

Disposal Service Agreement

Executed Between

Castro Valley Sanitary District

and

**Waste Management of Alameda
County, Inc.**

May 1, 2009

Final 7/28/08



Disposal Service Agreement

This page intentionally left blank.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TABLE OF CONTENTS

Disposal Service Agreement

ARTICLE 1. Definitions.....3

ARTICLE 2. Term of Agreement.....8

ARTICLE 3. Obligations of DISTRICT8

ARTICLE 4. Obligations of CONTRACTOR.....9

ARTICLE 5. Disposal Rates20

ARTICLE 6. Indemnity, Insurance, and Use of Performance Bond22

ARTICLE 7. Force Majeure28

ARTICLE 8. Default of Agreement.....29

ARTICLE 9. Legal Representation.....31

ARTICLE 10. Financial Interest31

ARTICLE 11. Independent Contractor32

ARTICLE 12. Laws to Govern.....32

ARTICLE 13. Consent to Jurisdiction.....32

ARTICLE 14. Assignment.....32

ARTICLE 15. Compliance with Laws35

ARTICLE 16. Waiver35

ARTICLE 17. Point of Contact35

ARTICLE 18. Notices35

ARTICLE 19. Nondiscrimination36

ARTICLE 20. CONTRACTOR’S Records36

ARTICLE 21. Quality of Performance of Contractor37

ARTICLE 22. Severability40

ARTICLE 23. Right to Require Performance.....40

ARTICLE 24. All Prior Agreements Superseded.....40



28	ARTICLE 25. Headings.....	40
29	ARTICLE 26. Exhibits	40
30	ARTICLE 27. Prevailing Wage	41
31	ARTICLE 28. Effective Date.....	41
32	EXHIBITS	43
33	Exhibit 1 Approved Per Ton Disposal Rate	45
34	Exhibit 2 Refuse Rate Index.....	50
35	Exhibit 3 Guaranty Agreement	54
36	Exhibit 4 Minimum MSW Disposal Requirements.....	59

37

Disposal Service Agreement

38

CASTRO VALLEY SANITARY DISTRICT

39 This Disposal Service Agreement (Agreement) is entered into this first (1st) day of
40 May, 2009 by and between the Castro Valley Sanitary District, a municipal corporation of
41 the State of California, hereinafter referred to as "DISTRICT" and Waste Management of
42 Alameda County, Inc., a California corporation, hereinafter referred to as
43 "CONTRACTOR".

44

RECITALS

45 **WHEREAS;** the DISTRICT enters this Agreement with CONTRACTOR, under which
46 CONTRACTOR receives Collected Material generated within the Castro Valley Sanitary
47 District for Disposal, transfer or processing at the Disposal Facility; and,

48 **WHEREAS;** the Castro Valley Sanitary District Board determines, pursuant to its police
49 powers, that obtaining a long-term commitment for Disposal, transfer or processing of
50 Collected Material generated in the DISTRICT is in the best interests of the health,
51 safety and well being of the citizens of the DISTRICT; and,

52 **WHEREAS;** the State of California, through enactment of the California Integrated
53 Waste Management Act of 1989 (California Public Resources Code Section 40000, et.
54 seq.) also recognizes the important health and safety consideration to long-term
55 planning for local government's adequate Disposal needs. The California Integrated
56 Waste Management Act of 1989 declares that the responsibility for management of Solid
57 Waste is a shared responsibility between the State and local governments. The State
58 requires local governments to make adequate provision for at least fifteen (15) years of
59 Solid Waste Disposal capacity to preserve the health, safety and well-being of the public.
60 The California Integrated Waste Management Act of 1989 also authorizes local
61 governments to enter into exclusive franchise contracts to provide Solid Waste handling
62 services for the health, safety and well being of its citizens (California Public Resources
63 Code Section 40059); and,

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

67 **WHEREAS;** the Disposal Facility is intended to be the principal Disposal Facility for the
68 Disposal, transfer or processing of Collected Material generated in the DISTRICT; and,

69 **WHEREAS;** the CONTRACTOR guarantees permitted capacity at the Disposal Facility
70 and Landfill for up to twenty (20) years for Disposal, transfer or processing of MSW

71 generated in the DISTRICT and for up to ten (10) years for Disposal transfer or
72 processing of all Collected Material except MSW generated in the DISTRICT; and,

73 **WHEREAS;** the Castro Valley Sanitary District Board determines that in order to provide
74 adequate Disposal, transfer or processing capacity, it is in the best interests of the
75 DISTRICT to secure a commitment from CONTRACTOR for the right to a portion of the
76 Disposal Facility's and Landfill's current Disposal, transfer or processing capacity on the
77 terms and subject to the conditions set out in this Agreement. The intent of this
78 provision is, in part, for the DISTRICT to contribute to preventing the substantial
79 environmental, aesthetic, health, and safety problems that may be created from
80 increasing volumes of Solid Waste in this country; and,

81 **WHEREAS,** the DISTRICT reviewed the CONTRACTOR'S proposal to provide Disposal,
82 transfer and processing services.

83 **WHEREAS,** the CONTRACTOR has represented that it has the experience and ability to
84 provide for Transfer and Disposal of Municipal Solid Waste, Recyclable Materials, and
85 Compostable Materials, to provide the transportation of such material to the appropriate
86 places for processing, recycling, composting and/or Disposal, and to accomplish all of
87 the same at the rates provided for herein; and

88 **WHEREAS,** the DISTRICT has entered into a Collection Service Agreement with
89 CONTRACTOR to provide Collection Services within the DISTRICT; and,

90 **WHEREAS;** the CONTRACTOR receives Disposal fees from the DISTRICT'S Collection
91 Contractor for the acceptance of Collected Material at the Disposal Facility and for the
92 Disposal, transfer or processing of Collected Material at the Disposal Facility; and,

93 **WHEREAS,** the DISTRICT determined that the CONTRACTOR has proposed to provide
94 Disposal, transfer or processing services at the Disposal Facility in a manner and on
95 terms which are in the best interest of the DISTRICT and its residents and businesses,
96 taking into account the qualifications and experience of the CONTRACTOR, and the
97 fees for providing such services; and,

98 **WHEREAS,** the DISTRICT wishes to engage the CONTRACTOR to provide the services
99 specified within this Agreement, in accordance with the terms and conditions of this
100 Agreement; and,

101 **WHEREAS,** the Castro Valley Sanitary District Board declares its intention of
102 maintaining reasonable rates for the Disposal, transfer or processing of Collected
103 material and other services.

104 Now therefore, in consideration of the mutual promises, covenants, and conditions
105 contained in this Agreement and for other good and valuable consideration, the
106 DISTRICT and CONTRACTOR agree as follows.

107 **ARTICLE 1. Definitions**

108 For the purpose of this Disposal Service Agreement, hereinafter referred to as
109 "Agreement", the definitions contained in this Article shall apply unless otherwise
110 specifically stated. When not inconsistent with the context, words used in the present
111 tense include the future, words in the plural include the singular, and words in the
112 singular include the plural. Use of the masculine gender shall include the feminine
113 gender.

114 1.01 Agreement. The written document and all amendments thereto, between
115 the DISTRICT and the CONTRACTOR, governing the provision of Disposal Services as
116 provided herein, including all exhibits hereto, as it may be amended from time to time.

117 1.02 Agreement Year. Each twelve (12) month period from May 1st to April
118 30th, beginning May 1, 2009.

119 1.03 Alternative Daily Cover (ADC). Disposal Facility cover material, other
120 than Compostable Material and at least six (6) inches of earthen material, placed on the
121 surface of the active face of the refuse fill area at the end of each operating day to
122 control vectors, fires, odor, blowing litter, and scavenging as defined in Section 20164 of
123 the California Code of Regulations.

124 1.04 Brown Goods. Discarded electronic equipment such as portable
125 televisions, computers, microwave ovens, and similar items.

126 1.05 Bulky Goods. Discarded Materials, such as large and small household
127 appliances (including refrigerators), furniture, carpets, mattresses, White Goods, Brown
128 Goods, clothing, un-mounted tires, and oversized Compostable Materials such as tree
129 trimmings and large branches, and similar large items classified by the DISTRICT as
130 MSW, excluding Construction and Demolition Debris.

131 1.06 Change in Law. The adoption, promulgation, or modification of any
132 enforceable federal, state or local rule, law, regulation, ordinance, permit or
133 administrative agency guidelines duly adopted and promulgated officially in writing for
134 uniform application occurring after the effective date of this Agreement, if such Change
135 in Law has a material adverse effect on the rights or obligations of any party to this
136 Agreement and could not be reasonably predicted or provided for. Change in Law does
137 not include changes initiated by CONTRACTOR. Change in Law does not include any
138 change relating to:

139 1.06.1 taxation of income of CONTRACTOR or



140 1.06.2 the failure of CONTRACTOR to comply with any legal requirement
141 imposed by any governmental agency having or contending to have jurisdiction . In no
142 event shall any Change in Law relieve CONTRACTOR, its insurance company and/or its
143 guarantor from its liability to indemnify DISTRICT from any and/or all expenses of any
144 nature whatsoever for CLOSURE/POST CLOSURE. Notwithstanding the foregoing and
145 for purposes of clarification, CONTRACTOR or DISTRICT may apply for rate increases
146 or decreases based on a Change in Law as defined herein effecting any costs including
147 but not limited to those directly related to CLOSURE/POST CLOSURE activities
148 concerning Solid Waste of DISTRICT placed in landfill of CONTRACTOR after the
149 effective date of such Change in Law. As a result of either prior agreements between
150 CONTRACTOR and DISTRICT, and/or as a result of this Agreement or the Collection
151 Agreement signed in conjunction with this Agreement, provided that DISTRICT has fully
152 performed, DISTRICT cannot be required or obligated to contribute additional funds to
153 CLOSURE/POST-CLOSURE activities concerning Municipal Solid Waste of DISTRICT
154 or the Solid Waste of any other agency or entity or individual placed in the landfill of
155 CONTRACTOR prior to the Effective Date of a change in law, except that the Effective
156 Date shall be replaced by the or the date DISTRICT is advised in writing by
157 CONTRACTOR of such change in law in the event such written notification is received
158 by DISTRICT more than ninety (90) calendar days after the Effective Date of the change
159 in law, whichever event is last to occur. It is understood that CLOSURE/POST
160 CLOSURE is a series of events which are required, or otherwise performed, either
161 during the operation or after closure of a landfill, or portion of a landfill, to comply with
162 the terms of an approved CLOSURE/POST CLOSURE plan, or amendments thereto, as
163 the result of legislation, rule, regulation, court decision or good engineering practices.
164 Notwithstanding any other provisions of this definition, Change in Law shall not include
165 such changes enacted or adopted prior to the effective date of this Agreement but which
166 do not take effect until after the date of this Agreement.

167 1.07 Collection Contractor. Waste Management of Alameda County, Inc.

168 1.08 Collected Material. MSW, Recyclable Material, Compostable Material,
169 Organic Waste, and Construction and Demolition Debris that is collected by the
170 Collection Contractor within the DISTRICT and delivered to the Disposal Facility.

171 1.09 Compostable Materials. "Compostable Materials" and "Compostables"
172 include Organic Waste and those materials designated from time to time in DISTRICT
173 Legislation for Collection and Recycling which are segregated from MSW and delivered
174 to the Disposal Facility by the Collection Contractor "Compostable Materials" shall also
175 include Compostable Materials sorted from MSW at the Disposal Facility by the
176 CONTRACTOR.

177 1.10 Construction and Demolition Debris. Used or discarded materials
178 removed from the premises during construction or renovation of a structure resulting

179 from construction, remodeling, repair or demolition operations on any pavement, house,
180 commercial building, pavement, or other structure. Construction and Demolition Debris
181 includes rocks, soils, tree remains and other Green Waste which results from land
182 clearing or land development operations in preparation for construction.

183 1.11 CONTRACTOR. Waste Management of Alameda County, Inc., a
184 California corporation.

185 1.12 Disposal. The final processing and disposition of materials received from
186 the Collection Contractor by CONTRACTOR under the terms this Agreement.

187 1.13 Disposal Facility. The transfer station and materials recovery facility
188 owned by CONTRACTOR located at Davis Street or facilities utilized for the Disposal,
189 processing or transfer of Collected Material received by the CONTRACTOR or places
190 approved by DISTRICT for such Disposal, processing or transfer.

191 1.14 Disposal Services. The receipt, acceptance, and processing of all
192 Collected Material delivered by the Collection Contractor and the safe and lawful transfer
193 of such material to the Landfill or a secondary processing facility or the sale of such
194 processed material as appropriate.

195 1.15 DISTRICT. The Castro Valley Sanitary District, California, and all territory
196 lying within its boundaries as presently existing or as such boundaries may be modified
197 during the term of this Agreement.

198 1.16 DISTRICT Representative. That person, or their designee, designated by
199 the DISTRICT and the CONTRACTOR, governing the provision of Disposal services as
200 provided herein.

201 1.17 Divert (or Diversion). To prevent Recyclable Materials and other materials
202 from Disposal at the Disposal Facility or Transformation Facilities (including facilities
203 using incineration, pyrolysis, distillation, gasification or biological conversion methods)
204 through source reduction, reuse, Recycling and composting, as provided in Section
205 41780 of the California Integrated Waste Management Act of 1989, as such California
206 Integrated Waste Management Act may be hereafter amended or superseded.

207 1.18 Force Majeure. Any acts of God, such as landslides, lightning, fires,
208 storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil
209 disturbances, acts of a public enemy, wars, blockades, riots, or other industrial
210 disturbances, eminent domain, condemnation or other taking, or other events of a similar
211 nature, not caused or maintained by the DISTRICT or CONTRACTOR, which event is
212 not reasonably within the control of the party claiming the excuse from its obligations due
213 to such event, to the extent such event has a significant and material adverse effect on
214 the ability of a party to perform its obligations thereunder. Force Majeure shall not
215 include power outages, fuel shortages, strikes, work stoppage or slowdown, sickout,
216 lockout picketing or other concerted job action conducted by the CONTRACTOR'S
217 employees or directed at the CONTRACTOR or subcontractor. Force Majeure shall



218 include a Change in Law if such Change in Law prohibits a party's performance
219 hereunder. Notwithstanding the foregoing, (i) no event relating to the Disposal Facility or
220 the delivery of Collected Material to that facility shall constitute a Force Majeure under
221 this Agreement unless (and then only to the extent) that such event prevents the delivery
222 of or acceptance of Collected material to or by that facility; (ii) no failure of performance
223 by any subcontractor of the CONTRACTOR shall be a Force Majeure unless such failure
224 was itself caused by a Force Majeure; (iii) except as provided herein, no event which
225 merely increases CONTRACTOR'S cost of performance shall be a Force Majeure; and
226 (iv) no event, the effects of which could have been prevented by reasonable precautions,
227 including compliance with agreements and applicable laws, shall be a Force Majeure.

228 1.19 Guarantor. USA Waste of California, Inc. a Delaware Corporation.

