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
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This Agreement is entered into by and between the West Contra Costa Integrated Waste Management Authority (Authority) and West County Resource Recovery, Inc., West Contra Costa Sanitary Landfill, Inc., Golden Bear Transfer Services, Inc., Richmond Sanitary Service, Inc. (“RSS”) and Keller Canyon Landfill Company, Inc. (operating subsidiaries of Republic Services, Inc. and hereinafter collectively referred to as “Contractor”) (together, the “Parties”) for the Transfer, Transport, Recycling, Composting, and Disposal (Post-Collection Services) of Solid Waste, Recyclable Materials, Dry Materials, Organic Materials, and Construction and Demolition Materials from the cities of Hercules, Pinole, Richmond, and San Pablo (collectively the Member Agencies of the Authority and hereinafter referred to as “Member Agencies”) and certain portions of the unincorporated areas of the County of Contra Costa pursuant to a franchise collection agreement between RSS and the County (that historically have been within the Authority’s service area including: East Richmond Heights, North Richmond, Montalvin Manor, Tara Hills, and El Sobrante) (together the Member Agencies and County are hereinafter collectively referred to as “Franchise Agencies”) on the Service Commencement Date of January 1, 2014.

RECITALS, DETERMINATIONS, AND FINDINGS

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

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

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

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

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

WHEREAS, Contractor, by means of the services and facilities of Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill and West County Resource Recovery, provides Post-Collection Services to the Authority through certain agreements between Contractor and the Authority; and
WHEREAS, these contracts for Post Collection Services are expiring effective December 31, 2013; and.

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

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

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

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

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

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

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

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

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

WHEREAS, this Agreement helps the Authority achieve the following goals:

(1) Securing rate stability over the long term and financial protection from environmental Liabilities;
(2) Establishing service and performance standards to help assure that the Authority and all Franchise Agencies meet their respective obligations under law and to protect and preserve the health, safety, and financial assets of its citizens;

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

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:
ARTICLE 1
DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings specified in Exhibit 1 to this Agreement, which is attached hereto and incorporated by reference.
ARTICLE 2
TERMS OF AGREEMENT

2.1 Effective Date

(Note: This section is unresolved at the time of this posting though the parties continue to negotiate. Republic prefers that the agreement not be effective until all collection amendments have been approved. The member agencies would like this agreement to be effective, except for the enhanced services, even if one or more agencies have been delayed in adopting the amendment.)

This Agreement becomes effective on the date that the latter of the Parties executes the Agreement or the date that all of the Member Agencies have executed an amendment to their Collection Franchise Agreement(s) at a minimum substantially in the form presented in Exhibit 2.4.6, whichever is later.

Except as specifically provided herein, Contractor shall make all necessary preparations required to provide all Services under this Agreement between the effective date and the Service Commencement Date.

2.2 Term

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

2.3 Survival of Certain Provisions

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

1) All representations and warranties;

2) All Indemnities and insurance requirements;

3) Obligations to pay any due and payable monetary amounts, or claims for those amounts, including damages, any Disposal Rates, and payment of any amounts accrued and payable upon termination of the Agreement in accordance with Section 7.2;

4) Obligations to submit and maintain Records and any reports for periods (or portions thereof) concluded prior to the expiration or termination of this Agreement; and,

5) Any other rights and obligations of the Parties stated elsewhere in this Agreement which pertain to operations conducted during the term of this Agreement including, but not limited to, the following:

4.2 Permits
2.4 Conditions to Effectiveness of Agreement

2.4.1 New Agreement Supersedes all Others

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

(Note: The following text is unresolved at the time of this posting though the parties continue to negotiate. Republic and Richmond wish to include a reference to the Richmond/Golden Bear agreement. The Authority and other member agencies wish to remain silent on that agreement.) Include in a separate section...
2.4.2 Release of Claims

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

2.4.3 Environmental Review

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

2.4.4 Procurement Reimbursement

Contractor shall pay the Authority, as reimbursement for the Authority’s actual cost of procuring and
negotiating this Agreement, not to exceed two hundred thousand dollars ($200,000). Such payment
shall be made January 30, 2014 or upon the Effective Date of this Agreement whichever is later. Failure
to timely make such payment may, in the Authority’s sole discretion, constitute a default subject to the
provisions of Section 7 of invalidate this Agreement.

2.4.5 Cost Baseline Study Reimbursement

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

2.4.6 Execution of Amendments for Collection Services

(Note: This section is unresolved at the time of this posting though the parties continue to negotiate.
Republic prefers that the agreement not be effective until all collection amendments have been
approved. The member agencies would like this agreement to be effective, except for the enhanced
services, even if one or more agencies have been delayed in adopting the amendment.)

{Republic’s preferred language:} Prior to the effectiveness of this Agreement, the Franchise Agencies
must have executed an amendment to their Collection Franchise Agreement(s) substantially in the form
presented in Exhibit 2.4.6.- LANGUAGE IN 2.1 IS WHAT WE WILL NEED AS DISCUSSED IN LAST MEETING.
Prior to the effectiveness of Sections 4.1.4, 4.1.6, 4.1.8, and 4.1.9 of this Agreement, the Franchise Agencies must have executed an amendment to their Collection Franchise Agreement(s) authorizing implementation of the enhanced collection services described in Exhibit 2.4.6.
ARTICLE 3
OBLIGATIONS OF THE AUTHORITY

3.1 Facility Designation

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

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

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

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

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

3.2 No Tonnage Obligation or Limit on Waste Prevention

Neither the Authority nor the Franchise Agencies are obligated to deliver any minimum specified quantity of Solid Waste, Recyclable Materials, or Organic Materials to the Landfill or Approved Processing Facilities, but the Authority is obligated to deliver any and all such franchised Solid Waste, Recyclable Materials, Dry Materials, C&D Materials and Organic Materials to the Landfill or Approved Processing Facilities. The Authority currently operates programs intended to reduce the amount of Solid Waste for Landfill Disposal as well as to reduce the total amount of materials generated by the community. Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the Authority in cooperation with the Contractor, when necessary, from continuing and expanding these programs or developing new programs having the goal of reducing the amount of material generated within the Authority service area and managed under this Agreement. The Contractor shall have the right of first refusal for such activities. This right of first refusal shall not apply to studies, education, outreach, advertising, or other activities that do not involve the Processing, Transportation, Disposal, handling, or other disposition of materials covered by this Agreement.
ARTICLE 4
OBLIGATIONS OF CONTRACTOR

4.1 Scope of Services

4.1.1 Solid Waste Transfer and Transport

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

4.1.2 Solid Waste Disposal

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

4.1.3 Recyclable Materials Processing

Contractor shall Process the Traditional Recyclable Materials Collected under the Collection Franchise Agreements for all Franchise Agencies. The Approved Recycling Materials Processing Facility shall separate the commingled Traditional Recyclable Materials into marketable commodity types, prepare those commodities for market, and market those commodities for sale. Under no circumstances may Contractor Dispose of any material Collected as Traditional Recyclable Material without first Processing such material in a manner that maximizes the Recovery of marketable commodities and obtaining written approval from the Authority, if required under Section 4.4.

4.1.4 Dry Material Processing

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

### 4.1.5. Organic Materials and Organics Processing

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

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

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

### 4.1.6. Mixed Construction and Demolition Materials Processing

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

Contractor shall receive from any Franchise Agency’s Franchised Collector and pre-Process all identified C&D loads to remove contaminants and large dimensional/non-sizeable material (e.g., very large diameter tree trunks) or wet material (e.g., saturated sheet rock). Contractor shall then Process the remainder of each load, using its mixed C&D sorting line or other processes in a manner that maximizes the Diversion of material from the Landfill. The sorting line shall be equipped and staffed with sorters in a manner adequate to consistently achieve a seventy percent (70%) Diversion rate for the material from the Authority service area that is processed by this sorting line. Materials targeted for Diversion shall include, but are not necessarily limited to: porcelain, cardboard, green waste, untreated wood, ferrous and non-ferrous metals, concrete, brick, plastics, aggregate, wallboard, sheetrock, plaster, lath, asphalt, base rock, dirt/soil, shingles, and carpet/pad. The Parties acknowledge that a significant portion of the Diversion from this program is achieved by utilizing fines or unders from this process as ADC or other
beneficial use at a Solid Waste Disposal site. In the event of a Change in Law eliminating or significantly reducing Diversion credit associated with Dry Material Processing or Mixed C&D Processing, the Parties 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 November 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 this Section 4.1.8 will increase annually by the same percentage as the Material Specific portion of the Rate as defined in Section 5.3.2.

