2.a – 2.b, plus any subsequent CPI-adjustments to this
2968 initial collection rate adjustment as authorized pursuant to the [City's/County's] rate setting
2969 methodology and process.

2970 4. The Franchise Agreement as amended by this and any prior Amendment executed by
2971 both Parties shall be construed together as one and the same agreement and is the entire
2972 agreement between the Parties.

2973 5. The term of this Amendment shall be coterminous with the remaining term of the
2974 Franchise Agreement.

2975 IN WITNESS WHEREOF, the [City/County] and Contractor have duly authorized execution of
2976 this Amendment and have executed this Amendment as of the date last set forth in the signatures
2977 below.

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2981

CITY/COUNTY OF [insert]
By: _____
Chair, xxx
Date: _____
Attest: xxx, Clerk
By: _____
Deputy/Secretary

RICHMOND SANITARY SERVICE, INC.,
a California Corporation
By: _____
Name: _____
Title: _____
Date: _____
By: _____
Name: _____
Title: _____
Date: _____

Note: Two officers must sign on behalf of corporations. The first must be the chairman of the board, president or any vice president; the second must be the secretary, assistant secretary, chief financial officer or any assistant treasurer. (Corp. Code, § 313; Civ. Code, § 1190.)

2982 2186761.1
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EXHIBIT 4.1.4
DRY MATERIAL PROCESSING

2986

2987

<Insert DOCUMENT referred to in Section 4.1.4 here>

2988
2989

EXHIBIT 4.1.9 PUBLIC EDUCATION AND OUTREACH

2990 Republic and its subsidiaries West County Resource Recovery and Richmond Sanitary Service
2991 (“Republic”) understand and recognize the importance of promotion as the key to helping residents and
2992 businesses understand more about Source reduction, Reuse, Recycling, and Composting.

2993

2994 Republic shall, with coordination with the Authority, Member Agencies and the TAC, develop and
2995 implement an approved public education and outreach program. The public education and outreach
2996 program shall include comprehensive, linguistically and culturally appropriate public outreach and
2997 community engagement, with the goal of guiding all customers in effectively implementing source
2998 reduction, reuse, recycling, and composting. The focus and goal of the program is to make recycling and
2999 composting easy, understandable, and convenient for all customers, assisting RecycleMore and Member
3000 Agencies in achieving AB939, AB341, and additionally specified waste diversion goals. Consistent with
3001 these goals, Republic shall:

- 3002 1. Develop and implement a public education and outreach strategy for the community-wide
3003 launch of supplemental collection services as approved by RecycleMore and Member Agencies,
3004 including weekly residential collection, commercial organics, and commercial dry routing, and
3005 others as appropriate
- 3006 2. Provide an approved public education, outreach, and customer service delivery that is approved
3007 by RecycleMore and Member Agencies to be linguistically and culturally appropriate consistent
3008 with the community needs of RecycleMore and its Member Agencies.
- 3009 3. Create and implement a strategy for public outreach and education, approved by RecycleMore
3010 and the Member Agencies, to meet subscription and diversion goals listed in the Term Sheet
3011 and as prioritized by RecycleMore and Member Agencies
- 3012 4. Design engaging and visually-based or bilingual/multilingual guides, mailers, brochures,
3013 webpages, and other educational materials with final design and content approved by
3014 RecycleMore and Member Agencies
- 3015 5. Distribute mailers and other educational materials to households, businesses, and other
3016 customers
- 3017 6. Develop and implement a strategy for outreach and education to community-based
3018 organizations, approved by RecycleMore and Member Agencies, to facilitate participation in
3019 diversion and recycling programs

3020

3021 For purposes of this Public Education and Outreach Program, the term “linguistically and culturally
3022 appropriate consistent with the community needs of RecycleMore and its Member Agencies” means
3023 targeted outreach that considers the linguistic and cultural diversity within the WCCIWMA service area
3024 and addresses dialectic or unique circumstances relative to ethnic communities, as determined and
3025 approved by RecycleMore and the Member Agencies.

3026

3027 To best achieve the highest possible level of public education and awareness, Republic shall designate
3028 the Recycling Coordinators to supervise, coordinate and implement all approved public education and
3029 outreach activities on our behalf. Republic agrees that the Recycling Coordinators are designated to

3030 serve Republic within the WCCIWMA service area, and shall not, except in cases of emergency or
 3031 extraordinary circumstances, have duties and responsibilities outside the WCCIWMA service area. The
 3032 Recycling Coordinators will, in addition to their other employment responsibilities, assist and provide
 3033 support to RecycleMore for outreach development. RecycleMore may, at its election, also engage City
 3034 staff for outreach development. The Recycling Coordinator job description shall include the following
 3035 tasks in his/her principal areas of responsibility.

3036 **Partnership with RecycleMore and Member Agency**

- 3037 1. Serve as a liaisons between RecycleMore and Republic
- 3038 2. Attend RecycleMore Board of Directors, City Council, City staff, and City strategy
 3039 development meetings, as appropriate
- 3040 3. Work with the RecycleMore, and Member Agencies as may be requested by
 3041 RecycleMore, to develop, coordinate and incorporate municipal activities into
 3042 Republic activities, and vice versa
- 3043 4. Participate and represent Republic in community activities
- 3044 5. Ensure customer satisfaction and participation of all program services

3045 **Assist local community service organizations with diversion and recycling programs**
 3046 **Media Relations**

- 3047 1. Develop relationships with local television, radio, and newspapers reporters
- 3048 2. Track local media coverage

3049 **Community Outreach**

- 3050 1.
- 3051 2. Coordinate, develop, and produce an approved education and outreach plan
- 3052 3. Coordinate implementation of the approved public education and outreach plan
- 3053 4. Conduct culturally appropriate approved outreach in English and Spanish (or
 3054 predominant second language within the service area) as needed
- 3055 5. Produce visually engaging outreach materials and use social media to as approved
 3056 by RecycleMore to promote services and programs Provide draft copies of all
 3057 written public education and outreach information for distribution to customers,
 3058 such as notices and outreach materials (includes but is not limited to new
 3059 customer service package, annual collection calendars, service information updates,
 3060 customer reminders, pending RecycleMore rate change notices) to the WCCIWMA
 3061 for review, comment and final approval prior to production and distribution to
 3062 customers. Concurrently submit one sample of said information in hardcopy form
 3063 directly to RecycleMore.

3064 **SINGLE-FAMILY EDUCATION PROGRAMS**3065 **Public Education Activities**

- 3066 1. Prepare a flyer/poster illustrating acceptable materials in Recyclable and Organic
3067 Materials Containers, providing instruction on how to prepare Source Separated
3068 Recyclable and Source Separated Organic Materials for collection describe the
3069 acceptable materials that can be included in the Recyclable and Organic Materials
3070 Containers and listing relevant contacts The flyer should emphasize any new
3071 Recyclable Materials to be included in Single-Stream Collection and the Organics
3072 Collection program.
- 3073 2. Prepare a “how-to” flyer describing the proper set out procedures for Collection
3074 Containers.
- 3075 3. Prepare and distribute public service announcements (PSA) for local newspapers.

3076
3077 **Promoting Recycling and Diversion Programs**

- 3078 1. Visit homeowner associations or other groups to promote and explain programs.
- 3079 2. Prepare a tenant outreach plan identifying feasible and effective options Republic
3080 Services could implement, if approved by the WCCIWMA, to better ensure
3081 residential and commercial tenants not currently receiving customer notices/bills
3082 are made aware how they can take advantage of the full range of garbage and
3083 recycling services available to them.
- 3084 3. Prepare an outreach plan for on-call & optional services identifying feasible options
3085 Republic could implement to inform customers and remind them about what
3086 additional services are available upon request to customers at no additional charge
3087 (including existing optional services like free on-call pick-ups and Christmas tree
3088 recycling as well as future enhancements like the small interior containers to be
3089 offered upon request for indoor use by tenants/occupants of multi-family
3090 complexes or businesses to temporarily store their recyclables until they can be
3091 placed in the appropriate centralized collection point, etc.)
- 3092 4. Prepare and distribute (4) quarterly newsletters in the form of a bill insert or other
3093 media that inform residents about topics such as availability of on-call Bulky
3094 Item/clean-up events, Bulky Item pick-ups, home Composting, proper handling of
3095 Household Hazardous Waste, E-Waste, and U-Waste, and environmental
3096 conservation.
- 3097 5. Prepare and distribute bill inserts, brochures, and/or featured quarterly newsletter
3098 article describing how to prepare Source Separated Recyclable and Source
3099 Separated Organic Materials for Collection. Information shall inform residents as to
3100 the acceptable materials that can be included in the Recyclable Materials and
3101 Organic Materials Containers and any common contaminants to be excluded from
3102 Collection to customers.
- 3103 6. Prepare Corrective Action Notices (Oops Tags) for drivers to use in the event of set-
3104 out problems. Tags shall be tailored to residential generator types, and may be used
3105 as a courtesy notice, or a notice of non-Collection. When used as a courtesy notice,
3106 the materials in question shall be collected, but Customers are informed of the

3107 improper element of the set-out and advised of how to ensure proper set-out in the
 3108 future. When used as a non-Collection notice, the Container in question is not
 3109 collected, and the tag shall advise Customer of the specific problem.