229 1.20 Guaranty Agreement. The agreement contained in Exhibit 3, which is
230 attached to and included in this Agreement that is executed by the Guarantor
231 guaranteeing the timely and full performance of CONTRACTOR'S obligations.

232 1.21 Hazardous Waste. Any material, substance, waste or component thereof
233 which poses an actual or potential risk to public health and safety or the environment by
234 virtue of being actually or potentially toxic, corrosive, bioaccumulative, reactive, ignitable,
235 radioactive, infectious or otherwise harmful to public health and safety or the
236 environment, and which requires special handling under any present or future federal,
237 state or local law, excluding de minimis quantities of waste of a type and amount
238 normally found in Residential MSW after implementation of programs for the safe
239 Collection, Recycling, treatment and Disposal of household hazardous waste in
240 compliance with Sections 41500 and 41802 of the California Public Resources Code
241 provided the Disposal Site and Transfer Station are owned or otherwise controlled by
242 Contractor, and in such event, the parties agree that this definition not be limited to any
243 particular statutory or regulatory regime and that it be construed as broadly as possible
244 so that CONTRACTOR bears the responsibility for exercising due diligence as provided
245 in Article 4 of this Agreement in the investigation, monitoring, control, decontamination,
246 removal and remediation of Hazardous Waste as is required in order to protect against
247 actual or potential risk to public health and safety or the environment.

248 1.22 Household Hazardous Waste. Any Hazardous Waste generated at a
249 residential premises.

250 1.23 Landfill. The Altamont Landfill and Resource Recovery Facility located at
251 10840 Altamont Pass Road, Livermore, CA that is owned and operated by
252 CONTRACTOR.

253 1.24 Municipal Solid Waste or MSW. Except as provided below, all "Solid
254 Waste" as defined in California Public Resources Code Section 40191, as that section
255 may be amended from time to time, which is generated within the District. MSW means

256 all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage,
257 trash, refuse, paper, rubbish, ashes, industrial wastes, Bulky Goods, Brown Goods,
258 dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste,
259 manure, vegetable or animal solid and semisolid wastes, and other discarded wastes,
260 but does not include abandoned vehicles, Hazardous Waste or other Unacceptable
261 Waste. MSW may include Recyclables, Compostable Materials, and Construction and
262 Demolition Debris if such materials are not source separated from MSW at the site of
263 generation or Collected for Recycling, Composting, processing and marketing.

264 1.25 Organic Waste. Green waste, food scraps and trimmings from food
265 preparation, including but not limited to; fruit and vegetable waste, grain waste, dairy
266 waste, meat and fish waste, and such items as non-recyclable or contaminated paper
267 such as pizza boxes, take-out food cartons (cardboard), paper towels, waxed cardboard,
268 wooden packaging such as crates and untreated and unpainted wallboard, etc. that are
269 separated at the source of generation for inclusion in the DISTRICT'S organic collection
270 programs.

271 1.26 Post-Closure. All activities and related costs during the Post-Closure
272 period of the Landfill or portions of the Landfill in accordance with applicable laws and
273 permits.

274 1.27 Recovered Material. Recyclable Materials recovered at the Disposal
275 Facility from MSW.

276 1.28 Recyclable Materials. Those materials designated in this Agreement or
277 DISTRICT Legislation for Recycling under this Agreement, including newsprint (including
278 inserts, coupons and store advertisements); mixed paper (including magazines,
279 catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper,
280 paperboard, paper egg cartons, office ledger paper, legal pad backing, shoeboxes and
281 telephone books); glass containers, (including brown, clear and green glass bottles and
282 jars) ; aluminum, (including beverage containers and foil products); small scrap and cast
283 aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension
284 for any single item); steel including "tin" cans, aerosol cans (empty, non-toxic products)
285 and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any
286 dimension for any single item); bimetal containers; all plastics (#1-7), except expanded
287 Polystyrene (EPS); dry cell household batteries when placed in a sealed heavy-duty
288 plastic bag; and those materials added by the CONTRACTOR from time to time.

289 1.29 Roll-Off Container. A metal container that is normally loaded onto a
290 motor vehicle and transported to an appropriate facility.

291 1.30 Ton (or Tonnage). A unit of measure for weight equivalent to two
292 thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.



293 1.31 Transformation Facility. A permitted facility used for the incineration,
294 pyrolysis, distillation, gasification, or biological conversion other than composting of
295 Municipal Solid Waste.

296 1.32 Un-permitted Materials. Materials that the Disposal Facility may not
297 receive under its permits.

298 1.33 Work Day. Any day, Monday through Saturday that is not a holiday as
299 set forth in Section 4.07 of this Agreement.

300 **ARTICLE 2. Term of Agreement**

301 2.01 Initial Term. The term of this Agreement shall be for twenty (20) year
302 term beginning on May 1, 2009 and terminating on April 30, 2029.

303 **ARTICLE 3. Obligations of DISTRICT**

304 3.01 General. The DISTRICT and the CONTRACTOR acknowledge that the
305 DISTRICT will not physically deliver Collected Material to the Disposal Facility; instead,
306 the Collection Contractor will carry out such deliveries. The parties further acknowledge
307 that the Collection Contractor will pay the tipping fees for Collected Material it delivers to
308 the Disposal Facility. The DISTRICT contractually controls the delivery of Collected
309 Material Collected in the DISTRICT by the Collection Contractor and shall direct
310 Collection Contractor to deliver such Collected Material to the Disposal Facility). The
311 CONTRACTOR acknowledges that the DISTRICT has no ability to direct individuals who
312 self-haul to use the Disposal Facility and does not contractually control the Collection
313 Contractor's residue from its Recyclable Materials and Organic Waste processing
314 activities. MSW shall not be delivered by the DISTRICT to the Landfill, except in an
315 emergency.

316 3.02 Minimum MSW Tonnage. Notwithstanding anything to the contrary in the
317 foregoing, DISTRICT does commit to provide a minimum amount of MSW calculated in
318 the manner as set forth and shown on Exhibit 4 which is attached to and included in this
319 Agreement on an annualized basis each and every Agreement Year during the term of
320 this Agreement. Any shortfall below the minimum will be charged to the DISTRICT on a
321 per ton "put or pay" basis at the then applicable Disposal element of the applicable per
322 Ton Disposal Rate. Any excess over the minimum amount can be carried forward for
323 two (2) years and applied to the current year's minimum tonnage requirement, after
324 which any such "shortfall credit" will expire. In determining if the DISTRICT has met the
325 minimum tonnage requirement, the current year tonnage shall be considered first and
326 then any excess tonnage from the two prior years may be counted.

327 3.03 Hazardous Material Programs. DISTRICT shall contractually require its
328 Collection Contractor to develop and implement a load inspection program to detect and
329 discover Hazardous Material and Household Hazardous Waste and shall prohibit
330 Collection Contractor from knowingly delivering such material to the Disposal Facility.
331 DISTRICT shall encourage its residents to participate in the Alameda County Household
332 Hazardous Waste Program that provides residents with a place for safe Recycling,
333 treatment, and/or disposition of Household Hazardous Waste. The parties recognize,
334 however, that DISTRICT cannot assure CONTRACTOR that such programs will prevent
335 any amount of Hazardous Waste or Household Hazardous Waste from being delivered
336 to the Disposal Facility.

337 3.04 No Limit on Waste Prevention. DISTRICT, Collection Contractor, or other
338 DISTRICT agents will continue to develop and participate in waste prevention activities,
339 including source reduction and resource recovery activities, which may reduce the
340 amount of MSW delivered to the Disposal Facility. Nothing in this Agreement shall
341 restrict DISTRICT, Collection Contractor, or other DISTRICT agents from any such
342 activities.

343 **ARTICLE 4. Obligations of CONTRACTOR**

344 4.01 General. During the term of this Agreement, and consistent with Sections
345 4.14.1 and 4.14.2 herein, CONTRACTOR shall provide Disposal Services under the
346 terms and conditions of this Disposal Service Agreement. CONTRACTOR shall
347 perform its obligations with respect to Disposal Services hereunder in accordance with
348 sound management and operations practice, regulatory and permit requirements,
349 applicable law, the provisions hereof, and covenants, conditions, and restrictions
350 pertaining to the Disposal, transfer or processing of Collected Material.

351 4.02 Facility Permits.

352 4.02.1 Existing Permits. CONTRACTOR shall obtain, at its own
353 expense, all permits and licenses required by law or ordinance and maintain same in full
354 force and effect throughout the term of this Agreement. CONTRACTOR shall provide
355 proof of such permits, licenses or approvals and shall demonstrate compliance with the
356 terms and conditions of such permits, licenses and approvals upon the request of the
357 DISTRICT Representative.

358 4.02.1.1 CONTRACTOR shall keep the DISTRICT fully
359 informed, in a timely manner, of its progress in securing permits, or renewals of permits,
360 which occur during the term of this Agreement as they pertain to the Disposal, transfer or
361 processing operations at the Disposal Facility or Landfill as appropriate in accordance
362 with this Agreement and the costs related thereto.

363 4.02.1.2 CONTRACTOR shall provide the DISTRICT upon
364 DISTRICT'S request with copies of any applications that the CONTRACTOR submits to



365 any regulatory body in connection with the issuance of new permits, or the extension,
366 revision or modification of existing permits with respect to the Disposal Facility or
367 Landfill.

368 4.03 CONTRACTOR Compliance with Permits. CONTRACTOR shall comply
369 with all permits, terms, and conditions of such permits as they may be amended or
370 superseded (including any mitigation measures) related to the operation and
371 maintenance of the Disposal Facility. CONTRACTOR shall be solely responsible for
372 paying any fines or penalties imposed by governmental agencies for CONTRACTOR'S
373 noncompliance with permit terms or CONTRACTOR'S failure to obtain necessary
374 permits for the Disposal Facility.

375 4.04 Disposal Facility Operations. CONTRACTOR, at its cost and expense,
376 shall at all times use best efforts to operate the Disposal Facility and Landfill in the
377 manner required by applicable law and permits. CONTRACTOR'S responsibilities for
378 the Disposal Facility shall include, but are not limited to, the following:

379 4.04.1 Operation, management, and maintenance of the Disposal Facility
380 and Landfill will comply with sound management and operations practice, regulatory and
381 permit requirements, applicable law, standard industry practices, and covenants,
382 conditions and restrictions pertaining to the site;

383 4.04.2 Provision, operation, and maintenance of all equipment, rolling
384 stock, and supplies necessary for operations, and environmental monitoring;

385 4.05 Days and Hours of Operation. CONTRACTOR shall operate the Disposal
386 Facility for the receipt of Collected Material in accordance with the days and hours of
387 operation as set forth in all permits. At a minimum, CONTRACTOR shall accept
388 Collected Material delivered by the Collection Contractor Monday through Friday from
389 6:00 a.m. to 5:00 p.m. and Saturday from 6:00 a.m. to 4:30 p.m. CONTRACTOR may
390 not reduce the hours or total number of hours for acceptance of Collected Material
391 delivered by the Collection Contractor required by the Agreement without the
392 concurrence of the DISTRICT and Collection Contractor except such changes required
393 by a change in a Disposal Facility permit.

394 4.06 Emergency Services. In the event of a tornado, major storm, earthquake,
395 fire, natural disaster, or other such event, the DISTRICT Representative may require the
396 CONTRACTOR to extend the hours of operation in order to accept materials from the
397 DISTRICT'S Collection Contractor. However, the CONTRACTOR shall not be required
398 to extend the hours of operation to the extent that such extension would cause
399 CONTRACTOR to violate its permit(s).

400 4.07 Holidays. CONTRACTOR shall not be required to accept MSW from the
401 Collection Contractor on Thanksgiving Day, Christmas Day and New Years Day.

402 4.08 Traffic Control and Direction. CONTRACTOR shall provide necessary
403 signs and personnel to assist drivers to proper unloading areas. The CONTRACTOR
404 shall provide and maintain signs for the convenience of vehicles using the Disposal
405 Facility so that vehicles travel, queue, unload, exit in a safe manner. The CONTRACTOR
406 will operate the facility using best efforts and operating practices to facilitate the safe and
407 efficient traffic flow at the Disposal Facility to ensure that no vehicles queue on public
408 streets in the normal course of business.

409 4.09 Average Processing Time.

410 4.09.1 In the event CONTRACTOR is not the Collection Contractor,
411 CONTRACTOR shall operate the Disposal Facility so that all Collection Contractor
412 Collection vehicles are processed, unloaded, and exited from the facility no more than
413 twenty (20) minutes, on average, after arriving at the scale house and mounting the
414 scale to weigh-in. (For purposes of this Section 4.09.1, “on average” shall be calculated
415 on a monthly basis.)

416 4.09.2 In the event CONTRACTOR is the Collection Contractor, but the
417 DISTRICT has exercised its authority to have other personnel Collect and deliver
418 Collected Material to the Disposal Facility as a result of a strike or other labor unrest,
419 CONTRACTOR shall operate the Disposal Facility so that all Collection vehicles
420 delivering Collected Material from DISTRICT are processed, unloaded, and exited from
421 the facility no more than twenty (20) minutes, on average, unless DISTRICT has
422 approved a strike implementation plan specifying a longer time period, after arriving at
423 the scale house and mounting the scale to weigh-in.

424 4.10 Scale Operation.

425 4.10.1 Weighing Standards and Procedures. The scale house(s) at the
426 Disposal Facility’s entrance shall serve as the location for weighing vehicles and
427 charging Disposal fees as provided herein. All weighing shall be conducted by
428 CONTRACTOR or its agents by a licensed weighmaster. CONTRACTOR scale house
429 personnel shall be responsible for inspecting the Collected Material delivered to the
430 Disposal Facility. The Collection Contractor vehicles shall be charged Disposal fees
431 based on the Tonnage of Collected Material accepted by the Disposal Facility and the
432 applicable disposal rates as set forth in Exhibit 1 which is attached to and included in this
433 Agreement. CONTRACTOR shall weigh and record inbound weights of all Collection
434 Contractor vehicles when the vehicles arrive at the Disposal Facility. In addition,
435 CONTRACTOR shall weigh and record outbound weights of such vehicles for which
436 CONTRACTOR does not maintain tare weight information. CONTRACTOR shall
437 provide each driver with a receipt showing the date, time, and quantity and type of
438 Collected Material delivered to the Disposal Facility and the Disposal fee charged for
439 such material. The scale house computer system shall compile information into various
440 reports which typically include for each transaction, documentation of the Disposal fee



441 charged, weight of vehicle, vehicle identification number, customer account, material
442 type, route number, vehicle type, and origin of Collected Material.

443 4.10.2 Maintenance and Operation. CONTRACTOR shall maintain, in
444 accordance with applicable law, at least two State certified motor vehicle scales at the
445 Disposal Facility. All scales shall be linked to a centralized computer recording and
446 billing system which shall be compatible with CONTRACTOR'S systems and account for
447 tracking all incoming and outgoing materials. CONTRACTOR shall operate such scales
448 during facility receiving hours, established in Section 4.05, provided that CONTRACTOR
449 shall provide DISTRICT with access to weighing information at all times and copies
450 thereof on the next Work Day on which the scale house is open.

