

# **Collection Service Agreement**

**Executed Between**

**CITY of Albany**

**and**

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

November 1, 2011



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1.

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**CITY OF ALBANY**

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2  
3 THIS COLLECTION SERVICE AGREEMENT is made and entered into as of November 1,  
4 2011, by and between the CITY of Albany, a charter CITY and municipal corporation  
5 (hereinafter " CITY"), and Waste Management of Alameda County, Inc. (hereinafter referred to  
6 as "CONTRACTOR").

**RECITALS**

7  
8  
9 This Agreement is entered into with reference to the following facts and circumstances:

10  
11 **WHEREAS;** the Legislature of the State of California, by enactment of the California Integrated  
12 Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at  
13 California Public Resources Code Section 40000 et seq.), has declared that it is in the public  
14 interest to authorize and require local agencies to make adequate provisions for Solid Waste  
15 Collection within their jurisdiction; and,

16  
17 **WHEREAS;** the State of California has found and declared that the amount of Solid Waste  
18 generated in California, coupled with diminishing landfill space and potential adverse  
19 environmental impacts from landfilling and the need to conserve natural resources, have  
20 created an urgent need for State and local agencies to enact and implement an aggressive  
21 integrated waste management program. The State has, through enactment of the Act, directed  
22 the responsible State agency, and all local agencies, to promote diversion of materials from  
23 landfill Disposal and to maximize the use of feasible waste reduction, re-use, Recycling, and  
24 Composting options in order to reduce the amount of Solid Waste that must be Disposed; and,  
25

26  
27 **WHEREAS;** the CITY finds that the voters of Alameda County, through the Alameda County  
28 Source Reduction and Recycling Plan required by the Waste Reduction and Recycling Act of  
29 1990 (Measure D), have adopted a policy goal to reduce the total quantity of Solid Waste  
30 landfilled in Alameda County by diverting seventy five (75) percent of the materials generated in  
31 Alameda County from landfills by 2010; and,

32  
33 **WHEREAS;** under Section 15 Chapter 15.2 of the CITY'S Municipal Code, the CITY has the  
34 authority to provide for the Collection of Solid Waste through a contract with a solid waste  
35 collection provider; and

36  
37 **WHEREAS;** pursuant to California Public Resources Code Section 40059(a), the CITY has  
38 determined that the public health, safety, and well-being require that an exclusive right be  
39 awarded to a qualified CONTRACTOR to provide for the Collection of Solid Waste, Recyclable  
40 Materials, and Organic Materials, except for Collection of materials excluded in the CITY'S  
41 Municipal Code, and other services related to meeting the Act's fifty percent (50%) diversion  
42 goal and other requirements of the Act; and,

43  
44 **WHEREAS;** the CITY further declares its intent to regulate CONTRACTOR'S setting and  
45 collection of reasonable Rates that CONTRACTOR will charge Customers for the Collection of  
46 Solid Waste, Recyclable Materials, and Organic Materials; and

47  
48 **WHEREAS;** the CITY Council has determined, based on CONTRACTOR'S past performance,  
that CONTRACTOR, by demonstrated experience, reputation and capacity, is qualified to



49 provide for the Collection of Solid Waste, Recyclable Materials, and Organic Materials within the  
50 corporate limits of the CITY and CITY Council desires that CONTRACTOR be engaged to  
51 perform such services on the basis set forth in this Agreement; and  
52

53 **WHEREAS**, this Agreement has been developed by and is satisfactory to the Parties,  
54

55 **Now, THEREFORE**, in consideration of the mutual promises, covenants, and conditions  
56 contained in this Agreement and for other good and valuable consideration, the Parties agree as  
57 follows:  
58

## 59 **ARTICLE 1. Definitions**

60 For the purpose of this Collection Service Agreement, ("Agreement"), the definitions contained  
61 in this Article shall apply unless otherwise specifically stated. When not inconsistent with the  
62 context, words used in the present tense include the future, words in the plural include the  
63 singular, and words in the singular include the plural. Use of the masculine gender shall include  
64 the feminine gender.

65 1.01 Act. The California Integrated Waste Management Act of 1989 (Division 30 of  
66 the California Public Resources Code), as amended, supplemented, superseded, and replaced  
67 from time to time.