3110 Prepare and make available through WCRR and RSS's website "how-to" information on Recycling,
 3111 Composting, and proper Container set-outs in Adobe Acrobat PDF and provide Single-Family Customers
 3112 with links for additional resources. Enable Single-Family Customers to access information regarding
 3113 copies of newsletters and other outreach materials. Multi-Family Education Programs (to include mobile
 3114 homes)

3115 **Public Education Activities**

3116 1. Prepare and distribute information on new programs, Recycling and Diversion
 3117 programs available, special services available, proper handling and disposal of
 3118 Household Hazardous Waste, etc.

3119 2. Prepare a "how-to" flyer describing how to prepare Source Separated Recyclable
 3120 and Source Separated Organic Materials for Collection and describe the acceptable
 3121 materials that can be included in the Recyclable and Organic Materials Containers.

3122 3. Prepare a "how-to" flyer describing the Recyclables Collection program for
 3123 distribution to tenants and distribute to Multi-Family property managers for
 3124 distribution to tenants.

3125 4. Prepare posters describing Collection programs and distribute to Multi-Family
 3126 property managers for on-site use.

3127 **Promoting Recycling and Diversion Programs**

3128 1. Visit apartment managers or home owners' association meetings or other groups to
 3129 promote and explain WCRR and RSS's Collection programs.

3130 2. Prepare public education material on Recycling, the State and County mandatory
 3131 Recycling requirements and how to comply, and proper handling of Household
 3132 Hazardous Waste, E-Waste, and U-Waste and distribute (or arrange for distribution
 3133 of) materials directly to tenants of Multi-family Premises.

3134 3. Conduct site visits and provide technical assistance.

3135 4. Offer and respond to requests for on-site meetings and workshops. WCRR and RSS
 3136 will conduct workshops (when requested by RecycleMore) that will show property
 3137 managers and residents, in a hands-on interactive format, how to use the Recycling
 3138 and Organics program and will provide resources for additional information and
 3139 support.

3140 5. Prepare and distribute "move-in" kits for property managers and owners of Multi-
 3141 Family complexes to provide new tenants. Move-in kits shall provide Recycling
 3142 information and WCRR and RSS's Customer service phone number where questions
 3143 can be answered.

3144 6. As part of WCRR and RSS's website, provide tenants and property managers with
 3145 access to a dedicated multi-family page which will present "how-to" information for
 3146 tenants and property managers as well as links to other resources.

- 3147 7. Prepare Corrective Action Notices (Oops Tags) for drivers to use in the event of set-
 3148 out problems. Tags shall be tailored to residential generator types, and may be used
 3149 as a courtesy notice, or a notice of non-Collection. When used as a courtesy notice,
 3150 the materials in question shall be collected, but Customers are informed of the
 3151 improper element of the set-out and advised of how to ensure proper set-out in the
 3152 future. When used as a non-Collection notice, the Container in question is not
 3153 collected, and the tag shall advise Customer of the specific problem.
- 3154 8. Prepare and distribute notices to Customers that are not compliant with mandatory
 3155 Recycling requirements of AB 341.
- 3156 9. If a Multi-family/Source Separated Commercial Organic Materials program is
 3157 implemented, conduct the following activities:
- 3158 • Provide a starter kit to educate property managers on the Source Separated
 3159 Commercial Organic Materials Collection program;
 - 3160 • Conduct initial site visits to all Multi-Family premises to encourage
 3161 participation in the program and customize the program to fit the
 3162 Customer’s needs; and,
 - 3163 • Produce and distribute periodically, but at WCRR and RSS’s discretion
 3164 newsletters or bill inserts that inform customers about the Multi-
 3165 Family/Commercial Food Scrap Collection program.

3166 **COMMERCIAL EDUCATION PROGRAMS**

3167 **Public Education Activities**

- 3168 1. Prepare and distribute a flyer and/or “how-to” brochure to businesses explaining
 3169 the Recycling services provided to each general business type (restaurants,
 3170 office/commercial buildings, strip malls, and large commercial businesses).
- 3171 2. Prepare and distribute a flyer and/or “how-to” brochure describing the Source
 3172 Separated Organic Materials Collection services available to each business type and
 3173 how to prepare Organic Materials for Collection.
- 3174 3. Meet with business associations (Chamber of Commerce, Rotary Club, etc.) in
 3175 separate venues to educate businesses on the Recycling and Organics Collection
 3176 programs, answer questions, and provide service information.

3177 **Promoting Recycling and Diversion Programs**

- 3178 1. Prepare and distribute a newsletter to Commercial Customers promoting and
 3179 explaining Source Separated Recyclable Materials and Source Separated Organic
 3180 Materials Collection programs.
- 3181 2. Conduct site visits and provide technical assistance.
- 3182 3. For Source Separated Commercial Organic Materials Collection, conduct the
 3183 following activities, at a minimum:
- 3184 • Provide a starter kit to educate businesses on the Source Separated
 3185 Commercial Organic Materials Collection program;

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- Conduct initial site visits to all schools, institutions, restaurants, bakeries, grocery stores, and other food scrap generators to encourage participation in the program and customize the program to fit the Customer’s needs;
 - Produce and distribute periodically, newsletters or bill inserts that inform customers about the Source Separated Commercial Organic Materials Collection program.
 - (Insert details: number of sites, outcomes, etc.) Individual site visits to each commercial, multifamily and mobile home park customer to help the customer determine the appropriate mix of diversion services and achieve diversion goals pursuant to AB 341 (refer to Site Visit section)
 - (Insert details: number of sites, outcomes, etc.) Ongoing audits of multi-family and commercial locations to help these customers develop and take advantage of programs to eliminate waste and increase diversion (refer to Site Visit section)
4. Attend business associations’ meetings to promote and explain the Collection programs and the State and County mandatory Recycling requirements.
 5. Provide employee training to businesses that participate in Source Separated Recyclable Materials and/or Source Separated Organic Materials Collection programs, annually upon the Customer’s request.
 6. Prepare Corrective Action Notices (Oops Tags) for drivers to use in the event of set-out problems. Tags shall be tailored to Commercial generator types (based on the program, and may be used as a courtesy notice, or a notice of non-Collection. When used as a courtesy notice, the materials in question shall be collected, but Customers are informed of the improper element of the set-out and advised of how to ensure proper set-out in the future. When used as a non-Collection notice, the Container in question is not collected, and the tag shall advise Customer of the specific problem.
 7. Prepare and distribute notices to Customers that are not compliant with mandatory Recycling requirements of AB 341 which identify why the Customer is not compliant and what actions Customer can take to be compliant.
 8. WCRR and RSS shall reach out to various community organizations such as the Chamber of Commerce, Rotary, business associations and other appropriate groups to provide detailed Recycling outreach education and offer tools and support for successful programs.

3222 **SCHOOL OUTREACH**

3223 Recycling coordinators will cooperate and partner with RecycleMore in a public school education
3224 curriculum to teach children how to Recycle and Compost at school and at home.

3225 Recycling coordinators shall communicate the availability of its educational resources to each school
3226 through a variety of media prior to the opening of school each fall, and follow up and respond to

3227 school/teacher requests for educational materials, resources, and presentations throughout the
3228 year.

3229 Recycling coordinators will be available to meet with administrators, faculty, facilities personnel, and
3230 parents (through PTA meetings and other means) initially and as needed to establish and provide
3231 training on internal materials capture systems. Recycling coordinators shall provide educational
3232 curriculum and program how-to information in a fun format—such as through story-telling,
3233 Recycling relays, competitions, waste audits, and via video. Educational curriculum, activities, and
3234 presentations are geared toward grade level/age group.