451 4.10.3 Vehicle Tare Weights. Between the time this Agreement is
452 executed and May 1, 2009, CONTRACTOR shall weigh and determine the unloaded
453 ("tare") weight of each Collection Contractor vehicle to be used to deliver Collected
454 Material to the Disposal Facility. Before May 1, 2009, CONTRACTOR shall provide the
455 DISTRICT and Collection Contractor with a report listing vehicle tare weight information,
456 which shall include, at a minimum, hauler name, tare weight, vehicle identification
457 number, and date tare weight was determined. CONTRACTOR shall, at least every six
458 (6) months, reweigh and revise tare weights for all Collection Contractor vehicles used to
459 deliver Collected Material to the Disposal Facility.

460 4.10.3.1 When new vehicles are placed into service and
461 immediately after any significant repairs to vehicles by the Collection Contractor, the
462 CONTRACTOR shall promptly weigh such vehicles and determine the tare weight of
463 each vehicle. Within ten (10) Work Days of weighing, CONTRACTOR shall provide the
464 DISTRICT and Collection Contractor with a report listing vehicle tare weight information.
465 CONTRACTOR, DISTRICT, and Collection Contractor shall have the right to request re-
466 weighing of vehicles up to two (2) times per year, unless there is reasonable suspicion or
467 evidence that tare weights are not accurate, in which case, tare weights may be updated
468 more frequently to ensure accuracy.

469 4.10.4 Substitute Scales. To the extent practicable, if either scale is
470 inoperable, being tested or otherwise unavailable, all vehicles shall be weighed on the
471 remaining operating scale. To the extent that both the scales are inoperable, being
472 tested, or otherwise unavailable, CONTRACTOR shall substitute portable scales until
473 the permanent scales are replaced or repaired. CONTRACTOR shall arrange for any
474 inoperable scale to be repaired as soon as possible and, in any event, within three (3)
475 Work Days of the failure of the permanent scale. CONTRACTOR shall arrange to
476 immediately obtain a temporary substitute scale(s) should the repair of the permanent
477 scale require more than twelve (12) hours.

478 4.10.5 Estimates. Pending substitution of portable scales or during
479 power outages, CONTRACTOR shall estimate the Tonnage of Collected Material

480 delivered to the Disposal Facility by utilizing the arithmetic average of that vehicle's
481 recorded Tons of Collected Material delivered on its preceding three (3) deliveries, on
482 the same day of the week, to the Disposal Facility, with the exception that the Tonnage
483 estimated in Roll-off Containers shall be made by multiplying the estimated number of
484 cubic yards of Collected Material delivered per Roll-off Container by 0.25 Tons per cubic
485 yard for mixed MSW and 1.0 Tons per cubic yard for loads of dirt, rubble, or rock
486 material or such other amounts as may be agreed to in writing between CONTRACTOR
487 and DISTRICT.

488 4.10.5.1 All information required by Sections 4.10.1 and
489 4.10.2 shall continue to be recorded for each delivery of Collected Material to the
490 Disposal Facility during any period the scales are out of service.

491 4.10.6 Testing. CONTRACTOR shall test and calibrate all scales in
492 accordance with applicable law, but at least every twelve (12) months. Upon DISTRICT
493 request, CONTRACTOR shall provide the DISTRICT with copies of test results.
494 CONTRACTOR shall further test and calibrate any or all scales upon written request
495 therefore by the DISTRICT, within three (3) Work Days of such request. If such test
496 results indicate that the scale or scales complied with applicable law, the DISTRICT shall
497 reimburse CONTRACTOR the direct costs of such tests. If such test results indicate that
498 the scale or scales did not comply with applicable law, CONTRACTOR shall bear the
499 costs thereof and CONTRACTOR shall at its own cost adjust and correct, consistent
500 with the results of such test, all weight measurements recorded and Disposal fees
501 calculated, charged and paid, as the case may be, from the date of such request.

502 4.10.7 Records. CONTRACTOR shall maintain scale records that
503 provide information such as, but not limited to, date of receipt, inbound and outbound
504 time, inbound and outbound weights of vehicles, vehicle identification number,
505 jurisdiction of origin of materials received, type of material, hauler identification and/or
506 classification, type, weight, destination of material (i.e., to material recovery operations),
507 and destination of outbound materials.

508 4.11 Personnel. The CONTRACTOR shall engage and train qualified and
509 competent employees, including managerial, supervisory, clerical, maintenance, and
510 operating personnel, in numbers necessary and sufficient for operation of the Disposal
511 Facility and to perform CONTRACTOR'S obligations hereunder.

512 4.12 Ownership of Materials. Once Collected Material is delivered to the
513 Disposal Facility by Collection Contractor, ownership and possession of such material
514 shall transfer directly from the Collection Contractor to CONTRACTOR. CONTRACTOR
515 is hereby granted the right to retain, Recycle, process, Dispose of and otherwise use
516 such materials, or any part thereof, in any lawful fashion or for any lawful purpose
517 desired by CONTRACTOR and such right shall include CONTRACTOR'S right to retain
518 any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the
519 Collected Material.



520 4.13 Rejection of Un-permitted Material.

521 4.13.1 Inspection. CONTRACTOR shall use standard industry practices
522 to endeavor to detect and discover Un-permitted Material and shall not knowingly accept
523 Un-permitted Material at the Disposal Facility. CONTRACTOR shall comply with the
524 inspection procedures contained in its permit requirements. CONTRACTOR shall
525 promptly modify such procedure to reflect any changes in permits or applicable law.

526 4.13.2 Un-permitted Materials Handling and Costs. CONTRACTOR shall
527 arrange for or provide transportation and delivery to an appropriately permitted facility of
528 all Un-permitted Materials that are encountered and which cannot be accepted at the
529 Disposal Facility. CONTRACTOR is solely responsible for handling and arranging
530 transport and disposition of any Un-permitted Material that is contained in or with
531 Collected Material accepted by the CONTRACTOR, and for all related costs.

532 4.13.3 Remedies for Rejected Materials. If CONTRACTOR rejects
533 material delivered to the Disposal Facility by Collection Contractor, because it contains
534 Un-permitted Material including Hazardous Materials, CONTRACTOR shall direct
535 Collection Contractor to remove and dispose of it in a safe and lawful manner, at the
536 sole expense of the Collection Contractor. In the event that Un-permitted Material is
537 delivered to the Disposal Facility, CONTRACTOR shall be entitled to pursue whatever
538 remedies, if any, it may have against Collection Contractor's bringing such Un-permitted
539 Material to the Facilities, provided that in no case shall the DISTRICT be considered to
540 have brought such Un-permitted Material to the Facilities. In the event the Collection
541 Contractor delivers Un-permitted Materials on a frequent or continuous basis and the
542 Collection Contractor refuses to provide for the proper handling and disposition of such
543 Un-permitted Material, the CONTRACTOR shall provide written Notice to the DISTRICT
544 of such refusal by Collection Contractor. Nothing herein shall excuse the
545 CONTRACTOR from the responsibility of handling such Un-permitted Materials in a
546 lawful manner and to arrange for the proper disposition of such materials.

547 4.13.4 Notification. In the event CONTRACTOR is not the Collection
548 Contractor and CONTRACTOR rejects delivered materials, CONTRACTOR shall
549 immediately notify the Collection Contractor verbally and then follow such verbal
550 notification with written notice. The written notice will identify: the date and time of
551 occurrence; material type; material weight or volume; characterization of material; and
552 the CONTRACTOR'S reason for rejection of the delivered material.

553 4.14 Reservation of Disposal, Transfer and Processing Capacity.

554 4.14.1 MSW. CONTRACTOR shall guarantee its ability to accept and
555 Dispose, transfer or process all MSW delivered to the Disposal Facility by the Collection
556 Contractor for twenty (20) years from May 1, 2009. CONTRACTOR shall be responsible
557 for reasonably estimating the quantity of capacity that it shall be required to provide to

558 Disposal, transfer or process of all MSW generated in the DISTRICT over the term of the
559 Agreement. Except as set forth in Section 3.01 the DISTRICT makes no
560 representations, and is under no obligation, regarding the quantity or composition of the
561 MSW delivered to the Disposal Facility by the Collection Contractor.

562 4.14.2 Recyclable Material, Compostable Material, Organic Waste, and
563 Construction and Demolition Debris. CONTRACTOR shall guarantee its ability to accept
564 and Dispose, transfer or process all Recyclable Material, Compostable Material, Organic
565 Waste, and Construction and Demolition Debris delivered to the Disposal Facility by the
566 Collection Contractor for ten (10) years from May 1, 2009. CONTRACTOR shall be
567 responsible for reasonably estimating the quantity of capacity that it shall be required to
568 provide to Disposal, transfer or process of all Recyclable Material, Compostable
569 Material, Organic Waste, and Construction and Demolition Debris generated in the
570 DISTRICT over the term of the Agreement. DISTRICT makes no representations, and is
571 under no obligation, regarding the quantity or composition of the Recyclable Material,
572 Compostable Material, Organic Waste, and Construction and Demolition Debris
573 delivered to the Disposal Facility by the Collection Contractor.

574 4.15 Alternate Disposal Facility.

575 4.15.1 If CONTRACTOR becomes unable to accept Collected Material
576 generated in DISTRICT at the Disposal Facility because it did not use reasonable
577 business efforts in resisting changes, alterations and amendments to permits, or due to
578 reasons within its control and which could have been avoided by the exercise of due
579 care, or as the result of any labor unrest, including but not limited to, strike, work
580 stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by
581 CONTRACTOR'S employees or directed at CONTRACTOR, then and only if, and to the
582 extent, CONTRACTOR is actually prevented from accepting, processing and/or
583 transferring collected materials at the Disposal Site because of a concerted labor action,
584 CONTRACTOR shall (i) accept and Dispose, transfer or process of such Collected
585 Material at another Disposal Facility owned by it (or by another company which is owned
586 and controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal
587 rates in effect under this Agreement, and shall pay any additional transportation costs
588 incurred by Collection Contractor in delivering the Collected Material to the Disposal
589 Facility or any additional costs incurred by CONTRACTOR in transferring and
590 transporting Collected Material to the other disposal facility, or (ii) shall arrange for all
591 Collected Material to be Disposed, transferred or processed at a disposal facility not
592 owned by it or an affiliated company, in which case CONTRACTOR shall pay any
593 difference in the fees charged at such disposal facility plus any additional transportation
594 costs incurred in delivering Collected Material to the disposal facility, and the then-
595 current Disposal rates in effect under this Agreement. If as a result of a labor action
596 directed at CONTRACTOR, CONTRACTOR makes arrangements that allow for
597 continued operation of the Disposal Facility during the labor action, then it shall not be
598 obligated to provide an alternative Disposal Site or Landfill and DISTRICT shall be



599 required to direct all Collected Materials to the Disposal Site or Landfill providing
600 operations at the Disposal Site and Landfill are consistent with the requirements under
601 this AGREEMENT.

602 4.15.2 If CONTRACTOR, despite using reasonable business efforts to
603 resist changes, alterations and amendments to permits under Section 4.02, becomes
604 unable to accept and Dispose, transfer or process of Collected Material generated in
605 DISTRICT at the Disposal Facility, or if CONTRACTOR becomes unable to accept and
606 Dispose, transfer or process Collected Material at the Disposal Facility as the result of
607 an event of Force Majeure as defined herein then CONTRACTOR shall, to the extent it
608 is legally able to do so, offer to accept and Dispose, transfer or process of Collected
609 Material at another disposal facility or a transfer station owned by it (or by another
610 company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the
611 then-current Disposal rates in effect under this Agreement. CONTRACTOR has no
612 obligation, however, to pay for additional transportation costs incurred by the Collection
613 Contractor. DISTRICT has no obligation to accept such offer and, if DISTRICT rejects
614 such an offer, DISTRICT may terminate this Agreement by giving written notice in the
615 manner as set forth in Article 18 of this Agreement. Such termination shall be effective
616 thirty (30) calendar days after DISTRICT has given notice.

617 4.16 Monthly Report. Beginning on June 1, 2009, and monthly during the term
618 of this Agreement, CONTRACTOR shall provide a complete and accurate monthly report
619 no later than twenty (20) calendar days after the end of the reporting month. Therefore,
620 the first report will be due no later than June 20, 2009 for the reporting month of May
621 2009. The report shall include the total Tonnage of Collected Material generated in the
622 DISTRICT that was Diverted, Transferred, and Disposed at the Disposal Facility and
623 shall also list the Tonnage information separately for each of the following categories:
624 Collection Contractor residential Collected Material, Collection Contractor commercial
625 Collected Material, Bulky Goods from Collection Contractor Bulky Goods Collection
626 program, materials generated in the DISTRICT delivered by other companies or small
627 vehicles and self-hauled Collected Material. In addition, the monthly report shall include
628 the following using an allocation methodology, where appropriate, that is acceptable to
629 the DISTRICT.

630 4.16.1 Tonnage information by material type for material accepted at the
631 Disposal Facility;

632 4.16.2 Tonnage information and location of material transferred for
633 disposal;

634 4.16.3 Number and nature of rejected loads during the month;

635 4.16.4 Number and nature of occurrences in which CONTRACTOR
636 identified Hazardous Waste inadvertently accepted; and

637 4.16.5 Number and nature of any notice of violations.

638 4.17 Annual Report of Disposal Facility Activity. Beginning February 15, 2010
639 and annually thereafter during the term of this Agreement, CONTRACTOR shall submit
640 a complete and accurate annual report of Disposal Facility activity to the DISTRICT.
641 Annual reports shall be submitted no later than forty-five (45) calendar days after the end
642 of each calendar year. Therefore, the first report will be due no later than February 15,
643 2010 for the reporting year of May 2009 through December 2009. This report shall
644 contain all items required by this Section which, at a minimum, include the following: a
645 list of parties that CONTRACTOR has guaranteed capacity to through written
646 agreements, the annual estimated Tonnage to be Disposed by each party, and the term
647 of the CONTRACTOR'S capacity commitment. In the event CONTRACTOR has
648 agreements with private companies, the name of the party may be withheld from the list;
649 however, the annual tonnage estimate and term of the commitment must be provided.

650 4.17.1 The annual report shall include information on amounts of MSW
651 delivered to the Disposal Facility and Disposed, Recycled or Diverted and other
652 information which the DISTRICT may request in order to meet its obligations under the
653 California Waste Management Act of 1989.