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

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

### 4.1.9 Public Education

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

### 4.1.10 Cooperation with RFP and Transition to Next Contractor

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

4.1.11 Limitations to Scope

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

4.2 Permits

4.2.1 Securing Permits

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

4.2.2 Complying with Permits

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

4.2.3 Hazardous Material Programs

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

4.3.1 Landfill Disposal

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

1. Operating, managing and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and compaction of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;

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

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

4. Accepting delivery of Solid Waste from the Approved Transfer Station, subject to the limitations of Section 4.5;

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

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

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

4.3.2 Approved Processing Facilities

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

1. Operating, managing, and maintaining the Processing areas;

2. Providing, operating and maintaining all equipment, rolling stock, and supplies necessary for operations and environmental monitoring;

3. Operating, maintaining, and managing storm water drainage and control systems, treatment facilities, buildings, on-site utilities, and any other required facility elements.
(4) Accepting delivery of Recoverable materials Collected under the Collection Franchise Agreements, subject to the limitations of Section 4.5;

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

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

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

4.4 Ownership of Authority Materials

Once Solid Waste, Organic Materials, C&D Material, Dry Material, HHW, or Recyclable Material directed by the Authority is received and accepted by Contractor ownership and the right to possession of said materials shall Transfer directly from the Person delivering said materials to Contractor. Contractor may retain, Recycle, Process, Dispose of and otherwise use such Solid Waste, Organic Materials, C&D, Dry Materials, HHW, and Recyclable Materials in any lawful fashion or for any lawful purpose, except that Contractor may not Dispose of otherwise marketable Recyclable Materials or Organic Materials without the prior written approval of the Authority and Processing said materials as required under Section 4.1.3. This excludes process Overs and process Residue.

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

4.5 Rejection of Unpermitted Waste at Landfill

4.5.1 Inspection

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

4.5.2 Unpermitted Wastes Handling and Costs

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

4.5.3 Remedies for Rejected Materials

If Unpermitted Waste is delivered to the Landfill, Contractor shall be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that Unpermitted Waste to the Landfill. In no event shall the Authority or Franchise Agencies be required to bear the cost of the proper handling or remediation of Unpermitted Wastes which are delivered to the Landfill.

4.6 Approved Facility and HHW Facility Days and Hours of Operation

4.6.1 Facilities Hours of Operation

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

4.6.2 Approved HHW Facility Hours of Operation

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

4.7 Equipment and Supplies

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

4.8 Traffic Control and Direction

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

### 4.9 Scale Operation

#### 4.9.1 Maintenance and Operation

Contractor shall maintain at least two (2) State-certified motor vehicle scales at the Landfill and at least one (1) State-certified motor vehicle scale at each of the Approved Processing Facilities in accordance with Applicable Law. Contractor shall provide documentary evidence of such certification within ten (10) Calendar Days of Authority’s request. Contractor shall link all scales at each Approved Processing Facility and Landfill to a centralized computer recording and billing system and account for tracking all incoming material by jurisdictions of origin and outgoing materials by destination. Contractor shall operate those scales during the Approved Processing Facility receiving hours established in Section 4.6. Contractor shall provide the Authority with system generated original reports that does not contain proprietary confidential information.

#### 4.9.2 Vehicle Tare Weights

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

#### 4.9.3 Substitute Scales

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

#### 4.9.4 Estimates

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

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

4.9.5 Testing

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

4.9.6 Weighing Standards and Procedures

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

4.9.7 Scale Records

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

4.10 Personnel

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

4.11 Safety

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

4.12 Alternative Facilities

If Contractor does not receive the materials at the Approved Processing Facilities or Landfill for reasons other than Uncontrollable Circumstances then, following Authority approval given in the Authority’s sole discretion, Contractor shall: (i) accept the Authority’s materials at another similarly-capable processing facility or landfill owned by it or an Affiliate; or, (ii) arrange for the Authority’s material to be Processed...
or Disposed of at another similarly-capable processing facility or landfill not Owned by it or an Affiliate. In either case, Contractor shall provide service through these alternate facilities at no additional cost. If the Authority does not approve Contractor’s first choice of an alternate processing facility or landfill, Contractor shall have ten (10) Working Days to arrange for different alternate facilities. If Authority rejects such alternate facilities based on reasonable public policy, environmental, or business concerns, and Contractor proceeds to deliver such materials to the alternate facility(ies), then the Authority may terminate this Agreement in accordance with Section 7.2.

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

### 4.13 Invoicing

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

### 4.14 Quarterly and Annual Reports

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

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

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

### 4.14.1 Quarterly Reports

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

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

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

### 4.14.2 Annual Report

The Annual Report shall include:

1. **Service Level and Allocation Report.** Contractor shall provide the number of Customers subscribing to each collection service level authorized in the Franchise Agency Collection Franchises on the last day of each month of the report year. Contractor shall provide the basis for allocating tonnage in vehicles that serve multiple Franchise Agencies. The truck tonnage allocation shall include a list of vehicles, their assigned routes, and a description of how tonnage is allocated to each Franchise Agency.
2. Gross billings of the Rate authorized under this Agreement, reported by sector.
3. Status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the Transfer Station, MRF, Processing Facility, or Disposal Site within existing permitted areas.

4. Listing of all trucks that have received a revised stored tare weight at any Approved Facility or Landfill during the preceding quarter. The listing shall including the date the revised tare weight was established, truck number, license plate number, prior stored tare weight, revised stored tare weight, and a brief explanation of any significant variance.

4.15 Change in Applicable Law Affecting Rates

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

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

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

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

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

4.16 Closure and Post-Closure of Landfill

Contractor shall safely operate, maintain, and manage (including fulfillment of State funding requirements) the Landfill in compliance with Applicable Law not only during the Term but also thereafter until and during the Landfill Closure and Post-Closure period(s). Contractor is solely responsible, operationally and financially, for: (i) The appropriate Closure and Post-Closure activities of the Landfill; and, (ii) The establishment and funding of any reserve funds required by Applicable Law for the purposes of providing funds for the payment of costs of Closure of the Landfill (or any cell within the Landfill) or Post-Closure activities relating to the Landfill.
Contractor shall not hold the Authority or Franchise Agencies responsible for paying any deficiencies in required reserves. In addition, Contractor shall not hold the Authority or Franchise Agencies responsible for making any payments if actual Closure and Post-Closure costs relating to the Landfill exceed the amounts reserved by the Contractor for that purpose. This obligation survives expiration or termination of this Agreement.

4.17 Right to Enter Facility and Observe Operations

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

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

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

4.18 Provision of Emergency Services

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

Contractor shall be paid for its direct costs, plus a net profit not to exceed fifteen percent (15%) of the total payment to Contractor, in providing emergency services. Contractor may also request reimbursement of any indirect costs which Contractor can demonstrate, to the satisfaction of the Authority, are: i) directly required for or beneficial to the provision of emergency services; and/or, ii) otherwise allowable and expected as reimbursement from an emergency management agency including, but not limited to, the Federal Emergency Management Agency. The Authority shall not unreasonably withhold consent to reimbursement of such indirect costs. Contractor shall document all such costs in an invoice to the Authority. The Authority shall consider and conduct all necessary investigations to assure the appropriateness of the costs and shall endeavor to do so in as prompt a
fashion as is accommodated by the conditions. Contractor shall cooperate fully with Authority’s review, providing any documents the Authority Contract Manager deems necessary in the review. Once Authority is satisfied that all charges are reasonable and appropriate, Authority shall pay Contractor the approved amount within thirty (30) days.

4.19 Service Standards

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

4.20 Modifications to Scope of Service

4.20.1 General

Authority may request and Contractor shall perform additional services (including performance of additional material Recovery activities or specific methods of material Recovery) for which it is qualified and permitted. Contractor may propose to the Authority modifications to the scope of services for which Contractor believes the Parties shall jointly benefit. The respective Rate for service shall be increased or decreased, in accordance with this Section, to give effect to these adjustments.

4.20.2 Proposal for Modification of Services

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

(1) Methodology to be employed (including, but not limited to, changes to equipment, manpower, and staffing);

(2) Equipment to be utilized (including, but not limited to, equipment number, types, capacity, and age);

(3) Labor requirements (changes in number of employees by classification);

(4) Provision for program publicity/education/marketing (if appropriate);

(5) Estimate of the impact of the Service modification (including, but not limited to, increased Diversion Tonnage, reduced costs, and increased public service); and,

(6) Minimum one (1) year projection of the financial results of the program’s operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing Services.
4.20.3 Authority’s Review

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

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

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

4.20.4 Approval of Modification to Scope of Services

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

4.20.5 Authority’s Remedies Pending Negotiations

4.21 Triennial Review of 75% Recycling Goal

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

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

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

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

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

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

ii. In the event that the Authority Board of Directors conclude that Contractor has fully implemented programs in good faith, the Authority may request and Contractor shall develop and propose to Authority a plan for new or modified Recycling and Processing programs that are designed to achieve the seventy-five percent (75%) recycling rate in the most reasonable, cost-effective, and expedient manner possible. The Authority shall seek concurrence from applicable Franchise Agencies where the Authority determines the potential need for requesting modified services that may involve collection service changes. The Parties will review such a plan consistent with the requirements of Section 4.20 of this Agreement.