3235 Recycling coordinators shall work with all schools within the District to identify a Recycling champion
3236 within each school who will act as the school’s Recycling coordinator to monitor faculty, staff, and
3237 administrators for optimal, proper Recycling program participation, know of and utilize educational
3238 resources provided by WCRR and RSS and other sources, and communicate Recycling program
3239 results to students.

3240 **SPECIAL EVENTS**

3241 Arrange for and staff a booth or table at events to promote source reduction, reuse, Recycling,
3242 Composting, and proper handling of E-Waste, U-Waste, and Hazardous Waste and answer questions
3243 about Collection services. WCRR and RSS will develop a stand-alone and table-top professional
3244 display for use at events and will provide corresponding educational components that can be used
3245 to educate Customers and the general public about Recycling in general.

3246 Special event activities will be identified, scheduled, and coordinated through Recycling
3247 Coordinator’s participation with RecycleMore and Member Agency staff. Number of annual special
3248 events to be determined.

3249 **OTHER OUTREACH**

3250 Produce press releases and advertisements tied to specific community recycling events. Press
3251 releases shall be developed regarding new or enhanced services as needed. Advertisements shall be
3252 developed in conjunction with workshops, training programs, etc.

3253 Conduct educational tours of the WCRR, RSS, GBTS, and WCCSL facilities to familiarize residents,
3254 businesses, and school children with the facilities’ activities.

3255 Attend community workshops to explain Collection services and respond to questions from the
3256 community.

3257 Develop and maintain a website describing services provided.

3258 A translator service based on the predominant secondary language of the service area will be
3259 employed by Republic Services for educational materials.

3260 **EDUCATION FOR PUBLIC EVENTS**

3261 The Recycling Coordinators will partner with RecycleMore to develop and launch a sustainability-themed
3262 outreach for public events. The program can involve creating a family of “green” Recycling-specific

3263 educational hand-outs, and a common, customizable booth design that could be used at special events.
 3264 The Recycling Coordinators will also work with event planners to bring additional value. This would
 3265 include upfront planning for logistics detail, such as placement of Containers, providing a full contingent
 3266 of Containers at each Collection point with clear messaging to encourage Recycling participation, clean
 3267 up services, sponsorships, and educational materials. This is limited to an agreed upon list of public
 3268 events to attend within the service area.

3269

3270 **SITE VISITS**

3271

3272 We have developed a comprehensive support program to maximize commercial, multifamily and
 3273 mobile home park customers' understanding and participation in the program. Comprehensive waste
 3274 stream audit of each customer facility will be made by Republic Services to maximize participation in
 3275 the new recycling programs, as well as evaluate the most cost-effective and convenient service
 3276 required for our customers. The program's four core elements include:

3277

3278 • Site Evaluation. Trained Republic Services staff visits the facility to review existing services,
 3279 determine recycling potential, and assess space constraints for additional bins or carts.

3280 • Property Manager/Owner Buy in and Education. The Recycling - Public Outreach
 3281 Coordinators make phone calls and meetings to contact the manager or owner about
 3282 the expanded services and how they will benefit the facility.

3283 • Employees/ Resident Buy In and Education. The Recycling - Public Outreach
 3284 Coordinators host meetings and delivers educational materials to explain the new
 3285 program to employees or residents and why they should participate.

3286 • Regular Follow -Up. The continued success of the program depends on regular contact
 3287 with the customer to address additional concerns, space or contamination problems,
 3288 reeducation, education for new employees/tenants, etc.

3289

3290 **CART AND BIN LABELING / LID REPLACEMENT**

3291

3292 At the Authority's request, the Company shall ensure that all company containers are labeled with
 3293 durable full color labels and / or lid imprints that illustrate and spell out the range of items that are
 3294 and are not acceptable within all containers (including garbage, green waste, debris boxes, and other
 3295 Company provided services).

3296

3297 The Company agrees to place labels and / or imprinted lids on all new carts and bins placed into
 3298 service and when carts and bins are replaced / repaired.

3299

3300 If the Authority and / or a Member Agency direct the Company to label all existing carts and bins per
 3301 this provision, the Company will be allowed to recover the cost of producing the labels and / or
 3302 imprints in the collection rates. The parties will meet and discuss costs funded through other
 3303 avenues. The Company will complete installation of the labels and/or lids and shall complete
 3304 installation within an agreed upon time line or one (1) year of the decision to do so.

3305

3306 Prior to procuring any lids or labels the Company shall seek and be granted Authority approval for the
 3307 design and content of the lids and labels. Labels / lids shall be replaced as needed to ensure that the
 3308 appropriate use of each container is readily understandable to the Company's subscribers.
 3309

3310 PRESENTATIONS

3311
 3312 A typical presentation will start with an introduction of who we are and what we do at Republic
 3313 Services. A brief history on the evolution of solid waste collection, the introduction of recycling and
 3314 more recent innovations is outlined. Students are introduced to what role we play in their
 3315 communities, with an emphasis on how we can become partners in the collection and diversion
 3316 process. The Recycling – Public Outreach Coordinator talks about AB341, AB939, natural
 3317 resources, and the landfill. We also discuss the 4 R's and explain the *closing the loop* process.
 3318 Examples are shown of what items are recyclable in their area. Additional time is provided for any
 3319 questions and discussion.
 3320

3321 Presentations are available for upper elementary, junior high, high school, adult classes or groups,
 3322 business organizations, and clubs. The presentations can be modified according to audience and time
 3323 constraints. Topics covered include:

- 3324 • a brief history of garbage and the industry
- 3325 • what is recycling?
- 3326 • why do we recycle?
- 3327 • what do we recycle?
- 3328 • curbside and commercial recycling
- 3329 • the recycle process and closing the loop
- 3330 • products made from recycled material
- 3331 • markets
- 3332 • household hazardous waste and collection
- 3333 • yard waste program and composting

3334

3335 MEDIA SECTION

- 3336 1. All materials shall rely primarily on images, at a minimum be bilingual (English and Spanish (or
 3337 predominant second language within the service area)), and design and distribution coordinated
 3338 with RecycleMore and Member Agencies. At a minimum, Republic shall provide on an annual
 3339 basis:
- 3340 2. One (1) flyer/poster for residential customers and one (1) flier/poster for commercial customers
 3341 illustrating acceptable materials in Recyclable and Organic Materials Containers, providing
 3342 instruction on how to prepare Source Separated Recyclable and Source Separated Organic
 3343 Materials for collection, and listing relevant contacts, for residential and customers
- 3344 3. Four (4) quarterly newsletters in the form of bill inserts for residential customers and four (4)
 3345 quarterly bill inserts for commercial customers
- 3346 4. One (1) handout illustrating acceptable household hazardous waste, e-waste, and universal
 3347 waste materials, providing locations for drop off, and listing relevant contacts
- 3348 5. One (1) starter kit for residential customers and one (1) starter kit for commercial customers for
 3349 at the initiation of Recycling Collection Services, and one (1) starter kit for residential customers
 3350 and one (1) starter kit for commercial customers at the initiation of Organics Collection Services.
- 3351 6. Three (3) newspaper ads annually that communicate commercial program and recycling

3352 information

3353

3354 Additional calendars, brochures, and other material may be developed mutually by the Authority
3355 and the Company. Development and distribution costs may be substituted for one, of the six listed
3356 above. Additional such material may be mutually developed with costs funded through other
3357 avenues.

3358 Provide improved bill message option(s)/alternative(s), such as offering more space, billing inserts
3359 (stuffers), stickers, stamps (rubber), printed messages directly on the outside of envelopes, etc.
3360

3361 **INITIAL OUTREACH SCHEDULE**

3362 **Beginning December 2013**

3363 General (All Programs)

- 3364 1. Hire two recycling coordinators. RecycleMore (RM) staff or TAC member can help with
3365 interview process if Republic desires.
- 3366 2. Create and finalize outreach and education plan (Annual Plan) (annually)
- 3367 3. Republic to create a flyer (single or multiple versions) to provide information about what new
3368 materials can be recycled (organics & recyclables)
- 3369 4. Prepare “how-to” flyer describing proper set out procedures for collection containers
- 3370 5. Prepare and distribute PSA to local newspapers

3371 Residential

- 3372 1. RM and Republic coordinate print media production for the new food scraps programs for
3373 Hercules, Pinole and County residents.
 - 3374 a. RM to create postcard, tri-fold flyer and bill insert, put advertisement in local paper and
3375 do a press release.
 - 3376 b. RM prints and sends bill inserts to Republic for distribution
 - 3377 c. RM purchases the counter top pails.
- 3378 2. Food Scrap pails will be distributed at Republic locations/facilities to residents in Pinole,
3379 Hercules and County by request. IRRF office to distribute pails as well. Member agencies will
3380 distribute pails from City Hall.