654 4.18 Right to Enter Disposal Facility and Observe Operations. Upon
655 reasonable written notice of not less than twenty-four (24) hours the DISTRICT and its
656 designated representative(s) shall have the right to enter, observe and inspect the
657 Disposal Facility at any time during operations; conduct studies or surveys of the
658 Disposal Facility; meet with the Disposal Facility manager(s) or their representatives at
659 any time; and meet with other employees upon request, which request shall not be
660 unreasonably denied by CONTRACTOR, provided that the DISTRICT and its
661 representatives comply with CONTRACTOR'S reasonable safety and security rules and
662 shall not interfere with the work of the CONTRACTOR or its subcontractors. However,
663 in the event the Disposal Facility manager is not on the premises at the time the
664 DISTRICT or its designated representative(s) visit the CONTRACTOR'S facility, the
665 DISTRICT or its designated representative shall not be able to inspect some or all areas
666 of the facility and CONTRACTOR shall not be in breach of this Agreement. In such
667 case, the DISTRICT shall give notice requesting access to the site and CONTRACTOR
668 shall arrange for DISTRICT or its designated representative(s) to conduct the on-site
669 inspection within twenty-four (24) hours of such notice. Upon DISTRICT request,
670 CONTRACTOR shall make personnel available to accompany DISTRICT employees on
671 inspections. CONTRACTOR shall ensure that its employees cooperate with the
672 DISTRICT and respond to the DISTRICT'S reasonable inquiries.

673 4.19 Provision of Emergency Services. CONTRACTOR shall provide
674 emergency services, at the DISTRICT'S request, in the event of major accidents,
675 disruptions, or natural calamities. CONTRACTOR shall be capable of providing
676 emergency services within twenty-four (24) hours of notification by the DISTRICT, or as
677 soon thereafter as is reasonably practical, in light of the circumstances. Emergency



678 services, which exceed the CONTRACTOR'S obligations under this Agreement
679 including, but not limited to, obligations related to facility receiving hours, the types and
680 quantities of permitted materials accepted at the Transfer Station or Disposal Facility,
681 the nature of resource recovery activities, and Transfer requirements, shall be
682 compensated through a modification to the scope of services using procedures set forth
683 herein.

684 4.20 Modifications to Scope of Service.

685 4.20.1 General. DISTRICT may direct CONTRACTOR to perform
686 additional services (including, but not limited to, performance of additional resource
687 recovery activities) or modify the manner in which CONTRACTOR performs existing
688 services (including, but not limited to, the modifications to or elimination of services).
689 CONTRACTOR'S Disposal rates shall be increased or decreased, as appropriate, to
690 give effect to these adjustments.

691 4.20.2 Proposal for Modification of Services. Within sixty (60) calendar
692 days of DISTRICT request for a proposal, CONTRACTOR shall present its proposal to
693 modify existing services. At a minimum, the proposal shall contain a complete
694 description of the following:

695 4.20.2.1 Program objectives and goals to be used in
696 measuring the success of the program as discussed in Section 4.20.5 below;

697 4.20.2.2 Methodology to be employed (changes to
698 equipment, manpower, staffing, etc.);

699 4.20.2.3 Equipment to be utilized (equipment number, types,
700 capacity, age, etc.);

701 4.20.2.4 Labor requirements (changes in number of
702 employees by classification);

703 4.20.2.5 Provision for program publicity, education, and
704 marketing (if appropriate);

705 4.20.2.6 Estimate of the impact of the service modification
706 (increased Diversion tonnage, reduced costs, increased public service, etc.); and

707 4.20.2.7 Five (5) year projection of the financial results of
708 the program's operations in an operating statement format including documentation of
709 the key assumptions underlying the projections and the support for those assumptions,
710 giving full effect to the savings or costs to existing services.

711 4.20.3 DISTRICT'S Review. Within ninety (90) calendar days of
712 receiving the CONTRACTOR'S proposal, the DISTRICT shall review and comment on,
713 and approve or disapprove of the modification to the scope of services. The DISTRICT

714 and CONTRACTOR may mutually agree to extend the time period for review due to the
715 complexity of the scope of service modification under consideration, the time needed for
716 the review or approval, or for other reasonable reasons.

717 4.20.3.1 The DISTRICT may request the assistance of an
718 independent third party to review the proposal. The reasonable costs of such review
719 shall be paid by the CONTRACTOR if the modification to the scope of services is
720 initiated by the CONTRACTOR or, by the DISTRICT if the modification to the scope of
721 services is initiated by the DISTRICT. CONTRACTOR'S refusal to pay the reasonable
722 cost of review of a CONTRACTOR-initiated proposal shall be grounds for DISTRICT
723 rejection of such proposal.

724 4.20.3.2 The DISTRICT may request copies of, or access to,
725 the CONTRACTOR'S operating and business records reasonably required to verify the
726 reasonableness and accuracy of the impacts associated with a modification to the scope
727 of services. CONTRACTOR shall fully cooperate with the DISTRICT'S request and
728 provide DISTRICT and its agent(s) copies of or access to CONTRACTOR'S records.

729 4.20.4 Approval of Modification to Scope of Services. Upon DISTRICT
730 approval or determination, DISTRICT will issue a notice approving the modification to
731 the scope of service and documenting any change to the CONTRACTOR'S Disposal
732 rates, and approved change to CONTRACTOR'S obligations hereunder. The parties
733 shall prepare a written amendment to the Agreement documenting any and all changes
734 resulting from the modification to the scope of services. No adjustment in
735 CONTRACTOR'S Disposal rate, change in CONTRACTOR'S obligations, or change in
736 scope of services shall become effective absent such DISTRICT approval or
737 determination.

738 4.20.5 Termination for Cause. DISTRICT shall have the right to
739 terminate a program for cause, at no cost to DISTRICT or DISTRICT'S ratepayers if the
740 CONTRACTOR is not achieving the program's agreed to and defined goals and
741 objectives. Prior to such termination DISTRICT shall meet and confer with
742 CONTRACTOR for a period of up to ninety (90) calendar days to resolve DISTRICT'S
743 concerns. Thereafter, DISTRICT may terminate the program if DISTRICT reasonably
744 believes CONTRACTOR cannot meet or is not meeting the agreed to and defined
745 project goals and objectives. Notwithstanding these changes, CONTRACTOR shall
746 continue the program during the ninety (90) day period unless instructed in writing by
747 DISTRICT to discontinue the program.

748 4.20.6 Termination without Cause. DISTRICT shall also have the right to
749 terminate a program without cause. Prior to such termination, and as a condition of the
750 termination, DISTRICT shall reimburse CONTRACTOR for all costs incurred for
751 implementation and performance of the program that were identified in the program
752 proposal prepared and submitted by CONTRACTOR and agreed to by DISTRICT which



753 will have not been funded or otherwise recovered through program compensation at the
754 time the program is terminated.

755 4.20.7 Diversion Activities. CONTRACTOR shall use reasonable efforts
756 to operate the Disposal Facility so as to segregate Recyclable Materials.
757 CONTRACTOR shall document the quantity of Recyclable Materials removed from the
758 MSW delivered by the Collection Contractor for recycling and the quantity of such
759 material Diverted from Disposal. CONTRACTOR shall calculate the quantity of
760 Recyclable Materials Diverted from Disposal on a monthly basis using a methodology
761 acceptable to the DISTRICT and shall report thereon in accordance with reporting
762 requirements in Sections 4.16 and 4.17. CONTRACTOR shall provide resource
763 recovery programs as may be agreed between the DISTRICT and CONTRACTOR to
764 divert Recyclable Materials from Disposal.

765 4.20.8 Recovered Materials Revenues. CONTRACTOR shall retain all
766 revenues generated from the sale of Recovered Materials.

767 4.20.9 Other Services. CONTRACTOR shall provide additional services
768 not otherwise contemplated under this Agreement at a price to be mutually agreed upon
769 between the DISTRICT Representative and the CONTRACTOR. In the event the
770 CONTRACTOR and the DISTRICT Representative cannot agree on terms, conditions
771 and price of such service or program DISTRICT shall have the right to procure the
772 service of other vendors or contractors to provide the requested service or program at a
773 location other than the CONTRACTOR'S Disposal Facility or Landfill.

774 4.20.10 Proposal Development Fee. No later July 1 2009,
775 CONTRACTOR shall submit proposal development fees to the DISTRICT in the amount
776 of **Forty Thousand Dollars (\$40,000.00)**.

777 **ARTICLE 5. Disposal Rates**

778 5.01 Disposal Rate Elements. The Disposal rate shall be comprised of two (2)
779 elements: 1) a Disposal element, and 2) a Disposal government fee element.

780 5.01.1 Adjustments to the Disposal Element. Except as provided in this
781 Article, the Disposal element shall not be adjusted over the term of this Agreement.

782 5.01.1.1 Fixed Adjustment. On July 1, 2010, and July 1
783 2011, the base Disposal rate as set forth on Exhibit 1, and as adjusted in accordance
784 with this Agreement, shall be adjusted by a two and nine tenths (2.9) percent increase in
785 the then current rate exclusive of governmental or regulatory fees or assessments which
786 shall be a pass-through.

787 5.01.1.2 RRI Adjustment Through July 1, 2018. Beginning
788 on July 1, 2012 and annually thereafter through July 1, 2018, the Disposal element of

789 the Disposal rate shall be adjusted by the Refuse Rate Index Adjustment as set forth in
 790 Exhibit 2 except that the adjustment shall never be less than two and nine tenths (2.9)
 791 percent, nor more than eight (8) percent in any year regardless of the calculated RRI
 792 adjustment exclusive of changes in governmental or regulatory fees or assessments
 793 which shall be a pass-through.

794 5.01.1.3 RRI Adjustment Beginning July 1, 2019. Beginning
 795 on July 1, 2019 and annually thereafter during the term of this Agreement, the Disposal
 796 element of the Disposal rate shall be adjusted by the Refuse Rate Index Adjustment as
 797 set forth in Exhibit 1, without consideration of an upper or lower limit except that in any
 798 year that the calculation of the RRI results in a negative number, there shall be no
 799 adjustment of the Disposal Element. Instead the negative RRI number shall be added to
 800 the result of the subsequent years RRI calculation and the result shall be the RRI
 801 adjustment for that subsequent year.

802 5.02 Regulatory Costs. The Disposal element established under Article 5.01
 803 includes all costs associated with complying with all federal and State statutes, and
 804 DISTRICT and County ordinances concerning public health, safety and environmental
 805 issues and all laws, regulations, rules, orders, judgments, degrees, permits, approvals,
 806 or other requirement of any governmental agency having jurisdiction over the disposition
 807 of MSW, Recyclable Materials, Compostable Material, or Construction and Demolition
 808 Debris that are in force on the effective date of this Agreement, including any current
 809 provisions which become effective on or which require compliance by a date after the
 810 effective date of this Agreement.

811 5.02.1 Changes in Regulatory Costs. If CONTRACTOR or DISTRICT
 812 believes that complying with laws or governmental regulations enacted after the effective
 813 date of this Agreement will increase or decrease the costs of operating the facility,
 814 including but not limited to those costs associated with closure and post-closure
 815 obligations relating to tonnage received after the effective date of the change in law then
 816 CONTRACTOR or DISTRICT may request an adjustment to the Disposal element
 817 relating to costs associated with tonnage delivered after the change in law or regulation,
 818 by submitting to the other party its proposed method for complying with the new or
 819 modified regulations, the estimated cost of compliance relating to costs associated with
 820 tonnage delivered after the change in law or regulation, and the associated per-Ton
 821 adjustment necessary to the Disposal element. As part of this process, CONTRACTOR
 822 shall provide DISTRICT with access to only those operational and financial records
 823 specifically supporting the change in costs required to address changes in regulatory
 824 requirements.

825 5.02.2 CONTRACTOR shall then submit the proposed method of
 826 compliance to the appropriate regulatory agency (ies). If the agency (ies) approves that
 827 method without conditions, the Disposal element may be adjusted.



828 5.02.3 If the requesting agency (ies) does not approve the methodology,
829 CONTRACTOR will implement the method of compliance which is approved by the
830 regulatory agency (ies) and resubmit its estimate of cost impacts to Disposal Facility
831 operations and proposed Disposal element adjustment for DISTRICT'S review and
832 written approval. DISTRICT and CONTRACTOR shall meet and confer in good faith to
833 reach agreement on the cost of compliance and the corresponding adjustment to the
834 Disposal element.

835 5.03 Government Fees. The Disposal rate includes the government fee
836 elements set forth in Exhibit 1.

837 5.04 Changes in Government Fee Elements. Government Fee elements shall
838 be adjusted each July 1st as needed so that they equal the then current government fees
839 required to be paid by CONTRACTOR.

840 5.04.1 Retroactive Adjustments. In the event of a change in a
841 governmental or regulatory fee or implementation of a new governmental or regulatory
842 fee, which becomes effective at some time other than July 1 of any year, CONTRACTOR
843 shall be compensated for such increase through the inclusion of a "Retro Element" in the
844 next rate adjustment. DISTRICT and CONTRACTOR agree that the "Retro Element"
845 shall be an amount needed to compensate the CONTRACTOR for increases in fees paid
846 during the period from the inception of the fee increase through the subsequent June
847 30th and shall not include interest, overhead, or any other costs of any type. The "Retro
848 Element" shall only be included in the rate structure for twelve (12) months or that period
849 necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve
850 (12) months, and shall be removed prior to calculating the rates to be set as of the
851 subsequent July 1st.

852 5.05 Payment of Governmental Fees. CONTRACTOR shall pay, when and as
853 due, any and all governmental fees to the appropriate federal, State, regional, or local
854 governmental entities which levied the fees, and shall provide DISTRICT with proof of
855 such payments promptly upon request.

856 5.06 Payment of Taxes. CONTRACTOR shall pay, when and as due, any and
857 all governmental assessments, or taxes incurred as a result of CONTRACTOR'S
858 provision of services under this Agreement, including estimated taxes, and shall provide
859 DISTRICT with proof of such payments promptly upon request.