The parties agree that the 75% goal is a target and not a guaranteed recycling rate put forth by Contractor as part of this Agreement. The intent of the performance review referenced in Subsection 4.21.B shall be to determine whether Contractor has made good faith efforts to implement
the programs and services outlined in this Agreement and not to determine whether Contractor has achieved a recycling rate of 75%.
ARTICLE 5
CONTRACTOR COMPENSATION

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

5.2 Initial Rate

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

1) The “material specific” portion of the Rate which is to compensate Contractor for the services provided under Sections 4.1.1 through 4.1.6 of this Agreement;

2) The “HHW” portion of the Rate which is to compensate Contractor for the services provided under Section 4.1.7 of this Agreement;

3) The “Authority” portion of the Rate which is to compensate Contractor for its payment of the Authority’s operating expenses;

4) The “Recycling Rebate” portion of the Rate which confers the value of the Recyclable Materials Processed under this Agreement to the Franchise Agencies’ rate payers; and

5) The “Governmental Fee” portion of the Rate which is to compensate Contractor for fees required by various regulatory agencies related to the use of the Landfill and Approved Facilities.

5.2.2 Material Specific Portion of the Rate
The initial “material specific” portion of the Rate shall be based on Contractor’s calendar year 2014 annual proposed cost of service of ten million two hundred fifty one thousand one hundred thirty five dollars ($10,251,135), less the initial cost of governmental fees, as described in Section 5.2.6, of one million four hundred nineteen thousand five hundred thirty four dollars and six cents ($1,419,534.06).

The material specific portion of the initial Rate net of governmental fees shall equal sixty nine dollars and eighty five cents ($69.85) per ton which is calculated as follows:
a) Eight million eight hundred thirty one thousand six hundred dollars and ninety four cents ($8,831,600.94);

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

c) Rounded to the nearest penny.

5.2.3 HHW Portion of the Rate

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

The HHW portion of the initial Rate shall equal five dollars and seventy five cents ($5.75) per ton which is calculated as follows:

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

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

c) Rounded to the nearest penny.

5.2.4 Authority Portion of the Rate

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

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

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

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

c) Rounded to the nearest penny.

### 5.2.5 Recycling Rebate Portion of the Rate

The initial “Recycling Rebate” portion of the Rate shall be based on the Contractor’s proposed calendar year 2014 annual proposed rebate value of seven hundred twenty two thousand three hundred twenty dollars ($722,320). This estimate is based upon a rebate value of forty dollars ($40) per ton of Recyclable Materials received under this Agreement, multiplied by the Parties agreed-upon estimated annual tonnage of eighteen thousand fifty-eight (18,058). The initial recycling rebate shall be used in the establishment of Rates for Calendar Years 2014 and 2015. The Recycling Rebate shall only be used in calculating the Rate charged to Richmond Sanitary Service for the Franchise Agencies where they are the Franchised Collector.

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

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

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

c) Rounded to the nearest penny.

### 5.2.6 Governmental Fee Portion of the Rate

The initial “Governmental Fee” portion of the Rate shall be based on the governmental fees in place at the execution of this Agreement (as presented in the below table) and the stipulated basis for extrapolating those fees to annual costs, as described herein.
<table>
<thead>
<tr>
<th>Fee Description</th>
<th>Fee Amount</th>
<th>Stipulated Basis</th>
<th>Annual Fee Amount</th>
<th>Material Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Enforcement Agency – Golden Bear Transfer Station &amp; West Contra Costa</td>
<td>$1.75/Ton</td>
<td>86,035 tons</td>
<td>$150,561.25</td>
<td>Solid Waste</td>
</tr>
<tr>
<td>Sanitary Landfill</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Richmond Transfer Station Facility Franchise Fee (APPROVED TRANSFER</td>
<td>$1.50/Ton</td>
<td>86,035 tons</td>
<td>$129,052.50</td>
<td>Solid Waste sent for</td>
</tr>
<tr>
<td>FACILITY)</td>
<td></td>
<td></td>
<td></td>
<td>Disposal</td>
</tr>
<tr>
<td>Host Mitigation Fees (IRRF)</td>
<td>$3.47/Ton</td>
<td>17,909 tons</td>
<td>$60,532.42</td>
<td>All Tons</td>
</tr>
<tr>
<td>(APPROVED TRANSFER FACILITY)</td>
<td></td>
<td></td>
<td>$62,144.23</td>
<td></td>
</tr>
<tr>
<td>Host Mitigation Fees (APPROVED TRANSFER FACILITY)</td>
<td>$3.47/Ton</td>
<td>86,035 tons</td>
<td>$298,541.45</td>
<td>Solid Waste</td>
</tr>
<tr>
<td>West Contra Costa Sanitary Landfill Processing Host Mitigation Fee – paid on</td>
<td>$0.93/Ton</td>
<td>21,359 tons</td>
<td>$19,863.87</td>
<td>Processed (for example:</td>
</tr>
<tr>
<td>all Processed Materials</td>
<td></td>
<td></td>
<td>$19,436.69</td>
<td>C&amp;D, organics, etc.)</td>
</tr>
<tr>
<td>Contra Costa County Solid Waste Fee (AB 939 KCLC)</td>
<td>$0.15/Ton</td>
<td>86,035 tons</td>
<td>$12,905.25</td>
<td>Solid Waste Disposal</td>
</tr>
<tr>
<td>AB 1220 Integrated Waste Management Fee KCLC</td>
<td>$1.40/Ton</td>
<td>86,035 tons</td>
<td>$120,449.00</td>
<td>Solid Waste Disposal</td>
</tr>
<tr>
<td>Contra Costa Bailey Road Surcharge KCLC</td>
<td>$0.68/Ton</td>
<td>86,035 tons</td>
<td>$58,503.80</td>
<td>Solid Waste Disposal</td>
</tr>
<tr>
<td>Bailey Road Charge KCLC</td>
<td>$0.32/Ton</td>
<td>86,035 tons</td>
<td>$27,531.20</td>
<td>Solid Waste Disposal</td>
</tr>
<tr>
<td>Contra Costa County Landfill Surcharge (KCLC)</td>
<td>25% of Gate Rate, net of taxes/fees</td>
<td>86,035 Tons $34.50/ton minus per ton fees X 0.25 / 1.25</td>
<td>$549,763.65</td>
<td>Revenue Based Calculation</td>
</tr>
</tbody>
</table>

**Note:**
1. Chart estimates Governmental Fees by material type and Facility
2. Estimate based on actual Tons from July 1, 2012 through June 30, 2013
3. 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.
The Governmental Fee portion of the initial Rate shall equal eleven dollars and twenty three cents ($11.23) per ton which is calculated as follows:

a) One million four hundred nineteen thousand five hundred thirty four dollars and six cents ($1,419,534.06);

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

c) Rounded to the nearest penny.

5.2.7 Calculation of the Initial Rate

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

5.3 Annual Adjustments to the Rate

5.3.1 General

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

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

The Authority’s Board of Directors shall approve the Rate adjustment at its regularly-scheduled November meeting each year. If the adjustment to Rates cannot be considered and approved at that
meeting due to a delay caused solely by the Authority and/or Franchise Agencies, the Authority shall allow the Contractor to retroactively bill customers for the amount of the adjustment to the Rate for any period of said delay that is caused by the Authority and/or Franchise Agencies. If the adjustment to Rates cannot be considered and approved at that meeting due to a delay caused in whole by Contractor’s delay in submitting the request in a complete and accurate form, then prior Rates remain in effect until such adjustment is made and Contractor shall not be entitled to any revenue lost because of the delay.

5.3.2 Adjustment to Material Specific Portion of the Rate

The material-specific portion of the Rate (initially $69.85 per ton) shall be adjusted annually, based on eighty-five percent (85%) of the average monthly change in the San Francisco-San Jose-Oakland All Urban Consumers CPI. The average monthly change shall be calculated by averaging the percentage change in the index values for the most recent July through June, compared to the values for the same month one year prior.

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

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

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

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

The Contractor and the Authority Contract Manager shall jointly prepare and submit a draft HHW Drop-off Services budget to the Authority Board of Directors for its review and approval. This draft budget shall be submitted no later than September 1 in each Calendar Year for the next Calendar Year’s budget. The Authority Board of Directors may approve that budget as submitted or may request modifications to the budget, including requesting either an increase in service levels or a reduction or elimination of Services in order to reduce costs. Once approved, this budget shall serve as the revenue requirement for the HHW portion of the Rate for the coming year. Contractor shall be entitled to an operating margin of eleven and fifty five one hundredths percent (11.55%) for calendar year 2014 and fifteen percent (15%) in all subsequent Rate Years.

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

For example:

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

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

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

5.3.4 Adjustment to Authority Portion of the Rate

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

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

For example:

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

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

Then, Authority portion of the Rate would be six dollars and zero cents ($6.00) per ton.
5.3.5 Adjustment to Recycling Rebate Portion of the Rate

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

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

For example:


Monthly Average = $144.25 x 0.2817 (stated percentage of OBM) = $40.64 Revised Per-Ton Rebate

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

For example:

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

Revised Annual Tonnage = 18,123

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

18,123 Revised Annual Tonnage

X 40.64 Revised Per-Ton Rebate Value

-$736,518.72 Revised Recycling Rebate Revenue Requirement
The revenue requirement for the Recycling Rebate portion of the Rate shall be divided by the actual Tonnage of Solid Waste, Recyclable Materials, C&D, Organic Materials, and Dry Materials received by Contractor from the Franchise Agencies’ Franchised Collector in the most recently completed twelve month period to determine the adjusted Rate.