3381 **January 2014 – December 2014**

3382 General

- 3383 1. Republic to distribute flyer (single or multiple versions) to provide information about what new
3384 materials can be recycled (organics & recyclables) to all business, residents and multi-family
3385 tenants by January 31, 2014.
- 3386 2. Prepare and distribute 4 quarterly newsletters to all residential and commercial customers
3387 promoting and explaining new recyclable materials and organics program, etc. The information
3388 provided in newsletter can be collaboration with RM staff. RM staff will review content before

- 3389 distribution. Cycle 1: January to March; Cycle 2: April to June; Cycle 3: July to September; Cycle
 3390 4: October to December
- 3391 3. Recycling Coordinators to present information about new programs at business chamber events,
 3392 expos and other associations throughout the year.
 - 3393 4. The Recycling Coordinators shall make quarterly status presentations/report (ongoing)
 - 3394 5. Republic to create a comprehensive recycling guide about new programs and materials that are
 3395 recyclable for residents and businesses (including but not limited to programs offered by
 3396 RecycleMore, HHW programs, grants, school programs, compost giveaways, bulky pickup, on-
 3397 call services). This guide is for the RSS service area.
 - 3398 6. RecycleMore to coordinate a recycling guide with the City of El Cerrito.
 - 3399 7. Make all the information about rates, services and “How to” available on the Companies’
 3400 websites by December 31, 2014. RM will continue to maintain their website with information
 3401 and the Republic website should provide a direct link to www.recyclemore.com
 - 3402 8. 4 to 5 weeks prior to the start of weekly collection (October 2014) Republic will create, print and
 3403 mail (at the latest September 2014) the new Recycling Guide to all residents and businesses. In
 3404 addition, ads will be placed in newspaper and local publications (i.e.: Marketplace).
 - 3405 9. October - December 2014: Create and finalize outreach and education plan with RM staff
 3406 (Annual Plan).
 - 3407 10. Prepare and distribute notices to customers who are not in compliance with AB341 (annually)
 - 3408 11. Cart and Bin Labeling

3409 Commercial

- 3410 1. Prepare and distribute a flyer and/or “how-to” brochure to businesses explaining the Recycling
 3411 services provided to each general business type (restaurants, office/commercial buildings, strip
 3412 malls, and large commercial businesses).
- 3413 2. Prepare and distribute a flyer and/or “how-to” brochure describing the Source Separated
 3414 Organic Materials Collection services available to each business type and how to prepare
 3415 Organic Materials for Collection.
- 3416 3. January-March, Republic to identify educated and subscribe new commercial food scrap
 3417 recycling accounts (200 accounts the first year).
- 3418 4. April 1, 2014 begin the commercial organics collection route.

3420 Multi-Family (January – June)

- 3421 1. Prepare Move-in kits for property managers/owners for new tenants
- 3422 2. Schedule training meetings/workshops and presentations to tenant councils
- 3423 3. Multi-family residents need to be mailed information about weekly collection service (October).
- 3424 4. If an organics program is implemented, then conduct the following activities:
 - 3425 a. Provide a starter kit to educate property managers on the Source Separated Organic
 3426 Materials Collection program;
 - 3427 b. Conduct initial site visits to all multi-family premises to encourage participation in the
 3428 program and customize the program to fit the Customer’s needs.

3429

3430 C&D

- 3431 1. Construction and demolition information about certification, services and recycling
3432 opportunities provided to customers at the scale house, etc. This can be in the form of a flyer or
3433 guide.
- 3434 2. RM staff will continue to provide CALGreen information to Member City planning departments.

3435

3436 Special Events

- 3437 1. Arrange for and staff a booth/table at events throughout the year.
- 3438 2. Create a professional informative display to be used at special events (Fourth of July, Cinco de
3439 Mayo, Home Front Festival, Juneteenth etc.). Attend at least 10 special events per year.
- 3440 3. Upfront planning for logistics detail, such as placement of containers, providing a full contingent
3441 of containers.

3442

3443 **January 2015-December 2015**

3444

3445 Commercial

- 3446 1. Add 100 more commercial food scraps customers and maintain existing accounts.

3447

3448 Schools

- 3449 1. RM and Recycling coordinators cooperate on outreach. Recycling Coordinators will begin to
3450 work with RM staff to understand the educational programs offered. The expectation is that
3451 facility tours will be arranged by Republic.
- 3452 2.
- 3453 3. Communicate the availability of educational resources to each school prior to the opening of
3454 school each fall
- 3455 4. Respond to school/teacher requests for educational materials, resources, and presentations
3456 throughout the year.
- 3457 5. Conduct educational tours of Company's facilities (field trips).
- 3458 6. Work with schools to identify recycling champion who will act as the school's recycling
3459 coordinator and provide appropriate training
- 3460 7. Available to meet with administrators, faculty, facilities personnel, and parents (through PTA
3461 meetings and other means) initially and as needed to establish and provide training on internal
3462 materials capture systems.
- 3463 8. Other school outreach programs

3464

3465 **January 2016 – December 2016**

3466 General/Commercial

- 3467 1. At least 400 commercial organics accounts need to be signed up for food scrap diversion
3468 program and maintained customer base.
- 3469 2. Prepare press releases and advertisements ongoing about the success of new programs/services
3470 (3 times per year).

- 3471 3. Maintain website information.
- 3472 4. Create and finalize outreach and education plan with RM staff (Annual Plan) with measurable
- 3473 goals. Present quarterly progress on goals to RM staff and Member Agencies (TAC Meetings).

3474

3475 Schools

- 3476 1. 4Rs and compost classroom presentations; promotional materials including posters, internal
- 3477 classroom bins, fliers for school programs will be conducted by RM and Republic.
- 3478 2. Presentations can continue to be collaboration with RM as well as the school newsletter.
- 3479 3. RM staff would like to add food scrap diversion at schools with cooperation with Republic.

3480 Republic can implement any item sooner. RecycleMore, with input from Republic, may at its discretion
3481 create informative guides that supplement the ones created by Republic.

**EXHIBIT 4.14
REPORTING**

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3483

3484

3485

<Insert Sample Report Format here>

EXHIBIT 6.2 INSURANCE

3486
3487

3488 **1. General Liability** Insurance Services Office form number GL 0002 covering Comprehensive
3489 General Liability and Insurance Services Office form number GL 0404 covering Broad Form
3490 Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage
3491 ("occurrence" form CG 0001). \$10,000,000 combined single limit per occurrence for bodily injury,
3492 personal injury and property damage.

3493 The Commercial General Liability Business policy must contain endorsements in substantially the
3494 following form:

3495 (i) "Thirty (30) Calendar Days prior written notice shall be given to the Authority in the event of policy
3496 cancellation. Such Notice shall be sent via e-mail to:

3497 West Contra Costa Integrated Waste Management Authority
3498 Executive Director
3499 1 Alvarado Square
3500 San Pablo, CA 94806

3501
3502 (ii) "The Authority, its officers, employees, and agents are additional insureds on this policy." The
3503 Authority requires form CG2010 0704.

3504 (iii) "This policy shall be considered primary insurance as respects any other valid and collectible
3505 insurance maintained by the Authority, including any self-insured retention or program of self-
3506 insurance, and any other such insurance shall be considered excess insurance only."

3507 (iv) "Inclusion of the Authority as an additional insured shall not affect the Authority's rights as
3508 respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy
3509 shall protect Contractor and the Authority in the same manner as though a separate policy had been
3510 issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy
3511 beyond the amount shown or to which the Contractor would have been liable if only one (1) Party had
3512 been named as an insured."

3513 **2. Automobile Liability** Insurance Services Office form number CA 0001 covering Automobile
3514 Liability, code 1 "any auto" and endorsement CA 458 002 0611 (occurrence form). \$10,000,000
3515 combined single limit per accident for bodily injury and property damage. The Automobile Liability
3516 policy must contain the same endorsements as required for Comprehensive General Liability and MCS
3517 90 endorsement.

3518
3519 **3. Workers' Compensation and Employers Liability Insurance.** Workers' compensation limits as
3520 required by State Labor Code Section 3700.

3521 The Workers' Compensation policy must contain a broad form waiver of subrogation: endorsement.

3522 The insurer must waive all rights of subrogation against the Authority, its officers, employees and
3523 volunteers for losses arising from work performed by the Contractor for the Authority, except for the
3524 willful misconduct or sole negligence of the Authority.