860 **ARTICLE 6. Indemnity, Insurance, and Use of Performance**

861 **Bond**

862 6.01 CONTRACTOR'S Duty to Indemnify DISTRICT. CONTRACTOR shall
863 and does indemnify and hold harmless the DISTRICT, its agents (for purposes of this

864 Article, including attorneys and consultants), officers, employees, volunteers,
865 successors, assigns, and appointed and elected officials (collectively "Indemnitees")
866 from and against any and all losses, liabilities, claims, suits, allegations, actions,
867 damages, interest, penalties, fines, forfeitures, demands and/or causes of action
868 (collectively "claims") arising from or in connection with CONTRACTOR'S performance
869 hereunder, including but not limited to closure/post closure costs associated with a
870 change in law related to tonnage received prior to the change in law, except to the extent
871 such claims arise out of the negligence or willful misconduct of DISTRICT, in which case
872 CONTRACTOR'S indemnification shall be reduced in proportion to the DISTRICT'S
873 degree of comparative fault. CONTRACTOR shall indemnify and hold harmless the
874 Indemnitees from and against all costs of investigation, litigation, negotiation or
875 alternative dispute resolution; counsel fees; expenses incurred in obtaining expert
876 testimony and the attendance of witnesses; and all other expenses and liabilities
877 incurred in connection with the defense of any action or proceedings brought thereon,
878 and from and against any orders, judgments, or decrees which may be entered therein.
879 The DISTRICT shall provide CONTRACTOR with prompt notice of any claims, and
880 CONTRACTOR may assume the defense of any claim, with counsel reasonably
881 acceptable to the Indemnitees, and CONTRACTOR shall have authority to settle any
882 claim, with the DISTRICT'S consent which may not be unreasonably withheld and
883 provided such settlement fully releases and extinguishes Indemnitees' alleged liability
884 under the claim. Where a conflict of interest exists between the Indemnitees and
885 CONTRACTOR with respect to a claim, CONTRACTOR shall provide the Indemnitees
886 with independent legal counsel of the Indemnitees' choice, at CONTRACTOR'S
887 expense. Without limiting the generality of the foregoing, CONTRACTOR'S
888 indemnification shall include: personal injury, death or damage to property (including
889 contamination); product liability, violation of federal, state, or local law; or any other claim
890 whatsoever connected with the activities of CONTRACTOR, its subcontractors, agents,
891 and/or employees under this Agreement or on account of the performance of character
892 of the work performed hereunder, including unforeseen difficulties, accidents,
893 occurrence, or omissions, including but not limited to, any failure to exclude Hazardous
894 Waste from Collection or processing; any claim that CONTRACTOR, or its agents,
895 subcontractors, directors, officers, employees or representatives, has breached an
896 express or implied warranty of merchantability or fitness for particular use or any other
897 warranty relating to any materials marketed pursuant to this Agreement; or any claim
898 that any of them has violated any license, copyright, or other limitation on
899 CONTRACTOR'S use of computer software in connection with CONTRACTOR'S
900 performance of services under this Agreement; Notwithstanding the foregoing,
901 CONTRACTOR shall not be required to indemnify the Indemnitees for: (i) claims
902 resulting entirely from the acts or omissions of independent (not affiliated with
903 Contractor) third party owners or operators of facilities approved by DISTRICT under this
904 Agreement, where such third party acts or omissions are beyond CONTRACTOR'S
905 control; (ii) third party claims based solely on CONTRACTOR'S delivery of the de
906 minimis amounts of materials excluded from the definition of Hazardous Waste under



907 this Agreement to a facility approved by the DISTRICT under this Agreement, and (iii)
908 any claim that the DISTRICT set or approved disposal rates or fees in violation of
909 Applicable Law. Approval of insurance coverage, or acceptance of work or services by
910 the DISTRICT under this Agreement does not relieve CONTRACTOR or its agents,
911 subcontractors, directors, officers, employees, or representatives of liability under this
912 Section.

913 6.02 Insurance. CONTRACTOR shall secure and maintain throughout the
914 course of the Agreement insurance against claims for injuries to persons or damages to
915 property which may arise from or in connection with the performance of the work
916 hereunder by the CONTRACTOR, its agents, representatives, employees or
917 subcontractors.

918 6.02.1 Comprehensive General Liability Insurance. CONTRACTOR, at its
919 own expense, shall maintain liability and property damage insurance for the period
920 covered by this Agreement in the amount of Five Million Dollars (\$5,000,000) per
921 occurrence combined single limit coverage. The scope of such coverage shall be at least
922 as broad as Insurance Services Office Commercial General Liability Coverage
923 (occurrence form CG0001). The DISTRICT may require increases in the amount of
924 coverage on an annual basis proportionate to inflation in the regional Consumer Price
925 Index referenced in Exhibit 2 hereof. Such coverage shall include, but not be limited to,
926 protection against claims arising from: bodily and personal injury, including death
927 resulting therefrom; damage to property resulting from activities contemplated under this
928 Agreement; product liability; and claims relating to completed operations. Any failure to
929 comply with reporting or other provisions of the policies including breaches of warranties,
930 shall not affect coverage provided to the Insured Parties. The policy shall stipulate that
931 this insurance is primary insurance and that no other insurance carried by the DISTRICT
932 will be called upon to contribute to a loss suffered by CONTRACTOR hereunder. The
933 policy shall stipulate that this insurance shall apply separately to each of the Insured
934 Parties against whom a claim is made, except with respect to the limits of the insurer's
935 liability. Such insurance shall be with insurers and under forms of policies reasonably
936 satisfactory in all respects to the DISTRICT and shall provide that written notice must be
937 given to the DISTRICT thirty (30) days prior to policy cancellation by certified mail, return
938 receipt requested. CONTRACTOR shall notify the DISTRICT within ten (10) days of its
939 knowledge of any material change in coverage.

940 6.02.2 Motor Vehicle Liability Insurance. CONTRACTOR, at its own
941 expense, shall maintain motor vehicle liability insurance for the period covered by this
942 Agreement in the amount of Five Million Dollars (\$5,000,000) per occurrence combined
943 single limit coverage for personal and bodily injury and property damage. The scope of
944 such coverage shall be at least as broad as Insurance Services Office form number CA
945 0001 Covering Automobile Liability, Code (any auto). The DISTRICT may require
946 increases in the amount of coverage on an annual basis proportionate to inflation in the

947 Consumer Price Index Series ID: cuirxa400sa0 Consumer Price Index, All Urban
948 Consumers, All Items – Bay Area. Such insurance shall be with insurers and under
949 forms of policies reasonably satisfactory in all respects to the DISTRICT and shall
950 provide that written notice must be given to the DISTRICT thirty (30) days prior to policy
951 cancellation by certified mail, return receipt requested. CONTRACTOR shall notify the
952 DISTRICT within ten (10) days of its knowledge or any material change in coverage.

953 6.02.3 Worker Compensation Insurance. CONTRACTOR at its own
954 expense, shall carry and maintain full Worker Compensation Insurance, as required by
955 the California Labor Code and Employer’s Liability insurance with limits not less than
956 Five Million Dollars (\$5,000,000) for each employee per accident or disease. The scope
957 of such coverage shall be at least as broad as the Worker’s Compensation insurance
958 required by the State of California and Employer’s liability insurance. Such insurance
959 shall be with insurers and under forms of policies reasonably satisfactory in all respects
960 to the DISTRICT, unless CONTRACTOR is self-insured and complies with the
961 requirements of Article 6.02.5. Such policies shall provide that written notice must be
962 given to the DISTRICT thirty (30) days prior to cancellation by certified mail, return
963 receipt requested. CONTRACTOR shall notify the DISTRICT within ten (10) days of its
964 knowledge of any actual or impending material change in coverage under insurance
965 policies or self-insurance programs.

966 6.02.4 Environmental Impairment Liability. CONTRACTOR, at its own
967 expense, shall carry and maintain environmental impairment liability insurance for the
968 term, including any extensions thereto, in the amount of Ten Million Dollars
969 (\$10,000,000) per loss and in annual aggregate, covering liability arising from the
970 release of waste materials and/or irritants, contaminants or pollutants. Such coverage
971 shall, if commercially available, without involvement of the DISTRICT, automatically
972 broaden in its form of coverage to include legislative changes in the definition of waste
973 materials and/or irritants, contaminants or pollutants. The policy shall stipulate this
974 insurance is primary insurance and no other insurance carried by the DISTRICT will be
975 called upon to contribute to a loss suffered by CONTRACTOR hereunder and waive
976 subrogation against the DISTRICT and other additional insureds.

977 6.02.5 Other Insurance Provisions. The liability policies are to contain, or
978 be endorsed to contain, the following provisions:

979 6.02.5.1 The DISTRICT, its officers, officials, employees,
980 agents and volunteers are to be covered as respects: liability arising out of activities
981 performed by or on behalf of the CONTRACTOR, products and completed operations of
982 the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or
983 vehicles owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall
984 contain no special limitations on the scope of protection afforded to the DISTRICT, its
985 officers, officials, employee’s agents (including attorneys and consultants) or volunteers.



986 6.02.5.2 For any claims related to this Agreement, the
987 CONTRACTOR'S insurance coverage shall be primary insurance as respects the
988 DISTRICT, its officers, employees, agents and volunteers. Any insurance or self-
989 insurance maintained by the DISTRICT, its officers, officials, employees, agents, or
990 volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute
991 with it.

992 6.02.5.3 Any failure to comply with reporting or other
993 provisions of the policies including breaches of warranties shall not affect coverage
994 provided to the DISTRICT, its officers, officials, employees, agents, or volunteers.

995 6.02.5.4 The CONTRACTOR'S insurance shall apply
996 separately to each insured against whom claim is made or suit is brought, except with
997 respect to the limits of the insurer's liability. The CONTRACTOR shall monitor its
998 insurance contracts and coverage at all times to provide the minimum coverage
999 specified by this Article.

1000 6.02.5.5 Each insurance policy required by this Article shall
1001 be occurrence based (except as provided in Article 6.02.5.10), shall be endorsed to state
1002 coverage, and shall not be suspended, voided, canceled by either party, reduced in
1003 coverage or in limits except after thirty (30) days' prior written notice by certified mail,
1004 return receipt requested, has been given to the DISTRICT.

1005 6.02.5.6 The DISTRICT, its officers, agents, and employees
1006 shall be named as additional insured on all policies. In the event of cancellation,
1007 suspension, or reduction of any coverage, thirty (30) days prior written notice thereof
1008 shall be given to the DISTRICT. Notice shall be sent by certified mail to:

1009 General Manager
1010 Castro Valley Sanitary District
1011 21040 Marshall Street
1012 Castro Valley, CA 94546

1013 6.02.5.7 CONTRACTOR shall furnish the DISTRICT with
1014 original certificates affecting coverage required by this clause. The certificates are to be
1015 signed by a person authorized by that insurer to bind coverage on its behalf. All
1016 endorsements are to be received and approved by the DISTRICT before work
1017 commences. . The insurance information required by this provision shall be provided to
1018 the DISTRICT by April 15, 2009.

1019 6.02.5.8 Insurance is to be placed with insurers with a
1020 current A.M. Best's rating of no less than A:VII or a rating which is acceptable to the
1021 DISTRICT.

1022 6.02.5.9 The CONTRACTOR and insurer agree to waive all
1023 rights of subrogation against the DISTRICT for losses arising from work performed by
1024 CONTRACTOR for DISTRICT. CONTRACTOR shall deliver the insurer's consent to
1025 such waiver within 30 days of the effective date of this Agreement.

1026 6.02.5.10 The Comprehensive General Liability Insurance
1027 and Automobile Liability insurance shall be written on an occurrence basis and kept in
1028 force during the entire term of this Agreement; Environmental Impairment Liability is
1029 written on a claims-made basis and shall be maintained through continuous renewals so
1030 as to provide the same levels of coverage after the expiration of this Agreement as might
1031 be necessary to protect DISTRICT from any and all liability during all applicable statutes
1032 of limitation which might apply to claims of third parties arising out of the activities of
1033 CONTRACTOR during the term of this Agreement. The deductibles or self-insured
1034 retention with respect to any Environmental Impairment Liability Insurance, including any
1035 renewals as set forth herein, shall not exceed \$5 million.

1036 6.02.5.11 CONTRACTOR shall comply with all requirements
1037 of the insurers issuing policies. The carrying of insurance shall not relieve
1038 CONTRACTOR from any obligation under this Agreement. If any claim exceeding the
1039 amount of any deductibles or self-insured reserves is made by any third person against
1040 CONTRACTOR or any subcontractor on account of any occurrence related to this
1041 Agreement, CONTRACTOR shall promptly report the facts in writing to the insurance
1042 carrier and to DISTRICT.

1043 6.03 Subcontractors. CONTRACTOR shall include subcontractors as insureds
1044 under its policies or shall furnish separate certificates and endorsements for each
1045 subcontractor. Coverage for subcontractors shall be subject to all requirements stated
1046 herein.

1047 6.04 Non-renewal or Cancellation. Upon notification of receipt by the
1048 DISTRICT of a notice of cancellation, material change in coverage, or expiration of
1049 policy(ies), CONTRACTOR shall file with the DISTRICT a certified copy of a new or
1050 renewal policy(ies) and certificates for such policy(ies), satisfactory to the DISTRICT.

1051 6.05 Failure to Comply. If at any time during the term of the Agreement,
1052 CONTRACTOR fails to comply with the provisions of Section 6.02, the DISTRICT may,
1053 in addition to any other remedy available to DISTRICT, take out and maintain, at
1054 CONTRACTOR'S expense, such insurance as the DISTRICT may deem proper and
1055 charge the cost thereof to the CONTRACTOR.

1056 6.06 Deductibles and Self-Insured Retentions. Except as set forth in Section
1057 6.02.4.10 above, any deductibles or self-insured retentions shall be for the account of
1058 the CONTRACTOR and shall be the sole responsibility of the CONTRACTOR.

1059 6.07 Performance Bond. The CONTRACTOR shall furnish a Performance
1060 Bond to ensure performance of this Agreement and each and every condition of this



1061 Agreement in a form acceptable to the DISTRICT no more than thirty (30) days after
1062 execution of this Agreement. The Performance Bond shall be equal to Five Million
1063 Dollars (\$5,000,000) to remain in force for the duration of this Agreement. The premium
1064 for the bond described above shall be paid by the CONTRACTOR. The Surety or
1065 Sureties shall be a company or companies satisfactory to the DISTRICT. Any surety
1066 shall be duly authorized to conduct business in the State of California.

1067 6.08 Corporate Guarantee. In addition to the performance assurance required
1068 in Section 6.07, CONTRACTOR is required to obtain Guaranty, and Guarantor has
1069 agreed to guarantee CONTRACTOR'S performance of this agreement, including
1070 CONTRACTOR'S indemnification obligations hereunder pursuant to a Guaranty
1071 Agreement in substantially the form attached as Exhibit 3. The Guaranty Agreement is
1072 being provided concurrently with CONTRACTOR'S execution of this Agreement.

1073 **ARTICLE 7. Force Majeure**

1074 7.01 CONTRACTOR shall not be in default of its obligations under this
1075 Agreement in the event, and for so long as, it is impossible or extremely impracticable
1076 for it to perform its obligations due to an "act of Force Majeure" which is not the fault of,
1077 and beyond the reasonable control of, the party claiming excuse from performance. Any
1078 labor unrest, including but not limited to, strike, work stoppage or slowdown, sick-out,
1079 picketing, or other concerted job action conducted by CONTRACTOR'S employees or
1080 directed at CONTRACTOR is not an excuse from performance under this provision and
1081 CONTRACTOR shall be obligated to continue to accept and Dispose of Collected
1082 Material, notwithstanding the occurrence of any or all of such events. To claim excuse
1083 under this Section CONTRACTOR must: (i) have taken reasonable precautions, if
1084 possible, to avoid being affected by the cause, including, in the case of impossibility of
1085 performance based on inability to obtain a governmental permit, compliance with the
1086 requirement of Section 4.02, and (ii) notify the DISTRICT in writing within five (5) Work
1087 Days after the occurrence of the event specifying the nature of the event, the expected
1088 length of time that the CONTRACTOR expects to be prevented from performing, and the
1089 steps which the CONTRACTOR intends to take to restore its ability to perform.