68 1.02 Affiliate. All businesses (including corporations, limited and general  
69 partnerships and sole proprietorships) which are directly or indirectly related to CONTRACTOR  
70 by virtue of direct or indirect Ownership interest or common management shall be deemed to be  
71 "Affiliated with" CONTRACTOR and included within the term "Affiliates" as used herein. An  
72 Affiliate shall include a business in which CONTRACTOR has a direct or indirect Ownership  
73 interest, a business, which has a direct or indirect Ownership interest in CONTRACTOR and/or  
74 a business, which is also Owned, controlled or managed by any business or individual which  
75 has a direct or indirect Ownership interest in CONTRACTOR. For the purposes of this  
76 definition, "Ownership" means ownership as defined in the constructive ownership provisions of  
77 Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided  
78 that ten(10) percent shall be substituted for fifty (50) percent in Section 318(a)(2)(C) and in  
79 Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of  
80 determining Ownership under this paragraph and constructive or indirect ownership under  
81 Section 318(a), Ownership interest of less than ten (10) percent shall be disregarded and  
82 percentage interests shall be determined on the basis of the percentage of voting interest of  
83 value which the ownership interest represents, whichever is greater.

84 1.03 Agreement. The written document and all amendments thereto, between CITY  
85 and CONTRACTOR, governing the provision of Collection Services as provided herein,  
86 including all exhibits hereto, as it may be amended from time to time.

87 1.04 Alternative Daily Cover (ADC). Disposal Facility cover material, other than  
88 Compostable Material and at least six (6) inches of earthen material, placed on the surface of  
89 the active face of the refuse fill area at the end of each operating day to control vectors, fires,  
90 odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of  
91 Regulations.

92 1.05 Applicable Law. All Federal, State, and local laws, regulations, rules,  
93 orders, judgments, degrees, permits, approvals, or other requirement of any governmental  
94 agency having jurisdiction over the Collection, transportation, Processing, and Disposal of Solid

95 Waste, Recyclable Materials and Organic Materials that are in force on the Effective Date and  
96 as they may be enacted, issued or amended during the Term of this Agreement.

97 1.06 Bag-it Bags. A plastic bag approved by CITY and provided by the  
98 CONTRACTOR or CITY which may be purchased by Customers for the Collection of Solid  
99 Waste overages.

100 1.01 Bin. A Container with capacity of approximately one (1) to eight (8) cubic  
101 yards, with a hinged lid, and with wheels, that is serviced by a front end-loading collection  
102 vehicle. Bins may also include Compactors that are owned by the Commercial Customer  
103 wherein the Commercial Collection Service occurs.

104 1.07 Bulky Items. Large discarded items including, but not limited to, Major  
105 Appliances, furniture, un-mounted tires, carpets, mattresses, and other oversize materials  
106 whose large size precludes or complicates their handling by normal Collection, Processing, or  
107 Disposal methods, but can be Collected without the assistance of special loading equipment  
108 (such as forklifts or cranes) and without violating collection vehicle legal load limits. Bulky Items  
109 do not include abandoned automobiles, large auto parts, or trees.

110 1.08 Business Days. Days during which CITY offices are open to do business  
111 with the public.

112 1.09 Can. A ten (10) gallon plastic Container with a lid.

113 1.10 Cart. A plastic Container with a hinged lid and wheels that is serviced by an  
114 automated or semi-automated Collection vehicle.

115 1.11 Change in Law. Any of the following events or conditions which has a  
116 material and adverse effect on the performance by the Parties of their respective obligations  
117 under this Agreement (except for payment obligations):

118 1.11.1 The enactment, adoption, promulgation, issuance, modification, or  
119 written change in administrative or judicial interpretation on or after the Effective Date of any  
120 Applicable Law; or

121 1.11.2 The order or judgment of any governmental body, on or after the  
122 Effective Date, to the extent such order or judgment is not the result of willful or negligent action,  
123 error or omission or lack of reasonable diligence of the CITY or of the CONTRACTOR,  
124 whichever is asserting the occurrence of a Change in Law; provided, however, that the  
125 contesting in good faith or the failure in good faith to contest any such order or judgment shall  
126 not constitute or be construed as such a willful or negligent action, error or omission or lack of  
127 reasonable diligence.