3525 **4. Pollution Legal Liability** in the amount of ten million dollars (\$10,000,000) covering liability
3526 arising from the release of pollution at the Landfill. The Pollution Legal Liability policy must contain the
3527 same endorsements as required for Comprehensive General Liability.

3528
3529

EXHIBIT 8.19 LIQUIDATED DAMAGES

3530 The performance standards and liquidated damages below are intended to identify the damages
3531 associated with the Contractor's willful or negligent acts or omissions under the Agreement which
3532 reduce the value of the services provided under this Agreement to the Authority and ratepayers. In the
3533 event that a failure to achieve a performance standard is the result of a foreseeable, but uncontrollable
3534 circumstance, Contractor shall notify the Authority, in writing, of its prospective failure and the means
3535 and date by which Contractor intends to remedy the failure. In the event that a failure to achieve a
3536 performance standard is the result of an unforeseeable and uncontrollable circumstance, Contractor
3537 shall notify the Authority in writing within one business day of the failure and shall notify the Authority
3538 of Contractor's plans to prevent future failures for similar reasons. The determination of the
3539 unforeseeable and/or uncontrollable nature of the circumstances shall be made in the reasonable
3540 discretion of the Authority's Contract Manager. This determination may consider the information
3541 provided by the Contractor and any other information which may be relevant. In the event such
3542 circumstances are determined to be unforeseeable and/or uncontrollable, the Authority's Contract
3543 Manager shall waive the assessment of damages.

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Performance Standard	Liquidated Damages
1. Failure to implement and conduct operational services. For each day that contractor is delayed in implementing or conducting any operational service(s) required under Sections 4.1.1 through 4.1.7 of this Agreement beyond the specified implementation date	\$1,000/service/day
2. Use of Authorized Facilities. For each ton of Solid Waste, Dry Materials, Recyclable Materials, Organic Materials, or C&D Debris delivered to a facility not approved for use under the provisions of this Agreement. This performance standard and associated liquidated damage would not apply in the event that Contractor provides notice in writing within 48 hours to the Authority of the need to use an alternative facility due to an unforeseen and uncontrollable circumstance.	\$125/ton
3. Disposal of Organic or Recyclable Materials. For each ton of otherwise marketable Organic Materials or Recyclable Materials Disposed, either pre- or post-processing, without the prior written approval of the Authority. This provision explicitly excludes Dry Materials processing, Compost Overs, and Residue from C&D and Curbside Processing.	\$125/ton
4. Timely submission of required reports and rate adjustment requests. For each day that a report or rate adjustment request required by this agreement is overdue past the specified due date. No submittal shall be deemed responsive to this requirement unless it is complete and accurate. In the event that a report is submitted and complete, but contains information the Authority reasonably believes is inaccurate, Contractor shall have ten (10) Working Days to correct or substantiate the information prior to this liquidated damage being imposed.	\$200/day for each day until accurate and complete submittal received
5. Timely response to requested information. For each day that contractor fails to respond to an Authority request for information or data that is authorized by the Agreement and which exceeds the allowable timeframes defined by the Agreement. The Authority shall request the information in writing and provide the Contractor a	\$200/day for each day until accurate and complete submittal received

<p>minimum of 15 business days to respond. No submittal shall be deemed responsive to this requirement unless it is complete and accurate. In the event that a report is submitted and complete, but contains information the Authority reasonably believes is inaccurate, Contractor shall have ten (10) Working Days to correct or substantiate the information prior to this liquidated damage being imposed.</p>	
<p>6. Failure to record accurate weights. For each failure to accurately weigh, record, and store the required details related to each and every load of material received at each of the approved facilities. Loads shall be considered inaccurately weighed if Contractor has not received required scale certification or if Contractor fails to update stored tare weights as needed (e.g. when major repairs are done to vehicles). Exceptions include power failures and equipment failures beyond Contractor’s control. In such an event, the Contractor shall comply with the requirements of Section 4.9 of the Agreement in order to record accurate weights.</p>	<p>\$250/load</p>
<p>7. Inaccurate disposal reporting. For each ton of waste that is incorrectly attributed to the Authority or any Franchise Agency resulting from an error in Contractor’s submission to the County Disposal Reporting Coordinator, after notice and opportunity for correction of State DRS reports, for the purposes of the State Disposal Reporting System.</p>	<p>\$125/ton</p>
<p>8. Delay in producing and/or delivering public education. For each day, up to 30, that Contractor is delayed in the production and/or delivery of public education materials required to be provided to the customers of Richmond Sanitary Service within the Authority service area under Section 4.1.9 of the Agreement, provided that the delay was an event under the control of the Contractor. In the event that a piece of public education is required monthly, quarterly, or annually, the item will be past due on the first day of the following calendar month, quarter, or year respectively.</p> <p>In the event Contractor is delayed more than thirty (30) days, Contractor shall have failed to perform under the Agreement and the Authority may utilize the funds available under the performance surety to produce and deliver the required education materials.</p>	<p>\$100/day for each day until delivered, up to 30 days per item</p> <p>AND</p> <p>\$2,500/event if delayed more than 30 days</p>
<p>9. Failure to provide technical assistance and outreach. Any failure to provide ongoing technical assistance (e.g. site visits requested by customer, the Authority, a Franchise Agency, or required in Section 4.1.8 or the annual education and outreach plan) and community outreach services (e.g. attending public events and venues to promote recycling and diversion programs) as required by the Agreement. Failure to provide technical assistance to Customers shall be counted as one event per Customer.</p>	<p>\$750/event</p>
<p>10. Accuracy of customer service information. Any documented (e.g. voice recording, copy of written materials or email, etc.) instance of any Contractor employee or agent providing inaccurate information to the public regarding the services provided under the Agreement. Information shall be determined inaccurate if it is in direct contradiction to the services and terms of the Agreement and/or any public education materials (e.g. website, brochures, posters, etc.) which have been approved by the Authority or applicable Franchise Agency. Information shall also be determined inaccurate if it fails to provide complete information on the subject which would educate the Customer about Diversion opportunities (e.g. omitting food waste from a list of accepted materials in the green cart, failing to inform Commercial customers that recycling or organics services are provided at no additional charge, etc.).</p>	<p>\$250/event</p>

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<p>11. Insufficient number of active source separated organics accounts. For each Customer below the target number of active Source Separated Organics Customers at or after each milestone date (i.e. 200 accounts by December 31, 2014; 300 accounts by December 31, 2015; 400 accounts by December 31, 2016). An account shall only be deemed active if they have subscribed to service, have received a container, and are actively separating organic materials from other solid waste. This measurement may be performed monthly using actual account information from the preceding calendar month. An account shall be considered active for the purposes of this performance standard, regardless of their actual separation of organic materials, if Contractor can demonstrate to the satisfaction of the Authority that Contractor’s Recycling Coordinators have made a good faith effort to work repeatedly with that account to identify and overcome barriers to their use of the program.</p>	<p>\$200/customer/ month</p>
<p>12. Failure to achieve dry processing diversion. For each ton that actual calendar year dry processing is below 10,000 tons processed in 2014 and 18,250 tons processed in each subsequent calendar year. This measurement may be performed annually using actual results from the preceding calendar year. In the event that actual processing tonnage is at least 90% of the standard for any given calendar year, Contractor may notify the Authority in writing of its intent cure the failure by processing a commensurate volume of additional dry material in the following calendar quarter. If the Contractor fails to provide such notice or process sufficient additional volumes in the following quarter, the performance standard shall not have been met.</p>	<p>\$150/ton</p>
<p>13. Failure to maintain diversion of C&D recycling. For each month that Contractor fails to maintain 70% or more of mixed C&D processed by Contractor is diverted. Damages shall be assessed based on the actual percentage of diversion achieved relative to the target, where two percentage points is used to measure the scale of the damage.</p> <p>For example, if Contractor achieves a diversion rate of 68.2% for a given month, the Authority may assess liquidated damages of up to \$1,000 for that month because 68.2% is within two percentage points of the 70.0% target diversion rate. As another example, if Contractor achieves a diversion rate of 67.9% the Authority may assess liquidated damages of up to \$2,000 for that month because 67.9% is more than two and less than four percentage points from the 70.0% target diversion rate.</p> <p>The measurement criteria to be based on overall C&D processing system diversion. The facility, in whole or in part, shall be certified from a certifying public agency (e.g. StopWaste.org, City/County of San Francisco, etc.) or industry group acceptable to the Authority. In the absence of a certifying public agency, the Authority and Contractor will meet and confer on certification criteria. In the event of a Change in Law associated with the diversion credit provided for using construction and demolition debris fines as ADC or other beneficial use, the Parties shall agree on a reduced diversion standard based on the elimination of that credit.</p>	<p>\$1,000 per two percentage points per month</p>