1090 7.02 The interruption or discontinuance of CONTRACTOR'S ability to accept
1091 and Dispose of Collected Material caused by one or more of the events described in this
1092 Section shall not constitute a default by CONTRACTOR under this Agreement.
1093 Notwithstanding the foregoing, however, if CONTRACTOR is excused from performing
1094 its obligations hereunder for any of the causes listed in this Section for a period of thirty
1095 (30) calendar days or more, upon expiration of the thirty (30) calendar days, the
1096 DISTRICT shall have the right, in its sole discretion, to terminate this Agreement by
1097 giving ten (10) calendar days' notice except that such termination may be effective two
1098 (2) Work Days after receiving notice by certified mail if such event(s) result in the

1099 CONTRACTOR'S failure to accept and Dispose, transfer and process Collected
1100 Material.

1101 **ARTICLE 8. Default of Agreement**

1102 8.01 Termination. The DISTRICT may cancel this Agreement, except as
1103 otherwise provided below in this Section, by giving the CONTRACTOR thirty (30)
1104 calendar days advance written notice, to be served as provided in Article 18, upon the
1105 happening of any one of the following events:

1106 8.01.1 The CONTRACTOR shall take the benefit of any present or future
1107 insolvency statute, or shall make a general assignment for the benefit of creditors, or file
1108 a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement
1109 for its reorganization or the readjustment of its indebtedness under the Federal
1110 bankruptcy laws or under any other law or statute of the United States or any state
1111 thereof, or consent to the appointment of a receiver, trustee or liquidator of all or
1112 substantially all of its property; or

1113 8.01.2 By order or decree of a Court, the CONTRACTOR shall be
1114 adjudged bankrupt or an order shall be made approving a petition filed by any of its
1115 creditors or by any of the stockholders of the CONTRACTOR, seeking its reorganization
1116 or the readjustment of its indebtedness under the Federal bankruptcy laws or under any
1117 law or statute of the United States or of any state thereof, provided that if any such
1118 judgment or order is stayed or vacated within sixty (60) calendar days after the entry
1119 thereof, any notice of default shall be and become null, void and of no effect; unless
1120 such stayed judgment or order is reinstated in which case, said default shall be deemed
1121 immediate; or

1122 8.01.2.1 By, or pursuant to, or under the authority of any
1123 legislative act, resolution or rule or any order or decree of any Court or governmental
1124 board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take
1125 possession or control of all or substantially all of the property of the CONTRACTOR, and
1126 such possession or control shall continue in effect for a period of sixty (60) calendar
1127 days; or

1128 8.01.3 The CONTRACTOR has defaulted, by failing or refusing to pay in
1129 a timely manner the administrative charges or other monies due the DISTRICT and said
1130 default is not cured within thirty (30) calendar days of receipt of written notice by
1131 DISTRICT to do so; or

1132 8.01.4 The CONTRACTOR has defaulted by allowing any final judgment
1133 for the payment of money to stand against it unsatisfied and said default is not cured
1134 within thirty (30) calendar days of receipt of written notice by DISTRICT to do so; or

1135 8.01.5 In the event that the monies due the DISTRICT under Section
1136 8.01.3 above or an unsatisfied final judgment under Section 8.01.4 above is the subject



1137 of a judicial proceeding, the CONTRACTOR shall not be in default if the sum of money is
1138 bonded. All bonds shall be in the form acceptable to the DISTRICT Attorney; or

1139 8.01.6 The CONTRACTOR has defaulted, by failing or refusing to
1140 perform or observe the terms, conditions or covenants in this Agreement or any of the
1141 rules and regulations promulgated by the DISTRICT pursuant thereto or has wrongfully
1142 failed or refused to comply with the instructions of the DISTRICT Representative relative
1143 thereto and said default is not cured within thirty (30) calendar days of receipt of written
1144 notice by the DISTRICT to do so, or if by reason of the nature of such default, the same
1145 cannot be remedied within thirty (30) calendar days following receipt by the
1146 CONTRACTOR of written demand from the DISTRICT to do so, the CONTRACTOR fails
1147 to commence the remedy of such default within said thirty (30) calendar days following
1148 such written notice or having so commenced shall fail thereafter to continue with
1149 diligence the curing thereof (with the CONTRACTOR having the burden of proof to
1150 demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b)
1151 that it is proceeding with diligence to cure said default, and such default will be cured
1152 within a reasonable period of time; or

1153 8.01.7 CONTRACTOR fails to perform its obligations under this
1154 Agreement, and: (i) if the failure or refusal of CONTRACTOR to perform Disposal
1155 services required by this Agreement has created an imminent threat to public health and
1156 is not cured within (2) Work Days after receiving written notice from the DISTRICT
1157 specifying the breach; or (ii) in the case of any other breach of the Agreement, the
1158 breach continues for more than thirty (30) calendar days after receiving written notice
1159 from the DISTRICT for the correction thereof, provided that where such breach cannot
1160 be cured within such thirty (30) calendar day period, CONTRACTOR shall not be in
1161 default of this Agreement if CONTRACTOR shall have commenced such action required
1162 to cure the particular breach within ten (10) calendar days after such notice, and it
1163 continues such performance diligently until completed. However, if CONTRACTOR has
1164 complied with its obligations to arrange and pay for Disposal of MSW at an alternative
1165 Disposal facility as set forth in Section 4.15, it shall not be in default of this Agreement.

1166 8.02 Effective Date. In the event of the aforesaid events specified above, and
1167 except as otherwise provided in said subsections, termination shall be effective upon the
1168 date specified in the DISTRICT'S written notice to the CONTRACTOR and upon said
1169 date this Agreement shall be deemed immediately terminated and upon such termination
1170 all liability of the DISTRICT under this Agreement to the CONTRACTOR shall cease,
1171 and the DISTRICT shall have the right to call the performance bond and shall be free to
1172 negotiate with other contractors for the operation of the herein specified services.

1173 8.03 Right to Perform. If this Agreement is suspended and/or terminated due
1174 to CONTRACTOR default, DISTRICT shall have the right to perform and complete, by
1175 contract or otherwise, the work herein or such part thereof as it may deem necessary

1176 and incur all expenses necessary for completion of the work, including, but not limited to,
1177 the costs of transportation to, and Disposal of Solid Waste at, and alternative disposal
1178 facility, but not including any right to operate the Disposal Facility. If such expenses
1179 (including, but not limited to, the costs of transportation to an alternative facility and the
1180 actual fees charged for Disposal) exceed the amounts which would have been paid to
1181 CONTRACTOR under this Agreement, if it had been fully performed by CONTRACTOR,
1182 then CONTRACTOR shall pay for the remaining term of this Agreement, the amount of
1183 such excess costs to the DISTRICT within thirty (30) calendar days of CONTRACTOR'S
1184 receipt of a claim for reimbursement, and evidence of costs incurred, from the
1185 DISTRICT.

1186 8.04 Immediate Termination. DISTRICT may terminate this Agreement
1187 immediately upon written notice to CONTRACTOR in the event CONTRACTOR fails to
1188 provide and maintain the performance bond as required by this Agreement,
1189 CONTRACTOR fails to obtain or maintain insurance policies endorsements as required
1190 by this Agreement, CONTRACTOR fails to provide the proof of insurance as required by
1191 this Agreement, or CONTRACTOR offers or gives any gift prohibited by DISTRICT
1192 Municipal Code.

1193 8.05 Termination Cumulative. DISTRICT'S right to terminate this Agreement is
1194 cumulative to any other rights and remedies provided by law or by this Agreement.

1195 **ARTICLE 9. Legal Representation**

1196 9.01 Acknowledgement. It is acknowledged that each party was, or had the
1197 opportunity to be, represented by counsel in the preparation of and contributed equally
1198 to the terms and conditions of this Agreement and, accordingly, the rule that a
1199 Agreement shall be interpreted strictly against the party preparing the same shall not
1200 apply herein due to the joint contributions of both parties.

1201 **ARTICLE 10. Financial Interest**

1202 10.01 Representation. CONTRACTOR warrants and represents that no elected
1203 official, officer, agent or employee of the DISTRICT has a financial interest, directly or
1204 indirectly, in this Agreement the compensation to be paid under it and, further, that no
1205 DISTRICT employee who acts in the DISTRICT as a "purchasing agent" as defined in
1206 the appropriate Section of California Statutes, nor any elected or appointed officer of the
1207 DISTRICT, nor any spouse or child of such purchasing agent, employee or elected or
1208 appointed officer, is a partner, officer, director or proprietor of the CONTRACTOR and,
1209 further, that no such DISTRICT employee, purchasing agent, DISTRICT elected or
1210 appointed officer, or the spouse or child of any of them, alone or in combination, has a
1211 material interest in the CONTRACTOR. Material interest means direct or indirect
1212 ownership of more than five percent (5%) of the total assets or capital stock of the
1213 CONTRACTOR.



1214

ARTICLE 11. Independent Contractor

1215
1216
1217
1218
1219
1220
1221
1222
1223
1224

11.01 In the performance of services pursuant to this Agreement, CONTRACTOR shall be an independent contractor and not an officer, agent, servant or employee of DISTRICT. CONTRACTOR shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrued to DISTRICT employees and CONTRACTOR expressly waives any claim it may have or acquire to such benefits.

1225

ARTICLE 12. Laws to Govern

1226
1227
1228

12.01 The law of the State of California shall govern the rights, obligations, duties and liabilities of DISTRICT and CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

1229

ARTICLE 13. Consent to Jurisdiction

1230
1231
1232
1233
1234
1235

13.01 The parties agreed that any litigation between DISTRICT and CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the Municipal or Superior Courts of Alameda County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

1236

ARTICLE 14. Assignment

1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247

14.01 Assignment.

14.01.1 DISTRICT Right to Terminate in Event of Assignment.

CONTRACTOR acknowledges that this Agreement involves rendering a vital service to DISTRICT'S residents and businesses, and that DISTRICT has selected CONTRACTOR to perform the services specified herein based on (1) CONTRACTOR'S experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best management practices for MSW, Recyclable Materials, Compostables and Construction and Demolition Debris, and (2) CONTRACTOR'S financial resources to maintain the required equipment and to support its indemnity obligations to DISTRICT under this Agreement. DISTRICT has relied on each of these

1248 factors, among others, in choosing CONTRACTOR to perform the services to be
1249 rendered by CONTRACTOR under this Agreement. Any Assignment by CONTRACTOR,
1250 either directly or indirectly, in whole or in part, of its rights or any interest it may have in
1251 this Agreement including any transfer of its stock or assets to a third party shall give the
1252 DISTRICT, in its sole discretion, the basis for terminating this Agreement in whole or in
1253 part upon the giving of a thirty (30) day written notice to CONTRACTOR. In the event
1254 such notice of termination is given as authorized by this Article, the CONTRACTOR shall
1255 continue, for up to twelve (12) months following notice of termination, to provide any or
1256 all of the services it is obligated to perform under this Agreement if requested by the
1257 DISTRICT in writing. The DISTRICT'S right to terminate the Agreement in whole or in
1258 part shall expire unless exercised within sixty (60) days of receiving written notice from
1259 CONTRACTOR as provided herein of an Assignment by CONTRACTOR. "Assignment"
1260 or "Assign" as used in this Agreement shall include, but not be limited to, (i) a sale,
1261 exchange or other transfer of substantially all of CONTRACTOR'S assets dedicated to
1262 any or all of the services to be provided under this Agreement to a third party (ii) a sale,
1263 exchange or other transfer of outstanding common stock of CONTRACTOR to a third
1264 party provided said sale, exchange or transfer results in a change of control of
1265 CONTRACTOR or any sale, exchange or transfer of the common stock of
1266 CONTRACTOR which results in the effective transfer of control of substantially all of the
1267 CONTRACTOR'S assets dedicated to any or all of the services to be provided under this
1268 Agreement to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-
1269 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
1270 arrangement, liquidation or other transaction to which results in a change of ownership
1271 or control of CONTRACTOR; (iv) any assignment by operation of law, including
1272 insolvency or bankruptcy, making assignment for the benefit of creditors, writ of
1273 attachment for an execution being levied against this Agreement, appointment of a
1274 receiver taking possession of CONTRACTOR'S property, or transfer occurring in the
1275 event of a probate proceeding; and (v) any combination of the foregoing (whether or not
1276 in related or contemporaneous transactions) which has the effect of any such transfer or
1277 change of ownership, or change of control of CONTRACTOR, or substantially all of the
1278 assets used for providing any of the services under this Agreement to a third party.

1279 14.01.2 Procedure for DISTRICT Evaluation of Proposed
1280 Assignment. If CONTRACTOR requests DISTRICT'S consideration of and consent to an
1281 Assignment, CONTRACTOR shall meet the following preliminary requirements:

1282 14.01.2.1 CONTRACTOR shall pay DISTRICT its reasonable
1283 expenses for attorney's fees and investigation costs necessary to investigate the
1284 suitability of any proposed Assignee, and to review and finalize any documentation
1285 required as a condition for approving any such Assignment;

1286 14.01.2.2 CONTRACTOR shall furnish DISTRICT with
1287 audited financial statements of the proposed Assignee's operations for the immediately
1288 preceding three (3) operating years;



1289 14.01.2.3 CONTRACTOR shall furnish DISTRICT with
1290 satisfactory proof that: (1) the proposed Assignee has at least ten (10) years of solid
1291 waste management experience on a scale equal to or exceeding the scale of operations
1292 conducted by CONTRACTOR under this Agreement; (2) in the last five (5) years, the
1293 proposed Assignee has not suffered any significant citations or other censure from any
1294 federal, state or local agency having jurisdiction over its solid waste operations due to
1295 any significant failure to comply with state, federal or local environmental laws and the
1296 Assignee has provided DISTRICT with a complete list of such citations and censures; (3)
1297 the proposed Assignee has at all times conducted its operations in an environmentally
1298 safe and conscientious fashion; (4) the proposed Assignee conducts its solid waste
1299 practices in accordance with sound management practices in full compliance with all
1300 federal, state and local laws regulating the collection and disposal of solid waste
1301 including hazardous substances; and, (5) of any other information required by DISTRICT
1302 to ensure the proposed Assignee can fulfill the terms of this Agreement in a timely, safe
1303 and effective manner.

1304 14.01.2.4 CONTRACTOR Default. Under no circumstances
1305 shall DISTRICT be obliged to consider any proposed Assignment if CONTRACTOR is in
1306 default at any time during the period of consideration.

1307 14.01.3 DISTRICT Discretion to Accept or Reject Assignment. The
1308 DISTRICT, in its sole discretion, may accept, reject or conditionally accept the proposed
1309 Assignment. If DISTRICT accepts a partial Assignment, the corporate guaranty provided
1310 in Section 1.20 and the Performance Bond provided in Section 6.07 shall remain in
1311 effect unless the DISTRICT in its sole discretion consents to adequate substitutes by the
1312 Assignee or to a novation, and absent a novation CONTRACTOR shall not be released
1313 from liability under this Agreement.