For example:

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

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

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

5.3.6 Adjustment to Governmental Fee Portion of the Rate

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

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

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

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

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

For example:

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

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

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

5.3.7 Calculation of the Adjusted Rate

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

a) Revised Material Specific portion of the Rate =$ 70.53; plus,

b) Revised HHW portion of the Rate = $4.00; plus,

c) Revised Authority portion of the Rate = $6.00; plus,

d) Revised Recycling Rebate portion of the Rate = -$4.91; plus,

e) Revised Governmental Fee portion of the Rate = $11.33; equals

f) Revised Rate = $86.95

5.4 Establishment of Post-Collection Surcharge

The Rate shall be multiplied by the Tons of material handled by Contractor from each Sector and then divided by the: gallons of Solid Waste service in that Sector to establish cart-based Post-Collection Surcharges; cubic yards of Solid Waste service in that Sector to establish bin-based Post-Collection Surcharges; and, tons of Solid Waste and C&D Material service in that Sector to establish roll-off Post-Collection Surcharges. The resulting value shall be rounded to the nearest cent per gallon, cubic yard, or ton.

For example:
If, the Rate is $88.40 per ton; and,

If, residential Sector cumulative Tonnage of Solid Waste, Recyclable Materials, and Organic Materials was 38,000 Tons in the previously completed twelve months; and,

If, residential Sector cumulative monthly Solid Waste service equals 6,430,050 gallons;

Then, the residential Post-Collection Surcharge would be four cents ($0.04) per gallon per month.

\[
\frac{($88.40 \text{ per ton} \times 38,000 \text{ tons})}{(6,430,050 \text{ gallons per month} \times 12 \text{ months})} = $0.04
\]

Contractor, through the Franchise Collector, may apply the Post-Collection Surcharges to Customer bills on the basis of their Solid Waste service level as measured in gallons, cubic yards, or tons.

For example, using the $0.04 per-gallon example Post-Collection Surcharge calculated above, a residential customer receiving 32-gallons per week of Solid Waste collection service would receive a Post-Collection Surcharge of five dollars and fifty four cents ($5.54) per month, calculated as:

\[
$0.04 \text{ per gallon} \times 32 \text{ gallons} \times 4.33 \text{ weeks per month} = $5.54
\]

5.5 Other Adjustments to Compensation

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

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

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

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

The following items shall not be considered in the adjustment of Post-Collection Rates:

- Changes in the price of fuel;
- Decreases in Recycling revenues (except as specifically contemplated in Section 5.3.5) due to changes in market conditions or any other factor from the sale of Recyclable Materials;
- Increases in the costs of Solid Waste, Recyclable Materials, Organic Materials, or C&D Material Processing not incurred as a result of Changes in Law;
- Increases in Transportation time and/or costs related to provision of Services provided under the Agreement;
- Changes in the number of Customers due to changes in population or housing/business development or annexations;
- Changes in Customer subscription levels (e.g., as Customers subscribe to Recycling and Organics Collection Services they may be able to reduce Solid Waste Collection, resulting in a potential revenue loss to the Contractor);
- Changes in the volume or composition of materials;
- Changes in the Approved Processing Facilities used to perform Services, unless those changes to facilities are the direct result of an Authority directed change in scope; or,
- Cost for providing Enhanced Collection Services described in Exhibit 2.4.6.
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.
6.1.2 Agreement Indemnification

Contractor shall indemnify, release, and hold harmless, at its sole cost and expense, the Authority (including the Persons described in the definition of Authority in Exhibit 1) from and against all 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 performance or non-performance of this Agreement, including the items listed in preceding Section 6.1.1, whether or not those Liabilities are litigated, settled or reduced to judgment and whether or not those Liabilities are caused in part by any wrongful or negligent act, error or omission of any Person indemnified under this Agreement. 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 (including the Persons described in the definition of Authority in Exhibit 1), the Authority shall pay those allocated portions of Liabilities and of defense costs.

6.1.3 Unpermitted Waste Defense and Indemnification

Contractor shall defend, indemnify, and hold harmless 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 that result or are claimed to have resulted directly or indirectly from the presence, Disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum to, in, on, at, or under the Landfill or Approved Processing Facilities, whether:

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

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

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

6.1.4 Environmental Indemnity

Contractor shall defend, indemnify, and hold the Authority harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including
attorneys’ fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Unpermitted Waste.

6.1.5 HHW Services Indemnity and Insurance

Contractor shall require its HHW services Subcontractor to fully indemnify, defend, and hold harmless both the Authority and Contractor 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 HHW services Subcontractor’s performance of activities, operations, and final disposal or recycling associated with the Household Hazardous Waste Facility, except such loss or damage which was caused by the active negligence or willful misconduct of the Authority or Contractor. Furthermore, the subcontractor shall maintain certificates of insurance for Professional and Pollution Legal Liability naming both the Authority and Contractor as an additional insured, to the extent available, in the minimum amounts of three million dollars ($3,000,000) per occurrence and five million dollars ($5,000,000) in the aggregate. In the event that the HHW services Subcontractor is unable to meet the required minimum insurance amounts, then Contractor shall take all reasonable actions to provide an equivalent indemnity of the Authority in the interim, while the Authority and Contractor meet and confer to develop an alternative that adequately protects the Authority.

6.2 Insurance Policies

6.2.1 Types and Amounts; Deductibles and Self-Insured Retentions

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

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

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

6.2.2 Required Provisions

(i) Primary. Policies shall always be primary with respect to the Contractor's Services and the Authority, the Authority's Affiliated employees, the Board of Directors, officers, officials, agents, assigns and volunteers (Authority insureds).
(ii) Additional insureds. Authority insureds must be included as additional insureds by endorsement under the Comprehensive General, Automobile Liability, Environmental Impairment Liability Policies and any other pollution policies secured by Contractor. A copy of the endorsement or evidence of blanket or contractual additional insured status must be submitted with the certificate(s) of insurance.

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

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

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

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

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

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

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

D. Evidence of Coverage. As of the Service Commencement Date, Contractor shall provide certificates of insurance and original endorsements required under this Agreement, signed by an authorized representative of the insurance company and including the signatory's company affiliation and title. Upon Authority's request, Contractor shall provide, or cause to be provided, to the Authority documentation acceptable to the Authority verifying that the individual signing those documents are authorized by the insurer to bind coverage on the insurer's behalf. At that time and thereafter simultaneously with renewal of the policies, Contractor shall file with the Authority a certificate of insurance and endorsements, in form and substance satisfactory to the Authority (including type and amount of coverage, effective dates, and expiration dates) signed or counter-signed by an authorized officer of the broker, certifying that the coverage has not lapsed and shall remain in effect at all times during the term of the policy.
E. Contractor Compliance. Contractor shall comply with all requirements of policies and the insurers. Carrying insurance shall not relieve Contractor from any obligations under this Agreement. Nothing in this Agreement may be construed as limiting in any way the extent to which the Contractor may be held responsible for payments of damages to Persons or property resulting from Contractor's or any Subcontractors’ performance of Services.

F. Worker’s Compensation. Contractor shall provide workers’ compensation coverage as required by State law, and prior to the Service Commencement Date pursuant to this Agreement, Contractor shall file the following statement with the Authority.

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

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

6.3 Performance Surety

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

7.1 Contractor Default

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

7.1.1 Service Defaults

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

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

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

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

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

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

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

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

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

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

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

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

7.1.3 Miscellaneous

(1) False Representations; Breach of Representations or Warranties. Contractor makes a representation, certification, or warranty in this Agreement or pursuant to this Agreement which Contractor knows, or in the course of diligently conducting business and providing Services should
have known, is untrue as of the date thereof. Contractor makes a representation or fails to make a
disclosure, whether within this Agreement or otherwise, to the Authority in connection with, or as a
material inducement to, entering into this Agreement or any future amendment to this Agreement,
which representation or failed disclosure is false or misleading in any material respect when made.