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EXHIBIT 8.19.A PERFORMANCE STANDARDS

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Expansion of Acceptable Material for Residential Single Stream Curbside Recycling & Weekly Collection of Residential Curbside Recycling

- Implementation of expanded acceptable material as of January 1, 2014
- Implementation of weekly collection of residential curbside recycling as of October 31, 2014
- The combined impact is estimated 7-10% (1,264 to 1,805 tons year) increase in collected tonnage by October 2015. Performance to be measured based on prior 12 month review (October 2014 – Oct 2015) for the 7-10% increase in collected tonnage.
- Public education material delivered December 2013 for expanded collection material and September 1, 2014 for weekly collection services
- Future performance for Public Education to be measured as timely delivery of public education material delivered to maintain program effectiveness

Weekly Collection of Residential Food & Green Organics Curbside Collection

- Implement as of October 31, 2014
- City of Hercules, City of Pinole, and Unincorporated Contra Costa County begin Food Waste Collection in Green Waste Cart beginning January 1, 2014
- Estimated 5% increase in collected tonnage within first 18 months and 10% increase in collected tonnage within 36 months (seasonally adj.)
- Estimated tonnage impact of an additional 1,000 tons/year within 18 months and an overall tonnage increase of 1,900 tons over 36 months (estimate may have to be seasonally adjusted)
- Initial period performance to be based upon program implementation and public education rollout by September 1, 2014 for weekly collection and November 1, 2013 for Food Waste Collection
- Future performance to be measured by ability to maintain the diversion level achieved (estimated 5% in first 18 months with an additional 5% for a total of 10% increase in collected tonnage within 36 months), maintaining the diversion expressed as a percentage of the pre-program baseline. 10% is over pre-program baseline, not an annual percentage increase. Public education material to be delivered to maintain program effectiveness

Commercial Source Separated Organics Collection

- January 1, 2014 to March 31, 2014
 - Identification of the area's largest organics generating accounts
 - Education of targeted accounts
 - Subscription to organics service
- April 1, 2014 commencement of dedicated organics collection route
- 200 accounts contacted and 100 accounts subscribed to service and participating by December 2014

EXHIBIT 8.20
GUARANTY AGREEMENT

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3641 This Guaranty, made as of the date written below by [REDACTED] (Guarantor), to and for the
3642 benefit of the West Contra Costa Integrated Waste Management Authority (Authority), a municipal
3643 corporation of the State of California (State).

3644 WITNESSETH

3645 **WHEREAS**, the Contractor and the Authority have negotiated the Agreement between the Authority for
3646 Solid Waste, Recyclable Materials, and Organic Materials Transport, Processing, and Disposal Services
3647 dated as of the later of the date of execution thereof by the Authority or the Contractor, as may be
3648 supplemented and amended from time to time in accordance with the terms thereof (Agreement),
3649 which Agreement is incorporated in this Agreement by reference and by this Agreement made part of
3650 this Agreement;

3651 **WHEREAS**, it is in the interest of Guarantor that the Contractor enter into the Agreement with the
3652 Authority;

3653 **WHEREAS**, the Authority is willing to enter into the Agreement only upon the condition that the
3654 Guarantor execute this Guaranty;

3655 **WHEREAS**, in the event Contractor fails to timely and fully perform its obligations, including the
3656 payment of moneys, pursuant to the Agreement, Guarantor is willing to Guaranty, Contractor's timely
3657 and full performance thereof; and

3658 **WHEREAS**, it is a condition precedent to the Authority's obligations under the Agreement that the
3659 Guarantor provide this Guaranty.

3660 **NOW, THEREFORE**, as an inducement to the Authority to enter into the Agreement, the Guarantor
3661 agrees as follows:

3662 Capitalized terms used in this Agreement and not otherwise defined in this Agreement, shall have the
3663 meaning assigned to them in the Agreement.

3664 **(1) Guaranty of Contractor's Performance Under Agreement.** Guarantor by this Guaranty directly,
3665 unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Contractor's
3666 obligations under the Agreement in accordance with the terms and conditions contained therein or to
3667 cause that timely and full performance. Within thirty (30) Calendar Days written request therefore by
3668 the Authority, Guarantor shall honor the Guaranty. Notwithstanding the unconditional nature of the
3669 Guarantor's payment obligations set forth in this Agreement, the Guarantor may assert the defenses
3670 provided in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims made
3671 under this Guaranty.

3672 **(2) Governing law; consent to jurisdiction; service of Process.** This Guaranty is governed by the laws of
3673 the State of California. The Guarantor by this Guaranty agrees to the service of Process in the State for
3674 any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor by this
3675 Guaranty agrees that the Superior Court of Contra Costa County, and to the extent permitted by law, the
3676 United States District Court for the Northern District of California, shall have the exclusive jurisdiction of
3677 all suits, Actions, and other proceedings involving itself and to which the Authority may be party for the
3678 adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this
3679 Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of
3680 any suit, action, or proceeding, and consents to the service of process in any suit, action, or proceeding
3681 by prepaid registered mail, return receipt requested.

3682 **(3) Enforceability; no Assignment.** This Guaranty is binding upon and enforceable against Guarantor, its
3683 successors, Assignees, and lawful representatives. It is for the benefit of the Authority, its successors
3684 and Assignees. The Guarantor may not Assign or delegate the performance of this Guaranty without the
3685 prior written consent of the Authority in its sole discretion. Any Assignment made without the consent
3686 of Authority is voidable by the Authority in its sole discretion. Together with its request for Authority
3687 consent, Guarantor shall pay Authority fifty thousand dollars (\$50,000) to pay Authority its reasonable
3688 expenses for private attorneys' fees and investigation costs ("Assignment expenses") necessary to
3689 investigate the suitability of any proposed Assignee, and to review and finalize any documentation
3690 required as a condition for approving any Assignment. Authority shall reimburse Guarantor the excess, if
3691 any, over those Assignment expenses it incurs. Contrariwise, Guarantor shall pay Authority the excess
3692 Assignment expenses, if any, over fifty thousand dollars (\$50,000) Authority incurs within thirty (30)
3693 Calendar Days of Authority's request thereof. Guarantor shall further pay to Authority the Authority's
3694 Reimbursement Costs for fees of attorneys who are not Authority employees and investigation costs
3695 necessary to enjoin the Assignment or to otherwise enforce this provision within thirty (30) Calendar
3696 Days of Authority's request thereof ("injunction costs").

3697 For purposes of this Guaranty "Assign" and "Assignment" means:

- 3698 (i) selling, exchanging or otherwise transferring effective control of management of the Guarantor
3699 (through sale, exchange or other transfer of outstanding stock or otherwise);
- 3700 (ii) issuing new stock or selling, exchanging or otherwise transferring twenty percent (20%) or more of
3701 the then outstanding common stock of the Guarantor which results in a change of control of
3702 Guarantor;
- 3703 (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-
3704 issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction
3705 which results in a change of Ownership or control of Guarantor;
- 3706 (iv) any Assignment by operation of law, including insolvency or bankruptcy, making Assignment for
3707 the benefit of creditors, writ of attachment of an execution, being levied against Guarantor,
3708 appointment of a receiver taking possession of any of Guarantor's tangible or intangible property;
3709 and

3710 (v) any combination of the foregoing (whether or not in related or contemporaneous transactions)
3711 which has the effect of any transfer or change of Ownership or control of Guarantor.

3712 For purposes of determining Ownership, the constructive Ownership provisions of Section 318(a) of the
3713 Internal Revenue Code of 1986, as in effect on the date here, shall apply, provided that (1) ten percent
3714 (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof;
3715 and (2) Section 318(a)(5)(C) is disregarded. For purposes of determining Ownership under this
3716 paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than
3717 twenty percent (20%) is disregarded and percentage interests is determined on the basis of the
3718 percentage of voting interest or value which the Ownership interest represents, whichever is greater.