1314 14.01.4 Subcontractor. The use of a subcontractor to perform
1315 services under this Agreement shall not constitute delegation of CONTRACTOR'S duties
1316 provided that CONTRACTOR has received prior written authorization from the Contract
1317 Administrator to subcontract such services and the Contract Administrator has approved
1318 a subcontractor who will perform such services. CONTRACTOR shall be responsible for
1319 directing the work of CONTRACTOR'S subcontractors and any compensation due or
1320 payable to CONTRACTOR'S subcontractor shall be the sole responsibility of
1321 CONTRACTOR. The Contract Administrator shall have the right to require the removal
1322 of any approved subcontractor for reasonable cause. No subcontractors have been
1323 approved by the DISTRICT.

1324

ARTICLE 15. Compliance with Laws

1325
1326
1327

15.01 In the performance of this Agreement, CONTRACTOR shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation those of the DISTRICT.

1328
1329
1330
1331
1332

15.02 DISTRICT shall provide written notice to CONTRACTOR of any planned amendment to the DISTRICT Ordinances that would substantially affect the performance of CONTRACTOR'S services pursuant to this Agreement. Such notice shall be provided at least thirty (30) calendar days prior to the Castro Valley Sanitary District's Board approval of such an amendment.

1333

ARTICLE 16. Waiver

1334
1335
1336
1337
1338
1339
1340

16.01 Waiver by DISTRICT or CONTRACTOR of any breach for violation of any term covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by DISTRICT of any fee, tax, or any other monies which may become due from CONTRACTOR to DISTRICT shall not be deemed to be a waiver by DISTRICT of any breach for violation of any term, covenant or condition of this Agreement.

1341

ARTICLE 17. Point of Contact

1342
1343

17.01 The day-to-day dealings between the CONTRACTOR and the DISTRICT shall be between the CONTRACTOR and the DISTRICT Representative.

1344

ARTICLE 18. Notices

1345
1346
1347
1348
1349

18.01 Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

1350
1351
1352
1353
1354

As to the DISTRICT:
General Manager
Castro Valley Sanitary District
21040 Marshall Street
Castro Valley, CA 94546



1355 As to the CONTRACTOR:
1356 District Manager
1357 Waste Management of Alameda County Inc.
1358 172 98th Street
1359 Oakland, CA 54603
1360 Telephone: (510) 613-2833
1361 Facsimile: (510) 663-0106

1362 and
1363 Vice President and Group General Council
1364 Waste Management
1365 7025 N. Scottsdale Road, #200
1366 Scottsdale, AZ 85253
1367 Telephone: (480) 624-8473
1368 Facsimile: (832) 668-3141

1369 18.02 Notices shall be effective when received at the address as specified
1370 above. Changes in the respective address to which such notice is to be directed may be
1371 made by written notice. Facsimile transmission is acceptable notice, effective when
1372 received, however, facsimile transmissions received (i.e. printed) after 4:30 p.m. or on
1373 weekends or holidays, will be deemed received on the next business day. The original
1374 of items that are transmitted by facsimile equipment must also be mailed as required
1375 herein.

1376 **ARTICLE 19. Nondiscrimination**

1377 19.01 Nondiscrimination. CONTRACTOR hereby agrees to abide by all local,
1378 state and federal laws and regulations pertaining to discrimination in employment
1379 including that no person shall, on the grounds of race, creed, color, disability, sex, sexual
1380 orientation, national origin, age religion, political affiliations or any other non-merit based
1381 factors, be subject to discrimination under this Agreement. Failure to abide by this
1382 provision shall be a breach of this Agreement subject to the provisions of Article 8.

1383 19.01.1 Treatment of Customers. In performing this Agreement,
1384 CONTRACTOR shall be attentive to Customer needs, and shall not discriminate against
1385 Customers or potential Customers because of age, ancestry, color, mental or physical
1386 disability, marital status, national origin, race, religion, sex, sexual preference, HIV
1387 status, AIDS or AIDS-related condition or medical condition.

1388 **ARTICLE 20. CONTRACTOR'S Records**

1389 20.01 CONTRACTOR shall maintain all documents and records which
1390 demonstrate performance under this Agreement for a minimum period of five (5) years,
1391 or for any longer period required by law, from the date of termination or completion of
1392 this Agreement .

1393 20.02 Any records or documents required to be maintained pursuant to this
1394 Agreement shall be made available for inspection, copy or, audit at any time during
1395 regular business hours, upon written request by the DISTRICT Representative, the
1396 DISTRICT Attorney, DISTRICT Auditor, General Manager, or a designated
1397 representative of any of these officers. Copies of such documents shall be provided to
1398 DISTRICT for inspection at the DISTRICT offices when it is practical to do so.
1399 Otherwise, unless an alternative site is mutually agreed upon, the records shall be
1400 available at CONTRACTOR'S address indicated for receipt of notices in this Agreement.

1401 20.03 Where DISTRICT has reason to believe that such records or documents
1402 may be lost or discarded due to the dissolution, disbandment or termination of
1403 CONTRACTOR'S business, DISTRICT may, by written request or demand of any of the
1404 above named officers, require that custody of the records be given to DISTRICT and that
1405 the records and documents be maintained in DISTRICT offices. Access to such records
1406 and documents shall be granted to any party authorized by CONTRACTOR,
1407 CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

1408 **ARTICLE 21. Quality of Performance of Contractor**

1409 21.01 Determination of Damages. The DISTRICT and CONTRACTOR agree,
1410 that as of the time of the execution of this Agreement, it is impractical, if not impossible,
1411 to reasonably ascertain the extent of damages which shall be incurred by DISTRICT as
1412 a result of a breach by CONTRACTOR of its obligations under this Agreement. The
1413 factors relating to the impracticability of ascertaining damages include, but are not
1414 limited to, the fact that: (i) substantial damage results to the Collection Contractor or
1415 DISTRICT who are denied services or denied quality or reliable service; (ii) such
1416 breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the
1417 Agreement to the Collection Contractor or DISTRICT for whose benefit this Agreement
1418 exists, in subjective ways and in varying degrees of intensity which are incapable of
1419 measurement in precise monetary terms; (iii) that exclusive services might be available
1420 at substantially lower costs than alternative services and the monetary loss resulting
1421 from denial of services or denial of quality or reliable services is impossible to calculate
1422 in precise monetary terms; and (iv) the termination of this Agreement for such breaches,
1423 and other remedies are, at best, a means of future correction and not remedies which
1424 make the Collection Contractor or DISTRICT whole for past breaches.

1425 21.02 Liquidated Damages. The parties further acknowledge that consistent
1426 and reliable Disposal service is of utmost importance to DISTRICT and that DISTRICT
1427 has considered and relied on CONTRACTOR'S representations as to its quality of



1428 service commitment in awarding the Agreement to it. The parties further recognize that
1429 some quantified standards of performance are necessary and appropriate to ensure
1430 consistent and reliable service and performance. The parties further recognize that if
1431 CONTRACTOR fails to achieve the performance standards, or fails to submit required
1432 documents in a timely manner, DISTRICT, Collection Contractor and DISTRICT'S
1433 residents and businesses will suffer damages and that it is and will be impractical and
1434 extremely difficult to ascertain and determine the exact amount of damages. Therefore,
1435 without prejudice to DISTRICT'S right to treat such non-performance as an event of
1436 default under Article 8, the parties agree that the liquidated damages amount defined in
1437 this Section represent reasonable estimates of the amount of such damages considering
1438 all of the circumstances existing on the effective date of this Agreement, including the
1439 relationship of the sums to the range of harm to DISTRICT that reasonably could be
1440 anticipated and the anticipation that proof of actual damages would be costly or
1441 impractical. In placing their initials at the places provided, each party specifically
1442 confirms the accuracy of the statements made above and the fact that each party has
1443 had ample opportunity to consult with legal council and obtain an explanation of the
1444 liquidated damage provisions at the time that the Agreement was made.

1445 DISTRICT Initial Here _____ CONTRACTOR Initial Here _____

1446 21.02.1 CONTRACTOR agrees to pay (as liquidated damages and
1447 not as penalty) the following amounts:

Liquidated Damages		
Item		Amount
a.	Failure to turnaround Collection Contractor vehicles at the Disposal Facility as set forth in Section 4.09.	\$100 per occurrence.
b.	Failure to submit complete and accurate reports to the DISTRICT.	\$100 per calendar day in excess of 20 days.
c.	Failure to submit required reports to the DISTRICT in a timely manner.	\$300 per calendar day after July 15th.
d.	Failure to maintain minimum operation hours or days. (Section 4.04)	\$100 per work day.
e.	Failure to provide adequate primary and alternate capacity to accept and process MSW, Recyclable Materials, or Compostable Materials as appropriate.	\$1,000.00 per day.
f.	Failure to correct submittal of inaccurate data within three (3) days (or such other time period as may be agreed to in writing between DISTRICT and CONTRACTOR) of notification by DISTRICT.	\$500.00 per incident per day.
g.	Failure to cure non-compliance with the provisions of this Agreement in the manner and time set forth in Section 8.01.6.	\$150.00 per incident per day.

1448

1449 21.03 DISTRICT may determine the occurrence of events giving rise to
 1450 liquidated damages through the observation of its own employees or representative or
 1451 investigation of complaints by Collection Contractor.

1452 21.04 Notification. Prior to assessing liquidated damages, DISTRICT shall give
 1453 CONTRACTOR notice of its intention to do so. The notice will include a brief description
 1454 of the incident(s) and non-performance. DISTRICT may present evidence of non-
 1455 performance in writing and through testimony of its employees and others relevant to the
 1456 incident(s) and non-performance. DISTRICT will provide CONTRACTOR with a written
 1457 explanation of his or her determination on each incident(s) and non-performance prior to
 1458 authorizing the assessment of liquidated damages. The decision of DISTRICT shall be
 1459 final and no further administrative remedies shall be available.

1460 21.05 Payment. CONTRACTOR shall pay any liquidated damages assessed
 1461 by DISTRICT within ten (10) Work Days after they are assessed. If they are not paid



1462 within the ten (10) Work Day period, DISTRICT may proceed against the performance
1463 bond required by this Agreement or order the termination of the franchise granted by this
1464 Agreement, or both.

1465 **ARTICLE 22. Severability**

1466 22.01 If any provision of this Agreement or the application of it to any person or
1467 situation shall to any extent be held invalid or unenforceable, the remainder of this
1468 Agreement and the application of such provisions to persons or situations other than
1469 those as to which it shall have been held invalid or unenforceable, shall not be affected,
1470 shall continue in full force and effect, and shall be enforced to the fullest extent permitted
1471 by law.

1472 **ARTICLE 23. Right to Require Performance**

1473 23.01 The failure of the DISTRICT at any time to require performance by the
1474 CONTRACTOR of any provision hereof shall in no way affect the right of the DISTRICT
1475 thereafter to enforce same. Nor shall waiver by the DISTRICT of any breach of any
1476 provision hereof be taken or held to be a waiver of any succeeding breach of such
1477 provision or as a waiver of any provision itself.

1478 **ARTICLE 24. All Prior Agreements Superseded**

1479 24.01 This document incorporates and includes all prior negotiations,
1480 correspondence, conversations, agreements and understandings applicable to the
1481 matters contained in this Agreement and the parties agree that there are no
1482 commitments, agreements or understandings concerning the subject matter of this
1483 Agreement that are not contained in this document or in the Collection Service
1484 Agreement which is being executed simultaneously with this document. Accordingly, it
1485 is agreed that no deviation from the terms of this Agreement shall be predicated upon
1486 any prior representations or agreements, whether oral or written.

1487 **ARTICLE 25. Headings**

1488 25.01 Headings in this document are for convenience of reference only and are
1489 not to be considered in any interpretation of this Agreement.

1490 **ARTICLE 26. Exhibits**

1491 26.01 Each Exhibit referred to in this Agreement forms an essential part of this
1492 Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by
1493 this reference.

1494

ARTICLE 27. Prevailing Wage

1495 27.01 Pursuant to Section 1770, et seq., of the California Labor Code, the
1496 successful CONTRACTOR shall pay, and shall require all subcontractors to pay, not
1497 less than the prevailing rate of per diem wages as determined by the Director of
1498 California Department of Industrial Relations. To obtain information regarding the
1499 prevailing rate of per diem wages, the CONTRACTOR may contact the California
1500 Department of Industrial Relations. The DISTRICT does not have this information
1501 available.

1502 27.02 CONTRACTOR shall forfeit to the DISTRICT, as a penalty, **Fifty Dollars**
1503 **(\$50.00)** for each calendar day or portion thereof for each employee paid (either by the
1504 CONTRACTOR or any subcontractor retained by the CONTRACTOR) less than the
1505 prevailing rate set forth herein on the project, as provided for in this agreement, all in
1506 accordance with Section 1775 of the Labor Code.

1507 27.03 In the performance of this contract, not more than eight (8) hours shall
1508 constitute a day's work, and the CONTRACTOR shall not require more than eight (8)
1509 hours of labor in a day from any person employed by him hereunder, except as provided
1510 in the Labor Code or Collective Bargaining Agreement. CONTRACTOR shall conform to
1511 Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code and the
1512 CONTRACTOR shall forfeit to the DISTRICT as penalty the sum of **Twenty-Five**
1513 **Dollars (\$25.00)** for each employee employed in the execution of this Agreement by the
1514 CONTRACTOR or any subcontractor retained by the CONTRACTOR for each calendar
1515 day during which any employee is required or permitted to labor more than eight (8)
1516 hours in violation of said Article.

1517

ARTICLE 28. Effective Date

1518 28.01 This Agreement shall become effective at such time as it is properly
1519 executed by the DISTRICT and the CONTRACTOR and the CONTRACTOR shall begin
1520 Services, as covered herein, as of May 1, 2009.



IN WITNESS WHEREOF, the DISTRICT and the CONTRACTOR have executed this Agreement on the day and year first written above.

IN WITNESS WHEREOF, the DISTRICT and CONTRACTOR have duly authorized execution of this Agreement, and have executed the Agreement as of the dates set forth below.

CASTRO VALLEY SANITARY DISTRICT

*WASTE MANAGEMENT OF
ALAMEDA COUNTY, INC. a
California corporation*

By: _____.

By: _____.

Roland P. Williams, Jr., General Manager

Dean Kattler, Market Area General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Anthony B. Varni
Varni, Fraser, Hartwell & Rodgers

John Lynn Smith
ReedSmith,LLP

EXHIBITS



This page intentionally left blank.