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

7.2 Right to Suspend or Terminate Agreement

7.2.1 Termination Events

Authority may terminate this Agreement in the following events:

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

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

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

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

7.2.2 Notice

Notice of termination may be effective no sooner than:

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

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

(3) Fifteen (15) Working Days after giving Contractor a Notice with respect to all other Contractor
Defaults or termination events.
7.2.3 Contractor's Obligations Upon Expiration or Termination

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

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

7.3 Right to Perform

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

7.4 All Other Available Remedies

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

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

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

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

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

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

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

7.6 Waiver

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

Contractor acknowledges that it is solely responsible for providing Services and except as provided below in this paragraph, by this Agreement irrevocably and unconditionally waives defenses to the payment and performance of its obligations under this Agreement based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that may be a basic assumption of Contractor with regard to any provision of this Agreement; provided, however that Contractor does not waive defenses to impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of any unforeseeable fact, event, or contingency that may arise during the Term of this Agreement. Contractor does not waive any defenses of Uncontrollable Circumstances at any time.
ARTICLE 8
OTHER AGREEMENTS OF THE PARTIES

8.1 Relationship of Parties

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

8.2 Compliance with Law

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

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

8.3 Governing Law

This Agreement shall be governed by, and construed and enforced in, accordance with the Applicable Laws of the State, without giving effect to the State’s principles of conflicts of laws.
8.4 Further Assurances

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

8.5 Assignment

8.5.1 Assignment by Authority

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

A. Assignment by Member Agency Withdrawal

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

B. Assignment by Dissolution

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

8.5.2 Assignment by Contractor

A. Permitted Assignments

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

B. Assignment Defined

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

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

C. Contractor Request for Assignment

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

i. Contractor shall pay Authority its reasonable expenses for attorney’s fees and investigation costs necessary to investigate the suitability of any proposed Assignee, and to review and finalize any documentation required as a condition for approving any such Assignment. An initial, retainer deposit payment to reimburse such costs shall be made in the amount of one hundred thousand dollars ($100,000) to the Authority by Contractor or the proposed assignee along with Contractor’s formal request for the Authority’s consideration of an Assignment. Authority shall draw against the retainer for its actual reasonable costs of the Assignment review. In the event such costs exceed the deposit amount, Contractor shall make the additional payment, beyond the initial deposit amount, upon approval of the assignment. In the event that the actual costs of the review are less than the retainer deposit amount, such unused portion of the retainer shall be returned upon the conclusion of the review of the Assignment.
ii. Contractor shall furnish Authority with audited financial statements of the proposed Assignee’s operations for the Immediately preceding three (3) operating years.

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

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

8.6 **Binding on Successors**

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

8.7 **Parties in Interest**

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

8.8 **Services Performed At Contractor’s Sole Expense**

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

8.9 **Notices and Communication**

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

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

1. Personal delivery to a representative of the Parties, with signed receipt,
(2) Deposit in the United States mail, first class postage prepaid (certified mail, return receipt requested), or

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

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

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

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

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

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

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

8.10 Authority Contract Manager

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

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

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

8.11 Duty of Contractor Not To Discriminate

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

8.12 Force Majeure

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

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

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

8.13 Maintenance of Records

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

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

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

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

8.14 Right to Inspect Records

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

8.15 Compilation of Information for State Law Purposes

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

8.16 Right to Demand Assurances of Performance

If Contractor:

(i) Is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action that affects Contractor’s performance under this Agreement;

(ii) Appears in the judgment of the Authority to be unable to regularly pay its bills as they become due; or

(iii) Is the subject of a civil or criminal proceeding brought by a federal, State, regional, or local agency for Violation of an Applicable Law with respect to Services;

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

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

8.17.1 Informal Resolution

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

8.17.2 Mediation

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

8.17.3 Arbitration Valuation Items

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

8.17.4 Binding Arbitration

Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure Section 1280 et. seq., pursuant to the AAA Commercial Arbitration Rules or the then-current JAMS Streamlined Arbitration Rules, and the terms of this Section. The provisions of the California Discovery Act shall apply. The Parties shall determine by mutual agreement whether the AAA or JAMS proceedings are to be used. Provisions of the California Discovery Act shall apply to the arbitration proceedings. In the event of any inconsistency, the terms of this Section shall control. The arbitration shall be administered by JAMS and conducted in the County of Contra Costa. If the proceeding is pursuant to AAA Commercial Rules, the arbitrator selection process shall apply. If the JAMS rules are employed, and the Parties are unable to select an arbitrator by mutual agreement, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (a) serve as the provider of arbitration or (b) enforce any provision of this arbitration clause, the Parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the Parties cannot agree on the arbitration organization, the Presiding Judge of the Contra Costa County Superior Court shall designate such an organization upon the petition of either Party.
(1) The arbitrator shall be independent of, and unaffiliated with, each Party and shall not ever have been an employee of either Party, under contract with either Party in the past five (5) years or have acted as an arbitrator for such Party within the past five (5) years.

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

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

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

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

__________________   __________________
Authority    [Contractor]

8.17.5 Pendency of Dispute

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

8.18.1    Notice of Convictions or Pleas

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

8.18.2    Contractor Cure

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

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

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

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

8.18.3    Authority Remedies

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

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

(ii)   Criminal Activity with respect to this Agreement.

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

Contractor must be given the opportunity to present to Authority Contract Manager evidence in mitigation during the preceding Notice period and Authority must consider that evidence.
### 8.18.4 Prohibited Transfers

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

### 8.19 Liquidated Damages

#### 8.19.1 General

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

#### 8.19.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards

Contractor shall pay (as liquidated damages and not as a penalty) the amounts set forth in Exhibit 8.19. The Authority Contract Manager may determine the occurrence of events giving rise to liquidated damages through the investigation or observation or investigation of complaints by Customers or any other party. These performance standards shall consider both effort (e.g., number of meetings with Customers to offer new programs) and results (e.g., Tons of material Recycled). In addition, these liquidated damages shall be in addition to any other remedy the Authority and/or Franchise Agencies
may have, which may include, but are not necessarily limited to: a determination of breach of contract, termination of the agreement, or litigation.

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

8.19.3 Amount

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

8.19.4 Payment of Liquidated Damages

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

8.19.5 Administrative Nature of Liquidated Damages

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

8.20 Guaranty of Contractor’s Performance

The Guarantor has agreed to guaranty Contractor’s performance of this Agreement including Contractor’s Indemnification obligations Hereunder pursuant to a Guaranty Agreement in substantially
the form attached as Exhibit 8.20. The Guaranty Agreement is being provided concurrently with Contractor's execution of this Agreement.

8.21 Exercise of Discretionary Actions

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

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

8.22 Jurisdiction, Venue

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

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

8.23 Costs and Expenses

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

8.24 Golden Bear Franchise Agreement (pending negotiation)
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 qualification below; 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.

With respect to ability to do so without causing a breach of any agreement or Violation of any Applicable Law or judicial decision, the entry into this Agreement is not a breach of the Golden Bear Transfer Services, Inc. exclusive franchise agreement with Member Agency City of Richmond, and vice versa, so long as the Authority continues to direct all Solid Waste to the Golden Bear Transfer Station as an Approved Processing Facility, and basing its representation on that ground, Contractor so represents.

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. Contractor Subject to the provisions above regarding the exclusive franchise agreement between Golden Bear Transfer Services, Inc. and Member Agency City of Richmond and Authority's continued direction of all Solid Waste to the Golden Bear Transfer Facility, Contractor 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 complied, 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 agreement or instrument to which the Contractor or any of its Affiliates is a Party or by which the Contractor or any of its Affiliates’ properties or assets are bound, or constitutes a default thereunder.

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

F. No Litigation. As of the Service Commencement Date, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the Contractor’s knowledge, threatened, against the Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations under this Agreement or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated by this Agreement.

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

H. Compliance with Applicable Law. Contractor further represents and warrants that it has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.
I. **Ability to Perform.** Contractor warrants that it possesses the business, professional and technical capabilities to provide Services; has secured and maintains in full force and effect Permits; and possesses the equipment, facility and employee resources required to fully and timely perform Services.

J. **Capacity.** Contractor warrants that as of the Service Commencement Date it has capacity at the Landfill and the Approved Processing Facilities to perform the services required under this Agreement throughout the Term and that it shall maintain that capacity through the Term.
ARTICLE 10
MISCELLANEOUS PROVISIONS

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

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

10.3 Interpretation and Construction

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

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

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

10.3.4 References to Parts
References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to “subsections” refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.
10.3.5 Examples

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

10.3.6 Specifics No Limitation on Generalities

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

10.4 Amendment

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

10.5 Severability

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

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

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

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

10.6 Costs of Enforcing Agreement

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

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

The Authority and Member Agencies represent and warrant that the Authority and Member Agency negotiating team consisting of representatives from the Cities of Richmond, Pinole, Hercules and San Pablo, and the Authority Executive Director and the County’s representative each and collectively have the full right and authority from the Authority Board, the County Board of Supervisors or the Member Agencies’ city councils, as the case may be, to negotiate fully and in good faith a mutually acceptable Agreement. IF COUNTY DOESN’T LIKE CHANGE THERE HAS TO BE SOME REPRESENTATION THAT THEY ARE PART OF THIS NEGOTIATION -

10.8 Counterparts

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

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

West Contra Costa Integrated Waste Management Authority

Contractor

By: ________________________________ By: ________________________________
Executive Director Area President
Approved as to Form: Approved as to Form:
_________________________________ ________________________________
Attorney Contractor Legal Counsel
Attest:
_________________________________
Authority Clerk
EXHIBIT 1
DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this Agreement:


“Actions” means all actions including claims, demands, causes of action, suits, mediation, arbitration, hearings, investigations, inquiries and proceedings, whether legal, judicial, quasi-judicial, governmental or administrative in nature and whether threatened, brought, instituted or settled.

“Affiliate” means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used Herein. An Affiliate shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect Ownership interest exists, the constructive Ownership provisions of Section 318(a) of the Internal Revenue code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, the (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

“Authority Contract Manager” means the Authority’s Executive Director or his/her designee who is responsible for the administrative management of this Agreement.