3719 **(4) Guaranty absolute and unconditional.** The undertakings of Guarantor set forth in this Agreement
3720 are absolute and unconditional, and the Authority is entitled to enforce any or all of those undertakings
3721 against Guarantor without being first required to enforce any remedies or to seek to compel the
3722 Contractor to perform its obligations under the agreement or to seek, or obtain recourse against any
3723 other Party or Parties, including but not limited to the Contractor or any Assignee of the Contractor, who
3724 are, or may be, liable therefore, in whole or in part, irrespective of any cause or state of facts whatever.
3725 Without limiting the generality of the foregoing, the Guarantor expressly agrees that its obligations
3726 under this Guaranty shall not be affected, limited, modified or impaired by any state of facts or the
3727 happening from time to time of an event, other than the payment of monetary obligations by the
3728 Contractor to Authority under the Agreement in accordance with the terms of the Agreement, including,
3729 without limitation, any of the following, each of which is by this Guaranty expressly waived as a defense
3730 to its liability under this Guaranty, except to the extent those defenses would be available to the
3731 Contractor and release, discharge or otherwise offset Contractor's obligations under the Agreement:

3732 (a) the invalidity, irregularity, illegality or unenforceability, of any defect in or objections to the
3733 Agreement;

3734 (b) any modification or amendment or compromise of or waiver of compliance with or consent to
3735 variation from any of the provisions of the Agreement by the Contractor;

3736 (c) any release of any collateral or lien thereof, including, without limitation, any performance bond;

3737 (d) any defense based upon the election of any remedies against the Guarantor of the Contractor, or
3738 both, including without limitation, any consequential loss by the Guarantor of its right to recover
3739 any deficiency, by way of subrogation or otherwise, from the Contractor or any other Person or
3740 entity;

3741 (e) the recovery of any judgment against the Contractor to enforce any of that collateral or
3742 performance bond;

3743 (f) the Authority or its Assignees taking or omitting to take any of the actions which it or any of that
3744 Assignee is required to take under the Agreement; any failure, omission or delay on the part of the
3745 Authority or its Assignees to enforce, assert or exercise any right, power or remedy conferred on it

- 3746 or its Assignees by the Agreement, except to the extent that failure, omission or delay gives rise to
3747 an applicable statute of limitations defense by the Contractor with respect to a specific obligation;
- 3748 (g) the default or failure of the Guarantor to fully perform any of its obligations set forth in this
3749 Guaranty;
- 3750 (h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor or the
3751 Authority, or any order or decree of a court, trustee or receiver in any proceeding;
- 3752 (i) in addition to those circumstances described in item (h), any other circumstance which might
3753 otherwise constitute a legal or equitable discharge of a Guarantor or limit the recourse of the
3754 Authority to the Guarantor;
- 3755 (j) the existence or absence of any action to enforce the Agreement;
- 3756 (k) subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present
3757 or future law or order of any government or of any agency thereof, purporting to reduce, amend
3758 or otherwise affect the Agreement or to vary any terms of payment or performance under the
3759 Agreement;
- 3760 *provided* that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary
3761 obligation of Contractor to Authority from which Contractor would be discharged, released or otherwise
3762 excused under the provisions of the Agreement.
- 3763 **(5) Waivers.** Guarantor by this Guaranty waives:
- 3764 (a) Notice of acceptance of this Guaranty and of the creation, renewal, extension and accrual of the
3765 limited financial obligations Guaranteed under this Guaranty;
- 3766 (b) Notice that any Person has relied on this Guaranty;
- 3767 (c) diligence, demand of payment and Notice of default or nonpayment under this Guaranty or the
3768 Agreement, and any and all other Notices required under the Agreement;
- 3769 (d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the
3770 Contractor;
- 3771 (e) any right to require a proceeding first against the Contractor or with respect to any collateral or
3772 lien, including, without limitation, any performance bond, or any other requirement that the
3773 Authority exercise any remedy or take any other action against the Contractor or any other
3774 Person, or in respect of any collateral or lien, before proceeding under this Guaranty;
- 3775 (f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or
3776 (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation,
3777 any performance bond) for the obligations of the Contractor under the Agreement; any pursuit of
3778 exhaustion of remedies against the Contractor or any other obligor or Guarantor of the

3779 obligations; and any requirement of promptness or diligence on the part of any Person in
3780 connection therewith; and

3781 (g) to the extent that it lawfully may do so, any and all demands or Notices of every kind and
3782 description with respect to the foregoing or which may be required to be given by any statute or
3783 rule of law, and any defense of any kind which it may now or hereafter have with respect to this
3784 Guaranty or the obligations of the Contractor under the Agreement, except any Notice to the
3785 Contractor required pursuant to the Agreement or Applicable Law which Notice preconditions the
3786 Contractor's obligation or the defenses listed in Section (8) below.

3787 To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to waive, and
3788 does by this Guaranty absolutely and irrevocably waive and relinquish, the benefit and advantage of,
3789 and does by this Guaranty covenant not to assert, any appraisal, valuation, stay, extension,
3790 redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or
3791 otherwise impede the due performance or proper enforcement of this Guaranty, the Agreement, or the
3792 obligations of the Contractor under the Agreement, and by this Guaranty expressly agrees that the right
3793 of the Authority under this Guaranty may be enforced notwithstanding any partial performance by the
3794 Contractor or the Guarantor, or the foreclosure upon any security (including, with limitation, any
3795 performance bond) given by the Contractor for its performance of any of its obligations under the
3796 Agreement.

3797 **(6) Agreements between Authority and Contractor; Waivers by Authority.** The Guarantor agrees that,
3798 without the necessity for any additional endorsement or Guaranty by or any reservation of rights against
3799 Guarantor and without any further assent by Guarantor, by mutual agreement between the Authority
3800 and Contractor, the Authority and Contractor may, from time to time

3801 (a) renew, modify, or compromise the liability of the Contractor for or upon any of the obligations by
3802 this Guaranty Guaranteed; or

3803 (b) consent to any amendment or change of any terms of the Agreement; or

3804 (c) accept, release, or surrender any security (including, without limitation, any performance bond),
3805 or

3806 (d) grant any extensions or renewals of the obligations of the Contractor under the Agreement, and
3807 any other indulgence with respect thereto, and to effect any release, compromise or settlement
3808 with respect thereto,

3809 all without releasing or discharging the liability of Guarantor under this Guaranty.

3810 The Guarantor further agrees that the Authority or any of its Assignees shall have and may exercise full
3811 power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under
3812 this Guaranty, to waive compliance with and any default of the Contractor under, the Agreement.

3813 **(7) Continuing Guaranty.** This Guaranty is a continuing Guaranty and shall continue to be effective or
3814 be reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is
3815 rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the
3816 Contractor or Guarantor or otherwise, all as though payment had not been made.

3817 **(8) Defenses.** Notwithstanding any provision in this Guaranty to the contrary, the Guarantor may
3818 exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses
3819 under the Agreement or Applicable Law which the Contractor could assert against any Party seeking to
3820 enforce the Agreement against the Contractor, and nothing in this Guaranty shall constitute a waiver
3821 thereof by the Guarantor.

3822 **(9) Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses and fees,
3823 including all reasonable attorney's fees, which may be incurred by the Authority in enforcing this
3824 Guaranty following the default on the part of the Guarantor under this Guaranty whether the same is
3825 enforced by suit or otherwise.

3826 **(10) Enforcement.** The terms of this Guaranty may be enforced as to any one (1) or more breaches
3827 either separately or cumulatively.

3828 **(11) Remedies cumulative.** No remedy in this Agreement conferred upon or reserved to the Authority
3829 under this Guaranty is intended to be exclusive of any other available remedy or remedies, but each and
3830 every remedy is cumulative and is in addition to every other remedy given under the Guaranty and the
3831 Agreement or in this Agreement after existing at law or in equity or by statute.

3832 **(12) Severability.** The invalidity or unenforceability of any one (1) or more phrases, sentences or
3833 clauses in this Guaranty contained shall not affect the validity or enforce ability of the remaining
3834 portions of this Guaranty, or any part thereof.

3835 **(13) Amendments.** No amendment, change, modification or termination of this Guaranty is made
3836 except upon the written consent of Guarantor and the Authority.

3837 **(14) Term.** The obligations of the Guarantor under this Guaranty shall remain in full force and effect
3838 until (i) all monetary obligations of the Contractor under the Agreement shall have been fully performed
3839 or provided for in accordance with the Agreement, or (ii) the discharge, release or other excuse of those
3840 obligations in accordance with the terms of the Agreement.

3841 **(15) No set-offs**

3842 **By Guarantor.** The obligation of Guarantor under this Guaranty shall not be affected by any set-off,
3843 counterclaim, recoupment, defense or other right that Guarantor may have against the Authority on
3844 account of any claim of the Guarantor against the Authority; *provided* that Guarantor reserves the right
3845 to bring independent claims not arising from the Agreement against the Authority so long as any claims
3846 shall not be used to set-off or deduct from any claims which the Authority may have against the
3847 Guarantor arising from this Guaranty.