Exhibit 1 Approved Per Ton Disposal Rate

Castro Valley Sanitary District
MSW DISPOSAL RATE PER TON

Effective Date	MSW Disposal Element (\$/ton)	MSW Disposal Government Fee Element	Total per Ton MSW Disposal Rate
July 1, 2007	\$54.81	\$17.67	\$72.48
July 1, 2008	\$54.81	\$17.91	\$72.72
May 1, 2009	\$54.81	To be inserted	
July 1, 2010			
July 1, 2011			
July 1, 2012			
July 1, 2013			
July 1, 2014			
July 1, 2015			
July 1, 2016			
July 1, 2017			
July 1, 2018			



Disposal Service Agreement

Agency	Total MSW Government Fee/Ton Effective July 1 st											
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
California Integrated Waste Management Board (AB1220) Fee	\$1.40	\$1.40										
Local Enforcement Agency (ACSWMD) Fee	\$0.22	\$0.22										
Business License (County) Fee	\$0.95	\$0.95										
"Measure D" Fee	\$7.43	\$7.67										
Alameda County Waste Management Authority Facilities Fee	\$1.50	\$1.50										
Alameda County Waste Management Authority Household Hazardous Waste Fee	\$2.15	\$2.15										
County Planning Department Fee	\$0.075	\$0.075										
County Open Space Fee	\$1.49	\$1.49										
Other Fee	\$0.00	\$0.00										
Davis Street Fees	\$2.45	\$2.45										

Agency	Total MSW Government Fee/Ton Effective July 1 st											
Total Government Fee Elements	\$17.67	\$17.91										



Exhibit 1

Castro Valley Sanitary District
ORGANIC DISPOSAL RATE PER TON

Effective Date	Residential Organic Disposal Element (\$/ton)	Commercial Organic Disposal Element (\$/ton)
July 1, 2007	\$54.49	\$87.19
July 1, 2008	\$54.49	\$87.19
May 1, 2009	\$54.49	\$87.19
July 1, 2010		
July 1, 2011		
July 1, 2012		
July 1, 2013		
July 1, 2014		
July 1, 2015		
July 1, 2016		
July 1, 2017		
July 1, 2018		

Castro Valley Sanitary District
Example of Rate Calculation for 32 Gallon Residential Service

Disposal Element	7/1/2007	7/1/2008	7/1/2009	7/1/2010	7/1/2011	7/1/2012
MSW Disposal	\$ 394	\$ 394	\$ 394	\$ 394	\$ 394	\$ 394
Proposed Gov't Fee	\$ 129	\$ 129	\$ 129	\$ 129	\$ 129	\$ 129
Adri Gov't Fee	\$ 202	\$ 202	\$ 202	\$ 202	\$ 202	\$ 202
Compost Disposal	\$ 1811	\$ 1811	\$ 1811	\$ 1811	\$ 1811	\$ 1811
Collection Element	\$ 2818	\$ 2818	\$ 2818	\$ 2818	\$ 2818	\$ 2818
Franchise Fee	\$ 2818	\$ 2818	\$ 2818	\$ 2818	\$ 2818	\$ 2818
Total	\$ 7248	\$ 7248	\$ 7248	\$ 7248	\$ 7248	\$ 7248
Gov't Fee	\$ 523	\$ 523	\$ 523	\$ 523	\$ 523	\$ 523
Gov't Fees	\$ 523	\$ 523	\$ 523	\$ 523	\$ 523	\$ 523
Change	\$ 0.00%	\$ 0.00%	\$ 0.00%	\$ 0.00%	\$ 0.00%	\$ 0.00%

New Gov't Fee of \$0.24 was effective 1/1/08

Disposal Element	5/1/2009	7/1/2009	7/1/2010	7/1/2011	7/1/2012
MSW Disposal	\$ 394	\$ 394	\$ 394	\$ 394	\$ 394
Proposed Gov't Fee	\$ 129	\$ 129	\$ 129	\$ 129	\$ 129
Adri Gov't Fee	\$ 202	\$ 202	\$ 202	\$ 202	\$ 202
Compost Disposal	\$ 1811	\$ 1811	\$ 1811	\$ 1811	\$ 1811
Collection Element	\$ 2818	\$ 2818	\$ 2818	\$ 2818	\$ 2818
Franchise Fee	\$ 2818	\$ 2818	\$ 2818	\$ 2818	\$ 2818
Total	\$ 7248	\$ 7248	\$ 7248	\$ 7248	\$ 7248
Gov't Fee	\$ 523	\$ 523	\$ 523	\$ 523	\$ 523
Gov't Fees	\$ 523	\$ 523	\$ 523	\$ 523	\$ 523
Change	\$ 0.00%	\$ 0.00%	\$ 0.00%	\$ 0.00%	\$ 0.00%

New Gov't Fee of \$0.50 will be implemented as of 1/1/09

Disposal Element	7/1/2010	7/1/2011	7/1/2012
MSW Disposal	\$ 394	\$ 394	\$ 394
Proposed Gov't Fee	\$ 129	\$ 129	\$ 129
Adri Gov't Fee	\$ 202	\$ 202	\$ 202
Compost Disposal	\$ 1811	\$ 1811	\$ 1811
Collection Element	\$ 2818	\$ 2818	\$ 2818
Franchise Fee	\$ 2818	\$ 2818	\$ 2818
Total	\$ 7248	\$ 7248	\$ 7248
Gov't Fee	\$ 523	\$ 523	\$ 523
Gov't Fees	\$ 523	\$ 523	\$ 523
Change	\$ 0.00%	\$ 0.00%	\$ 0.00%

Additional Gov't Fee represents amounts of Gov't Fee that are not eligible for the 9.35% adjustment

Disposal Element	7/1/2011	7/1/2012
MSW Disposal	\$ 394	\$ 394
Proposed Gov't Fee	\$ 129	\$ 129
Adri Gov't Fee	\$ 202	\$ 202
Compost Disposal	\$ 1811	\$ 1811
Collection Element	\$ 2818	\$ 2818
Franchise Fee	\$ 2818	\$ 2818
Total	\$ 7248	\$ 7248
Gov't Fee	\$ 523	\$ 523
Gov't Fees	\$ 523	\$ 523
Change	\$ 0.00%	\$ 0.00%

Additional Gov't Fee represents amounts of Gov't Fee that are not eligible for the 9.35% adjustment

Disposal Element	7/1/2012	7/1/2013
MSW Disposal	\$ 429	\$ 429
Proposed Gov't Fee	\$ 134	\$ 134
Adri Gov't Fee	\$ 208	\$ 208
Compost Disposal	\$ 230	\$ 230
Collection Element	\$ 2350	\$ 2350
Franchise Fee	\$ 347	\$ 347
Total	\$ 3489	\$ 3489
Gov't Fee	\$ 523	\$ 523
Gov't Fees	\$ 523	\$ 523
Change	\$ 0.00%	\$ 0.00%

Additional Gov't Fee represents amounts of Gov't Fee that are not eligible for the 9.35% adjustment

Disposal Element	7/1/2013
MSW Disposal	\$ 429
Proposed Gov't Fee	\$ 134
Adri Gov't Fee	\$ 208
Compost Disposal	\$ 230
Collection Element	\$ 2350
Franchise Fee	\$ 347
Total	\$ 3489
Gov't Fee	\$ 523
Gov't Fees	\$ 523
Change	\$ 0.00%

Additional Gov't Fee represents amounts of Gov't Fee that are not eligible for the 9.35% adjustment

Disposal Element	7/1/2014
MSW Disposal	\$ 459
Proposed Gov't Fee	\$ 134
Adri Gov't Fee	\$ 222
Compost Disposal	\$ 252
Collection Element	\$ 2515
Franchise Fee	\$ 370
Total	\$ 3702
Gov't Fee	\$ 523
Gov't Fees	\$ 523
Change	\$ 0.00%

Additional Gov't Fee represents amounts of Gov't Fee that are not eligible for the 9.35% adjustment

Disposal Element	7/1/2015
MSW Disposal	\$ 473
Proposed Gov't Fee	\$ 134
Adri Gov't Fee	\$ 229
Compost Disposal	\$ 259
Collection Element	\$ 2591
Franchise Fee	\$ 381
Total	\$ 3808
Gov't Fee	\$ 523
Gov't Fees	\$ 523
Change	\$ 0.00%

Additional Gov't Fee represents amounts of Gov't Fee that are not eligible for the 9.35% adjustment



Exhibit 2 Refuse Rate Index

Castro Valley Sanitary District

The "Refuse Rate Index" adjustment shall be calculated in the following manner:

The expenses of the disposal services for the designated fiscal period shall be prepared in the format set forth in the Operating Cost Statement - Description on the following page of this Exhibit.

2. The expenses of the disposal services shall be broken down into the following five cost categories: Labor; Diesel Fuel; Vehicle Replacement; Vehicle Maintenance and All Other. Each cost category is assigned a weighted percentage factor on that cost category's proportionate share of the total of the costs shown for all cost categories.

3. The following indices published by the United States Department of Labor, Bureau of Labor Statistics (BLS), are used to calculate the adjustment for each cost category. The change in each index is calculated on a twelve-month fiscal period in accordance with the terms of the Agreement. In the event any index is discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.

<u>Cost Category</u>	<u>Index</u>
Labor	Series ID: ceu6056210008 Service-Producing Industries
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel
Vehicle Replacement	Series ID: pcu3362113362111 Truck, bus, car, and other vehicle bodies, for sale separately
Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks
All Other	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items – Bay Area

4. The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (see Example).

Operating Cost Statement - Description

Labor: List all administrative, officer, operation and maintenance salary accounts.
List payroll tax accounts directly related to the above salary accounts.
List employee group medical and life accounts directly related to the above salary accounts.
List employee retirement or profit sharing contributions accounts directly related to the above salary accounts.

Diesel Fuel: List all diesel fuel accounts.

Vehicle Replacement:

List all collection and collection related vehicle depreciation accounts.
List all vehicle lease or rental accounts related to collection or collection related vehicles.

Vehicle Maintenance:

List all collection or collection related vehicle parts accounts.

All Other: List all other expense accounts related to the services provided under this Agreement. This category includes all insurance including general liability, fire, truck damage, and extended coverage; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; non-diesel fuel; office supplies; postage; trade association dues and subscription; advertising; and miscellaneous other expenses.



RRI Example

Item #	Category	Data Source	Percentage Change	Item Weight	Weighted Percentage Change
1	Average Hourly Earnings	Series ID: ceu6056210008 Service-Producing Industries	2.19%	49.05%	1.07%
2	Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel	4.74%	13.15%	0.62%
3	Vehicle Replacement	Series ID: pcu3362113362111 Truck, bus, car, and other vehicle bodies, for sale separately	6.79%	2.57%	0.17%
4	Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks	0.16%	13.46%	0.02%
5	CPI All Items	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items Bay Area	1.70%	21.77%	0.28%
Total				100.00%	2.16%

In this example, the Refuse Rate Index is 2.16%.

This page intentionally left blank.



Exhibit 3 Guaranty Agreement

Castro Valley Sanitary District

THIS GUARANTY (the "Guaranty") is given as of the 1st day of May, 2009.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. Waste management of Alameda County, Inc, hereinafter ("CONTRACTOR") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by USA Waste of California, Inc., (Guarantor).

B. CONTRACTOR and the Castro Valley Sanitary District ("DISTRICT") have negotiated an Agreement for Disposal Services dated as of May 1, 2009, (hereinafter "Agreement"). This Guaranty is attached to this Agreement as Exhibit 3 and is incorporated therein.

C. It is a requirement of the Agreement, and a condition to the DISTRICT entering into the Agreement, that Guarantor cause to perform all of the obligations and duties of the Contractor under the Agreement.

D. Guarantor is providing this Guaranty to induce the DISTRICT to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the DISTRICT that it will cause the full and prompt fulfillment of each and every term and condition of the Agreement which CONTRACTOR is required to perform, satisfy or observe. In the event that CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully cause to be performed, cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the DISTRICT of any damages, costs or expenses which might become recoverable by the DISTRICT from CONTRACTOR due to its breach of the Agreement.

2. Guarantor's Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional, and unlimited, and with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity, or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to CONTRACTOR in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this

Guaranty or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of CONTRACTOR; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the DISTRICT'S rights or remedies against CONTRACTOR; or (4) any merger or consolidation of CONTRACTOR with any other corporation, or any sale, lease or transfer of any or all the assets of CONTRACTOR. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code §2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code §2846, 2849, and 2850 as may be amended from time to time, including without limitation, the right to require the DISTRICT to (a) proceed against CONTRACTOR, (b) proceed against or exhaust any security or collateral the DISTRICT may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that DISTRICT may proceed against Guarantor for the obligations guaranteed herein without taking any action against CONTRACTOR or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the DISTRICT may hold now or hereafter hold. The DISTRICT may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against CONTRACTOR or any other guarantor or pledgor without impairing the DISTRICT'S rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the DISTRICT to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to CONTRACTOR'S obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the DISTRICT'S approval.

If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the DISTRICT as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or CONTRACTOR prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without



regard to the acceptance by the DISTRICT of any performance bond or other collateral to assure the performance of CONTRACTOR'S obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the DISTRICT against CONTRACTOR arising out of the Agreement based on CONTRACTOR'S failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of the DISTRICT in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the DISTRICT to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the DISTRICT and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the DISTRICT in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder except in that case which Guarantor is determined to be the prevailing party, in which case DISTRICT shall be liable for all of Guarantor's reasonable attorney's fees and costs. .

7. Governing Law: This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any suit, action, and other proceeding brought by the DISTRICT or other party to enforce this Guaranty may be brought and concluded in the courts of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agents for service of process in California:

*CT Corporation System
818 W. 7th St., Los Angeles, CA 90017*

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have not effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. Binding on Successors. This Guaranty shall inure to the benefit of the DISTRICT and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. Authority. Guarantor represents and warrants that it has the corporate power and the authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this

Guaranty on its behalf has the authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the DISTRICT:

General Manager
Castro Valley Sanitary District
21040 Marshall Street
Castro Valley, CA 94546

With a copy to the DISTRICT Board at the same address.

As to the GUARANTOR:

Waste Management of Alameda County, Inc.
Market Area General Manager
172 98th Ave., Oakland, CA 94603

With a copy to:

USA Waste of California, Inc.
Group General Counsel
7025 N. Scottsdale Rd. #200
Scottsdale, AZ 85253



IN WITNESS WHEREOF, the DISTRICT and Guarantor have executed this Agreement as of the day and year first written above.

CASTRO VALLEY SANITARY DISTRICT

USA Waste of California, Inc.

Roland P. Williams, Jr.

Dean Kattler

General Manager

Vice President & Market Area General Manager

USA Waste of California, Inc.

Approved as to Form:

Anthony B. Varni

Varni, Fraser, Hartwell & Rogers

Castro Valley Sanitary District Attorney

Exhibit 4 Minimum MSW Disposal Requirements

Castro Valley Sanitary District

The minimum MSW requirements of the DISTRICT required by Article 3 of this Agreement shall be calculated in the following manner.

1. The reported tonnage number shall be the sum of the refuse tonnage reported in columns Residential, Commercial, Roll-off, Self haul and Bulky by Waste Management of Alameda County, Inc. to DISTRICT for the preceding calendar year on the report page entitled Summary of Refuse Tonnage. For 2007 that reported initial tonnage number is 28,148 tons.
2. The base tonnage number for each full or partial calendar year shall be eighty (80) percent of the prior years reported tonnage number. Therefore the base tonnage number for 2008 would be 22,519. (The base tonnage number for 2009 will be calculated once the 2008 tonnage reports are accepted by the DISTRICT.)
3. The minimum tonnage number for each calendar year shall be the base tonnage number divided by 12, times the number of months in the calendar year.



This page intentionally left blank.