“Agreement” means this Agreement between the Authority and Contractor, including all exhibits, schedules and attachments, which are incorporated in this Agreement by reference, as this Agreement may be amended and supplemented.

“Alternative Daily Cover (ADC)” means cover material used to cover compacted Solid Wastes in a landfill, other than Organic Materials and other than at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of Regulations as may be amended from time to time.
“Applicable Law” means all laws, statutes, rules, regulations, guidelines, Permit conditions, Permits, Actions, determinations, orders, approvals or requirements of the United States, State, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern Services or the performance of the Parties' respective obligations under this Agreement, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation conditions and monitoring plans in accordance with environmental impact statements, conditional use permits; building codes, zoning, non-discrimination; and the Transfer or Disposition of Solid Waste, Organic Materials, and Recyclable Materials, and including but not limited to:

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

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

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

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

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

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


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

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

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

11. the Safe Drinking Water and Toxic Enforcement Act “Proposition 65”, (California Health and Safety Code Section 25249.5 et seq.);
(12) California Public Resources Code Sections 45300-04, 45700, California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273);

(13) Title 14 California Code of Regulations;

(14) Title 22 California Code of Regulations;

(15) Title 23 California Code of Regulations, Chapter 15, Sections 2510-2610; and

(16) Title 27 California Code of Regulation.

Any other government required rules, laws, statutes, regulations, guidelines, or policies which are imposed upon Contractor and not discretionary, governing the provision of the Services outlined within this Agreement.

“Approved Construction and Demolition Processing Facility” means the West Contra Costa Sanitary Landfill Organic Materials Processing Facility located at 1 Parr Blvd. in Richmond, California, which was selected by the Contractor and approved by the Authority as the site for the performance of services under Section 4.1.6 of this Agreement. Change in facility designation for the performance of such services shall require written authorization of the Authority Contract Manager.

“Approved Dry Materials Processing Facility” means the Newby Island Resource Recovery Park located at 1601 Dixon Landing Road in Milpitas California, which was selected by the Contractor and approved by the Authority as the site for the performance of services under Section 4.1.4 of this Agreement. Change in facility designation for the performance of such services shall require written authorization of the Authority Contract Manager.

“Approved Household Hazardous Waste (HHW) Facility” means the West County HHW Collection Facility at 101 Pittsburg Avenue in North Richmond, California which is used by the Contractor as the site for accepting and managing household hazardous waste from residents and conditionally exempt small quantity generators within the Authority’s service area as well as the surrounding unincorporated communities of Crockett, Kensington, Port Cost and Tormey pursuant to the terms of an agreement between the Authority, Contractor and the County.

“Approved Organic Materials Processing Facility” means the West Contra Costa Sanitary Landfill Organic Materials Processing Facility located at 1 Parr Blvd, Richmond, California, which was selected by the Contractor and approved by the Authority as the site for the performance of services under Section 4.1.5 of this Agreement. Change in facility designation for the performance of such services shall require written authorization of the Authority Contract Manager.

“Approved Processing Facility(ies)” means the Approved Organic Materials Processing Facility, Approved Construction and Demolition Processing Facility, Approved Transfer Station, and/or the Approved Recyclable Materials Processing Facility.

“Approved Recyclable Materials Processing Facility” means West County Resource Recovery Facility located at 101 Pittsburg Ave, Richmond, California or the Newby Island Resource Recovery Park located
at 1601 Dixon Landing Road in Milpitas, CA which were selected by the Contractor and approved by the
Authority as the locations for the performance of services under Section 4.1.3 of this Agreement. Change in facility designation for the performance of such services shall require written authorization of the Authority Contract Manager.

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

“Assign or Assignment” means:

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

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

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

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

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

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

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

“CCR” means California Code of Regulations.

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

(1) the adoption, promulgation, repeal, modification, amendment or other change in Applicable Law or change in judicial or administrative interpretation thereof occurring after the Service Commencement Date, other than laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by the Authority) or employment taxes; or
(2) any order or judgment of any federal, State or local court, administrative agency or governmental body issued after the Service Commencement Date and the order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; or

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

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

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

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

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

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

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

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

“Contractor” means 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. organized and operating under the laws of the State of California. For purposes of Indemnities, Contractor shall include Contractor’s employees, officers, agents, subcontractors and consultants performing or responsible for performing Services; provided that only signatory Contractors,
corporations, are obligated to provide Indemnities and its employees, officers, agents, subcontractors, and consultants shall not be liable therefore as individuals.

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

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

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

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

1. any criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to Solid Waste, Organic Materials, or Recyclable Materials Services of any kind (including collection, hauling, Transfer, Processing, Composting, or Disposal), including this Agreement; or
2. bribery or attempting to bribe a public officer or employee of a local, State, or federal agency; or
3. fraud, embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of Records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony; or
4. unlawful Disposal of Hazardous or Designated Waste; or
5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling or Disposal fees.

“Day” means calendar day.

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

“Direct Costs” means the sum of:

1. payroll costs directly related to the Contractor’s performance, or supervision of any obligation pursuant to the provisions of this Agreement, or Authority’s administration and enforcement of
this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, federal and State unemployment taxes and all medical and health insurance benefits, plus

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

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

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

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

“Disposal or Dispose (or other variation thereof)” means the final Disposition of Solid Waste in accordance with this Agreement at the Landfill.

“Diversion or Divert” means to Divert from landfill Disposal or transformation through source reduction, reuse, Recycling, Composting, or other means within the meaning of the Public Resources Code Section 41780.

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

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

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

“Franchise Agency(ies) or Franchising Agencies” means the County of Contra Costa and the cities of Hercules, Pinole, Richmond and San Pablo, collectively.
“Franchised Collector” means the company given the exclusive or limited right, by a Franchise Agency, to Collect Solid Waste, Organic Materials, and/or Recyclable Materials within the physical jurisdiction of that agency.

“Generator” means any Person whose act or process produces Solid Waste or Unpermitted Waste or other material that becomes part of the overall waste stream.

“Goods or Services” means all Goods or Services used in providing Services, including labor, leases, subleases, equipment, supplies and capital related to furnishing Services; insurance, bonds or other credit support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and legal, risk management, general and administrative services.

“Goods or Services” means subcontracted Goods or Services used in providing Services, specifically labor, equipment, and supplies related to furnishing Services.

“Government Fees” are fees or taxes imposed uniformly upon Solid Waste Landfill without regard to the specific site characteristics or operational history of those facilities. Government Fees are not amounts imposed upon the Landfill in connection with the repair, remediation, improvement, addition, or expansion of the Landfill.

“Government Fees” are federal, state or local fees or general or special taxes, including a business license tax, imposed on solid waste management and handling facilities, including any and all Approved Facilities pursuant to this Agreement.

“Governmental Fee(s)” are federal, state and local fees and general special taxes imposed on receipt of Solid Waste or on Solid Waste handling or disposal activities related to the use of the Landfill and Approved Facilities and authorized under this Agreement.

“Gross Receipts” shall mean total cash receipts collected from Customers by the Contractor for the provision of Services pursuant to this Agreement, without any deductions. Gross Receipts do not include revenues from the sale of Recyclable Materials.

“Guarantor” means Republic Services, Inc.

“Guaranty Agreement” is the agreement in substantially the form attached as Exhibit 8.21 executed by the Guarantor.

“Hazardous Materials or Hazardous Waste” are materials that by reason of their quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, Transported or Disposed of or otherwise mismanaged; or any waste which is defined and/or regulated as a Hazardous Waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, and:
(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., including 23 CCR Sections 2521 and 2522;

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980),

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.;

(5) materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, Transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste; and

(6) Any substance the presence of which at the Landfill is prohibited by Applicable Law.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of "Hazardous Waste", for purposes of collection, Transportation, Processing and/or Disposal, the broader, more restrictive definition is employed for purposes of this Agreement.

“Holidays” are defined as New Year’s Day, Martin Luther King Holiday, President’s Holiday, Easter Sunday, Memorial Day, Fourth of July, Labor Day, Columbus Day, Thanksgiving Day, and Christmas Day.

“Household Hazardous Waste” means any Hazardous Waste generated incidental to owning or maintaining a place of residence, excluding any Hazardous Waste generated in the course of operation of a business concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.

“Immediate or Immediately” means within twelve (12) hours.

“Indemnities or Indemnification” means all defense and Indemnities under this Agreement.

“Landfill” means Keller Canyon Landfill which is owned and operated by Contractor and located in Contra Costa County at 901 Bailey Road, Pittsburg, CA.

“Liabilities” means all Liabilities, including:
(1) Actions;
(2) Awards, judgments and damages, both: (i) actual damages, whether special and consequential, in contract or in tort, such as natural resource damages, damage for injury to or death of any Person; and damage to property; and (ii) punitive damages;
(3) Contribution or indemnity claimed by Persons other than the Parties;
(4) Injuries, losses, debts, liens, Liabilities;
(5) Costs, such as response remediation and removal costs;
(6) Interest;
(7) Fines, charges, penalties, forfeitures; and
(8) Expenses such as attorney’s and expert witness fees, expenditures for investigation and remediation, and costs incurred in connection with defending against any of the foregoing or in enforcing Indemnities.