3848 **By Contractor.** The obligation of Guarantor under this Guaranty is subject to any set-off, counterclaim,
3849 recoupment, defense or other right that the Contractor may assert pursuant to the Agreement, if any,
3850 but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim,
3851 recoupment, defense or other right that the Contractor may assert independently of and outside the
3852 Agreement.

3853 **(16) Warranties and representations.** The Guarantor warrants and represents that as of date of
3854 execution of this Guaranty:

3855 (a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform
3856 its obligations and undertakings under this Guaranty, and the execution, delivery and performance
3857 of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and
3858 shareholder action on the part of the Guarantor, (ii) have the requisite approval of all federal,
3859 State and local governing bodies having jurisdiction or authority with respect thereto, (iii) do not
3860 violate any judgment, order, law or regulation applicable to the Guarantor, (iv) do not conflict with
3861 or constitute a default under any agreement or instrument to which the Guarantor is a party or by
3862 which the Guarantor or its assets may be bound or affected, and (v) do not violate any provision of
3863 the Guarantor's articles or certificate of incorporation or by-laws;

3864 (b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal,
3865 valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance
3866 with its terms; and

3867 (c) There are no pending or, to the knowledge of the Guarantor, threatened Actions or proceedings
3868 before any court or administrative agency which would have a material adverse effect on the
3869 financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or
3870 undertakings under this Guaranty.

3871 **(17) No merger; no conveyance of assets.** Guarantor agrees that during the term of this Guaranty in
3872 accordance with Section (14) Guarantor shall not consolidate with or merge into any other corporation
3873 where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the
3874 Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its
3875 properties and assets to any Person, firm, joint venture, corporation and other entity, unless the
3876 Authority consents thereto in accordance with Section (3) above.

3877 **(18) Counterparts.** This Guaranty may be executed in any number of counterparts, some of which may
3878 not bear the signatures of all Parties to this Guaranty. Each counterpart, when so executed and
3879 delivered, is deemed to be an original and all counterparts, taken together, shall constitute one and the
3880 same instrument; *provided, however*, that in pleading or proving this Guaranty, it shall not be necessary
3881 to produce more than one (1) copy (or sets of copies) bearing the signature of the Guarantor.

3882 **(19) Notices.** All notices, instructions and other communications required or permitted to be given to
3883 or made upon any Party to this Guaranty is in writing, and is given in the manner and to the addresses
3884 provided in the Agreement.

3885 **(20) Separate suits.** Each and every payment default by Contractor under the Agreement shall give rise
3886 to a separate cause of action under this Guaranty, and separate suits may be brought under this
3887 Guaranty by the Authority or its Assignees as each cause of action arises.

3888 **(21) Headings.** The Section headings appearing in this Agreement are for convenience only and shall not
3889 govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this
3890 Guaranty.

3891 **(22) Entire Agreement.** This Guaranty constitutes the entire agreement between the Parties to this
3892 Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is
3893 intended to confer on any Person other than the Guarantor, the Authority and their permitted
3894 successors and Assigns under this Guaranty any rights or remedies under or by reason of this Guaranty.

3895 **(23) Personal Liability.** It is understood and agreed to by the Authority that nothing contained in this
3896 Agreement shall create any obligation or right to look to any director, officer, employee or stockholder
3897 of the Guarantor (or any Affiliate thereof) for the satisfaction of any obligations under this Guaranty,
3898 and no judgment, order or execution with respect to or in connection with this guaranty is taken against
3899 any director, officer, employee or stockholder.

3900 **(24) Events of Default.** Each of the following shall constitute an event of default under this Guaranty:

3901 **(a) Failure to fulfill payment of guaranty.** Guarantor fails to fulfill full and timely payment of any
3902 guaranty under this Guaranty, including Section (1), and the failure continues for five (5) Calendar
3903 Days after Notice (which is deemed given upon receipt of registered or certified mailing by U.S. Postal
3904 Service or of invoiced Commercial Service) (Hereunder defined as Notice) has been given to the
3905 Guarantor by the Authority; fails to perform any of its obligations under this Guaranty or engages in
3906 any acts prohibited under this Guaranty other than failures itemized below, and fails to cure that
3907 failure or conduct within thirty (30) Calendar Days;

3908 **(b) Breach of Guaranty.** The Guarantor fails to observe and perform any covenant, condition or
3909 agreement of this Guaranty, other than any failures listed explicitly in this Section, and that failure
3910 continues for more than thirty (30) Calendar Days after Notice has been given the Guarantor by the
3911 Authority;

3912 **(c) Failure to give Notice of proposed Assignment.** The Guarantor fails to give Authority notice in
3913 accordance with Section (19) within ten (10) Calendar Days of the first to occur of:

3914 (i) Contractor or any Affiliate issuing a press release as to any proposed Assignment, (within the
3915 meaning of Section (3), or consolidation, merger, conveyance, transfer or lease described in
3916 paragraph (e) of this Section (24) or;

3917 (ii) the filing with the Securities and Exchange Commission of a Form 8-K or other filing with
3918 respect to a memorandum of intent or an agreement and plan thereof.

3919 (paragraphs (i) and (ii) together defined as Change Notice);

3920 **(d) Consolidation, merger; conveyance of assets.** The Guarantor consolidates, merges or conveys,
3921 transfers or leases assets in Violation of Section (17) despite the Authority Board of Directors action
3922 following Change Notice in preceding paragraph (c) withholding or denying Authority consent, and on
3923 or before fifteen (15) Calendar Days thereafter, does not provide Authority with a substitute
3924 Guarantor satisfactory to Authority in Authority's sole discretion;

3925 **(e) Bankruptcy, insolvency, liquidation.** Guarantor files a voluntary claim for debt relief under any
3926 applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or
3927 shall consent to the appointment of or taking of possession by a receiver, liquidator, Assignee, trustee,
3928 custodian, administrator (or similar official) of Guarantor for any substantial part of Guarantor's
3929 operating assets or any substantial part of Guarantor's property, or shall make any general Assignment
3930 for the benefit of Guarantor's creditors, or shall fail generally to pay Guarantor's debts as they become
3931 due or shall take any action in furtherance of any of the foregoing.

3932 A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any
3933 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or
3934 hereafter in effect, or Guarantor consents to or fails to oppose any proceeding, or any court enters a
3935 decree or order appointing a receiver, liquidator, Assignee, custodian, trustee, sequestrator (or similar
3936 official) of the Guarantor or for any substantial part of the Guarantor's operating equipment or assets,
3937 or orders the winding up or liquidation of the affairs of the Guarantor;

3938 **(f) Breach of representations or warranties.** Any representation or warranty of Guarantor is untrue
3939 as of the date thereof; Guarantor knowingly makes, causes to be made or condones the making of any
3940 false entry in its books, accounts, Records, and reports under this Guaranty.

3941 Upon any Event of Default the Authority may proceed first and directly against the Guarantor under
3942 Guaranty without proceeding against or exhausting any other remedies which it may have. The
3943 Guarantor acknowledges that any Contractor Default comprises a Default under the Agreement.

3944

3945 **IN WITNESS WHEREOF** Guarantor has executed this instrument the day and year first below written.

3946 {Insert appropriate signature block}

3947 Proper notarial acknowledgment of execution by Guarantor must be attached.

3948 Chairman, president or vice-president, and (2) secretary, assistant secretary, CFO or assistant treasurer,
3949 must sign for corporations. Otherwise, the corporation must attach a resolution certified by the
3950 secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the
3951 corporation.

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3953

EXHIBIT 10
CORPORATE SECRETARY’S CERTIFICATE

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3956
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3958

The undersigned, being the Secretary of _____, a
Company Name
California corporation (“the Company”), do hereby certify that the following resolution was adopted by

3959
3960

the Board of Directors of the Company and that such resolution has not been amended, modified or
rescinded and is in full force and effect as of the date hereof:

3961

3962
3963
3964

RESOLVED, that _____ be, and hereby is, authorized to
Name of Designated Representative
execute by and on behalf of the Company the Agreement between the West Contra Costa Integrated

3965
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3968

Waste Management Authority and the Company for Post Collection Services and any and all other
agreements, instruments, documents or papers, as he/she may deem appropriate or necessary,
pertaining to or relating to such Agreement, and that any such action taken to date is hereby ratified
and approved.

3969

3970 Dated: _____

3971
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3976

Signature

Title