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

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

Pending Negotiations

“Niche Service(s)” Pending Negotiations

“Non-Allowable Costs” include the following:

(1) fines, penalties, assessments and other amounts paid for Violations or noncompliance with Applicable Law or in settlement of claims or allegations of noncompliance with Applicable Law;
(2) any costs of indemnifications, including Indemnification, Liabilities, or any mediation, arbitration or judicial proceeding, whether formal or informal;
(3) any contributions or donations to any Person (including charitable, non-profit, service or other community groups, and elected officials), including cash, property and services in kind;

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

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

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

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

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

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

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

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

“Overs” means portion(s) of Organic Material that is/are not suitable for composting. Also called compost-overs, these are large, woody parts of the compost pile that have not completely broken down during the composting process. Overs also include plastics and other non-compostable items in the Organic Material. Overs comprise approximately 7.5 percent of the Organic Material composted.

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

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

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

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

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

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

“Post-Collection Surcharge(s)” means the maximum amount Contractor, through the Franchise Collector’s billing system, may charge Customers based on their collection service level as measured in gallons, cubic yards, or tons, for Services under this Agreement. Post-Collection Surcharge(s) are either cart-based or bin-based and are calculated using the Authority approved per-ton Rates in the manner described in Section 5.4. Contractor may, in its sole discretion, charge any amount up to and including the maximum Post-Collection Rate Surcharge(s) approved by the Authority.

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

“PRC” means the California Public Resources Code.

“Quarterly Report” is described in Section 4.14.

“Rate(s)” means the maximum amount, expressed as a dollar unit per ton, approved by the Authority for the use in calculating the allowable Post-Collection Surcharge(s) that Franchise Haulers can that the Contractor may bill a Customer for providing Customer Services under this Agreement, and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the Authority. A Rate has been established for each individual scope of Service and the initial Rates are presented in Section 5.

“Rate(s)” means the maximum amount, expressed as a dollar unit, approved by the Authority that the Contractor may bill a Customer for providing Customer Services under this Agreement, and Contractor may, in its sole discretion, charge any amount up to and including the maximum Rate approved by the Authority. A Rate has been established for each individual scope of Service and the initial Rates are presented in Section 5.
“RCRA” means the Resource Conservation and Recovery Act (42 U.S.C. Section 6900 et. seq.).

“Reasonable Business Efforts” means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation that that Person has undertaken to satisfy.

“Records” means all ledgers, books of account, invoices, vouchers, canceled checks, logs, correspondence and other Records or documents evidencing or relating to Rates, Tonnages, satisfaction of Contractor’s obligations under this Agreement and performance of the terms of this Agreement, damages payable under this Agreement and Contractor Defaults, including those Records described in Sections 4.3, 4.4, 4.14, 4.17, 4.18, 8.14, 8.15 and 10.1.

“Recovered Material” means Recyclable Materials, Organic Materials, C&D materials, and Dry Materials that are Recovered.

“Recovery or Recover or Recovered (or other variations thereof)” means the picking, pulling, sorting, separating, classifying and Recovery of Recyclable Materials from Solid Waste whether by manual or mechanical means, after acceptance of the materials and before marketing of Recovered Materials, including Recycling, material reuse and Recovery, mulching, Composting, land application or transformation.

“Recycle(ing)” means the process of sorting, cleansing, treating and reconstituting materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused or reconstituted products.

“Recyclable Materials” means materials that are reused, remanufactured, or Processed. This definition is inclusive of both Traditional Recyclable Materials and Specialty Recyclable Materials.

“Residential” shall mean of, from, or pertaining to a single-family premises or multi-family premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

“Residue” means Solid Waste remaining as non-marketable commodities following Processing of Recyclable Materials.

“Services” mean all obligations of Contractor under and in accordance with this Agreement to Authority.

“Service Commencement Date” means the date specified in Section 2.2 when Post-Collection Services required by this Agreement shall be provided.
“Solid Waste” means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste, medical waste, Recyclable Materials, Dry Material, C&D Materials, or Organic Materials.

“Specialty Recyclable Materials” means Recyclable Materials that are not specified as Traditional Recyclable Materials that can be Collected by the Franchised Collector for purposes of Recycling by any Person, including the Authority or the Franchised Collector. For example, Specialty Recyclable Materials include, but are not limited to, large pieces of scrap metal, mattresses, C&D material, pallets, tires, plastic film, carpet, used motor oil, and used motor oil filters.

“Standard Industry Practice” means (1) the then-current development and operations practices and standards of the northern California Solid Waste management industry with respect to Recovery, Diversion, Transfer, Transport and Disposal Services, and (2) the then-current development, operations, Closure, and Post-Closure practices and Solid Waste Association of North America (or any successor organization) Manager of Landfill Operations standards in meeting Contractor’s obligations under this Agreement for Recovery, Diversion, and Disposal Services.

“State” means the State of California.

“Subcontractors” includes any Person that provides Goods or Services to Contractor, whether pursuant to formal, written agreement or merely in fact; subcontract means any arrangement, formal or informal, written or otherwise, between Contractor and a Subcontractor for providing Goods or Services. In no case shall the Contractor’s use of a Subcontractor confer upon that subcontractor any third party beneficiary rights under this Agreement.

“Term” is defined in Section 2.2.

“Ton(nage)” means a short Ton of two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

“Traditional Recyclable Materials” means Recyclable Materials which are included in the Processing and marketing plan of the Approved Recyclable Materials Processing Facility. The initial list of Traditional Recyclable Materials includes: All mixed paper, cardboard, #1 - #7 plastic beverage and food containers, mixed rigid plastic packaging and other food containers, glass containers (no Pyrex, windows, or mirrors), aluminum cans, tin cans, small pieces of scrap metal, plastic film and wrapping bags (properly bagged together), all mixed plastics, paper cartons, and milk and juice cartons.

“Transfer(ing) (or other variations thereof)” means transferring Solid Waste at the Golden Bear Transfer Station, if any, from Residential Collection vehicles, Commercial Collection vehicles and self-haulers into Transfer Vehicles.
“Transfer Vehicle” means a tractor and trailer designed to haul Solid Waste from any Transfer Station to the Landfill.

“Transportation” means the Transportation of Solid Waste, Organic Materials, and/or Recyclable Materials from any Transfer Station to the Landfill in accordance with Section 4.1.8.

“Uncontrollable Circumstance(s)” means any act, event or condition, whether affecting (i) Services or (ii) either Party, that is beyond the reasonable control of the Party relying thereon and not the result of willful or negligent action or inaction of that Party (other than the contesting in good faith or the failure in good faith to contest that action or inaction), which materially and adversely affects the ability of either Party to perform any obligation under this Agreement, comprised of:

1. An act of nature, landslide, lightning, earthquake, fire, tsunami, flood, or other natural disaster (excluding reasonably anticipated weather conditions within the jurisdictional Service Area of the Authority), explosion, sabotage, terrorism, war, blockade or insurrection, riot, civil disturbance, or other similar catastrophic events;

2. The failure of any appropriate federal, State or local public agency or private utility having operational jurisdiction in the area in which the Landfill or Approved Processing Facility is located to provide and maintain utilities, services, water, sewer or power transmission lines thereto;

3. A Change in Law other than a Change in Law excluded in item (ii) below; and

4. Strikes, work stoppages or other labor disputes or disturbances of Persons other than Contractor or any Affiliates performing Services;

Uncontrollable Circumstances excludes, without limitation:

(i) Either Party's own breach of its obligations under this Agreement;

(ii) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;

(iii) Strikes, work stoppages or other labor disputes or disturbances lasting longer than ninety-six (96) hours affecting Contractor or any Affiliates performing Services, or Contractor’s or Affiliates’ inability to hire adequate numbers of personnel who are competent and skilled in the work to which they are assigned;

(iv) The failure of the Contractor to secure Permits necessary for Services; and,

(v) As to the Contractor, the failure of any facilities and/or equipment to perform in accordance with any warranties, unless caused by Uncontrollable Circumstances.

“Unpermitted Waste” means wastes or other materials that the Landfill may not receive under their Permits, including:
(1) All materials that the Landfill is not permitted to accept;

(2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be Hazardous Materials if it contains more than one percent (1%) asbestos;

(3) Ash residue from the incineration of solid wastes, including Solid Waste, infectious waste described in Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as defined by Title 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or Disposal of Sewage Sludge) and agricultural wastes;

(4) Hazardous Materials;

(5) Medical Waste;

(6) Liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids, including cannery and food Processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e., unclassified sludge less than B), and those liquid wastes that may be Hazardous Wastes;

(7) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or Disposal of which is subject to any other state or federal regulation;

(8) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e., unclassified sludge less than “B”); and/or

(9) Designated Waste, but only if not permitted at the Landfill under Applicable Law, including Permits.

This definition shall be promptly amended to reflect any applicable changes in permits or Applicable Law.

“Violation” means any Notice, assessment or determination of non-compliance with Applicable Law from any Regulatory Agency to Contractor, after the exhaustion of all appeals and judicial processes, if applicable, whether or not a fine or penalty is included, assess, levied or attached, where Regulatory Agency means any federal, State or local governmental agency that regulates Transfer, Transportation and Disposal of Solid Waste, including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, California Air Resources Board, regional water quality management districts, California Department of Toxic Substances, CalRecycle, the Local Enforcement Agency, federal and State Environmental Protection Agencies and other federal or State health and safety department, applicable to Services.
“Working Days or Work Day” (or other variations thereof) means each day of the week excepting Saturdays, Sundays, and Holidays.

“Yard Trimmings” means materials that shall decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Trimmings are a subset of Organic Materials.
EXHIBIT 2.4.6
ENHANCED COLLECTION SERVICES

<Insert Sample Enhanced Collection Services Franchise Amendment here>
<Insert DOCUMENT referred to in Section 4.1.4 here>
EXHIBIT 4.1.9
PUBLIC EDUCATION AND OUTREACH

<Insert Public Education and Outreach here>
EXHIBIT 4.14
REPORTING

<Insert Sample Report Format here>
EXHIBIT 6.2
INSURANCE

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

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

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

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

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

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

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

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


The Workers’ Compensation policy must contain a broad form waiver of subrogation: endorsement.
The insurer must waive all rights of subrogation against the Authority, its officers, employees and volunteers for losses arising from work performed by the Contractor for the Authority, except for the willful misconduct or sole negligence of the Authority.

4. **Pollution Legal Liability** in the amount of ten million dollars ($10,000,000) covering liability arising from the release of pollution at the Landfill. The Pollution Legal Liability policy must contain the same endorsements as required for Comprehensive General Liability.
EXHIBIT 8.19
LIQUIDATED DAMAGES

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

<table>
<thead>
<tr>
<th>Performance Standard</th>
<th>Liquidated Damages</th>
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<tbody>
<tr>
<td>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</td>
<td>$1,000/service/day</td>
</tr>
<tr>
<td>2. Use of Authorized Facilities. For each ton of Solid Waste, Dry Materials, Recyclable Materials, Organic Materials, or C&amp;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.</td>
<td>$125/ton</td>
</tr>
<tr>
<td>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&amp;D and Curbside Processing.</td>
<td>$125/ton</td>
</tr>
<tr>
<td>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.</td>
<td>$200/day for each day until accurate and complete submittal received</td>
</tr>
<tr>
<td>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 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</td>
<td>$200/day for each day until accurate and complete submittal received</td>
</tr>
</tbody>
</table>
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.

| $250/load |

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.

| $125/ton |

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.

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.

| $100/day for each day until delivered, up to 30 days per item | AND | $2,500/event if delayed more than 30 days |

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.

| $750/event |

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.).

| $250/event |

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

| $200/customer/month |
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.

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<tr>
<th>12. <strong>Failure to achieve dry processing diversion.</strong> 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.</th>
<th>$150/ton</th>
</tr>
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</table>

| 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. 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. 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. | $1,000 per two percentage points per month |
This Guaranty, made as of the date written below by _________________ (Guarantor), to and for the benefit of the West Contra Costa Integrated Waste Management Authority (Authority), a municipal corporation of the State of California (State).

WITNESSETH

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

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

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

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

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

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

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

1. Guaranty of Contractor’s Performance Under Agreement. Guarantor by this Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Contractor’s obligations under the Agreement in accordance with the terms and conditions contained therein or to cause that timely and full performance. Within thirty (30) Calendar Days written request therefore by the Authority, Guarantor shall honor the Guaranty. Notwithstanding the unconditional nature of the Guarantor’s payment obligations set forth in this Agreement, the Guarantor may assert the defenses provided in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims made under this Guaranty.
(2) Governing law; consent to jurisdiction; service of Process. This Guaranty is governed by the laws of the State of California. The Guarantor by this Guaranty agrees to the service of Process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the Superior Court of Contra Costa County, and to the extent permitted by law, the United States District Court for the Northern District of California, shall have the exclusive jurisdiction of all suits, Actions, and other proceedings involving itself and to which the Authority may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of any suit, action, or proceeding, and consents to the service of process in any suit, action, or proceeding by prepaid registered mail, return receipt requested.

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

For purposes of this Guaranty “Assign” and “Assignment” means:

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

(ii) issuing new stock or selling, exchanging or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Guarantor which results in a change of control of Guarantor;

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

(iv) any Assignment by operation of law, including insolvency or bankruptcy, making Assignment for the benefit of creditors, writ of attachment of an execution, being levied against Guarantor, appointment of a receiver taking possession of any of Guarantor’s tangible or intangible property; and
(v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any transfer or change of Ownership or control of Guarantor.

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

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

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

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

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

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

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

(f) the Authority or its Assignees taking or omitting to take any of the actions which it or any of that Assignee is required to take under the Agreement; any failure, omission or delay on the part of the Authority or its Assignees to enforce, assert or exercise any right, power or remedy conferred on it
or its Assignees by the Agreement, except to the extent that failure, omission or delay gives rise to
an applicable statute of limitations defense by the Contractor with respect to a specific obligation;

(g) the default or failure of the Guarantor to fully perform any of its obligations set forth in this
Guaranty;

(h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor or the
Authority, or any order or decree of a court, trustee or receiver in any proceeding;

(i) in addition to those circumstances described in item (h), any other circumstance which might
otherwise constitute a legal or equitable discharge of a Guarantor or limit the recourse of the
Authority to the Guarantor;

(j) the existence or absence of any action to enforce the Agreement;

(k) subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present
or future law or order of any government or of any agency thereof, purporting to reduce, amend
or otherwise affect the Agreement or to vary any terms of payment or performance under the
Agreement;

provided that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary
obligation of Contractor to Authority from which Contractor would be discharged, released or otherwise
excused under the provisions of the Agreement.

(5) Waivers. Guarantor by this Guaranty waives:

(a) Notice of acceptance of this Guaranty and of the creation, renewal, extension and accrual of the
limited financial obligations Guarantied under this Guaranty;

(b) Notice that any Person has relied on this Guaranty;

(c) diligence, demand of payment and Notice of default or nonpayment under this Guaranty or the
Agreement, and any and all other Notices required under the Agreement;

(d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the
Contractor;

(e) any right to require a proceeding first against the Contractor or with respect to any collateral or
lien, including, without limitation, any performance bond, or any other requirement that the
Authority exercise any remedy or take any other action against the Contractor or any other
Person, or in respect of any collateral or lien, before proceeding under this Guaranty;

(f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or
(iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation,
any performance bond) for the obligations of the Contractor under the Agreement; any pursuit of
exhaustion of remedies against the Contractor or any other obligor or Guarantor of the
obligations; and any requirement of promptness or diligence on the part of any Person in connection therewith; and

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

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

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

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

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

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

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

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

The Guarantor further agrees that the Authority or any of its Assignees shall have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the Contractor under, the Agreement.
(7) **Continuing Guaranty.** This Guaranty is a continuing Guaranty and shall continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Contractor or Guarantor or otherwise, all as though payment had not been made.

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

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

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

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

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

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

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

(15) **No set-offs**

**By Guarantor.** The obligation of Guarantor under this Guaranty shall not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the Authority on account of any claim of the Guarantor against the Authority; provided that Guarantor reserves the right to bring independent claims not arising from the Agreement against the Authority so long as any claims shall not be used to set-off or deduct from any claims which the Authority may have against the Guarantor arising from this Guaranty.
By Contractor. The obligation of Guarantor under this Guaranty is subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert pursuant to the Agreement, if any, but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert independently of and outside the Agreement.

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

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

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

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

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

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

(19) Notices. All notices, instructions and other communications required or permitted to be given to or made upon any Party to this Guaranty is in writing, and is given in the manner and to the addresses provided in the Agreement.
(20) **Separate suits.** Each and every payment default by Contractor under the Agreement shall give rise to a separate cause of action under this Guaranty, and separate suits may be brought under this Guaranty by the Authority or its Assignees as each cause of action arises.

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

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

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

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

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

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

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

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

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

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

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

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

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

Upon any Event of Default the Authority may proceed first and directly against the Guarantor under Guaranty without proceeding against or exhausting any other remedies which it may have. The Guarantor acknowledges that any Contractor Default comprises a Default under the Agreement.
IN WITNESS WHEREOF Guarantor has executed this instrument the day and year first below written.

(Insert appropriate signature block)

Proper notarial acknowledgment of execution by Guarantor must be attached.

Chairman, president or vice-president, and (2) secretary, assistant secretary, CFO or assistant treasurer, must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.
EXHIBIT 10
CORPORATE SECRETARY’S CERTIFICATE

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

RESOLVED, that _______________________________ be, and hereby is, authorized to execute by and on behalf of the Company the Agreement between the West Contra Costa Integrated 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.

Dated: ___________________

_____________________________
Signature

_____________________________
Title