128 1.12 CITY. The CITY of Albany, a charter CITY and a municipal corporation, and all  
129 the territory lying within the municipal boundaries of the CITY as presently existing or as such,  
130 boundaries may be modified during the Term. Unless otherwise specified in this Agreement any  
131 action authorized or required by the CITY may be taken by the CITY Council or by an agent  
132 designated by the CITY Council.

133 1.13 Collect/Collection. To pick up, transport, and remove Discarded Materials.

134 1.14 Commencement Date. The date specified in Section 2.03 when Collection  
135 services required by this Agreement shall be provided.

136 1.15 Commercial. A non-Residential Premises where business activity is conducted,  
137 including, but not limited to, retail sales, services, wholesale operations, manufacturing and



138 industrial operations, but excluding businesses conducted upon Residential property which are  
139 permitted under applicable zoning regulations and are not the primary use of the property.

140       1.16 Commingled. A mix of Recyclable Materials.

141       1.17 Compactor. A mechanical apparatus that compresses materials and/or the  
142 Container that holds the compressed materials. Compactors include two (2) to four (4) cubic  
143 yard Bin Compactors serviced by front-end loader Collection vehicles and six (6) to fifty (50)  
144 cubic yard Debris Boxes serviced by roll-off Collection vehicles.

145       1.18 Compliance Manager. The Person designated by the CONTRACTOR to  
146 perform the following job responsibilities related to this Agreement: (1) review Agreement to  
147 ensure compliance; (2) manage and oversee the compilation of the monthly, quarterly, and  
148 annual reports required by this Agreement; (3) oversee the development of written  
149 communications for billing inserts, program education brochures, and direct mail pieces to fulfill  
150 obligations in this Agreement; (4) conduct environmental education presentations in public  
151 schools; (5) manage the coordination and development of community outreach events in the  
152 CITY; (6) serve as the liaison between the CITY and community groups; and (7) develops public  
153 education materials and outreach activities to promote special programs in the CITY.

154       1.19 Complaint. Written or orally communicated statements made by members of  
155 the public, Customers, Owners, or Occupants of properties served by CONTRACTOR, or  
156 officers, employees or agents of CITY alleging non-performance or deficiencies in  
157 CONTRACTOR'S performance, or otherwise alleging a violation by CONTRACTOR of the  
158 provisions of this Agreement.

159       1.20 Composting (or Compost). Includes a controlled biological decomposition of  
160 organic materials yielding a safe and nuisance free Compost Product.

161       1.21 Compost Product. The product resulting from the controlled biological  
162 decomposition of organic materials that are source separated from the municipal solid waste  
163 stream, or which are separated at a centralized facility.

164       1.22 Construction and Demolition Debris (C&D). Includes discarded building  
165 materials, packaging, and rubble resulting from construction, remodeling, repair or demolition  
166 operations on any pavements, houses, Commercial buildings, or other structures. Construction  
167 refers to SIC Codes 1521 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795.

168       1.23 Containers. Cans, Carts, Bins, Compactors, and Debris Boxes.

169       1.24 CONTRACTOR. Waste Management of Alameda County, Inc., a  
170 corporation organized and operating under the laws of the State of California and its officers,  
171 directors, employees, agents, companies, and subcontractors.

172       1.25 CONTRACTOR'S Compensation. The monetary compensation received by  
173 CONTRACTOR in return for providing services in accordance with this Agreement as described  
174 in Article 10.

175       1.26 CONTRACTOR Party(ies). CONTRACTOR, officers, directors, or management  
176 or fiscal employees (where "management employee" means any employee with direct or indirect  
177 responsibility for direction and control over the CONTRACTOR'S activities under this  
178 Agreement and "fiscal" employee means an employee with direct or indirect responsibility and  
179 control duties relating to financial matters under this Agreement).

180 1.27 Curb (or Curbside). The location of a Collection Container for pick-up, where  
181 such Container is placed not more than five (5) feet from the outside edge of the street or alley  
182 nearest the property's entrance.

183 1.28 Customer. The Person to whom CONTRACTOR submits billing invoice and  
184 from whom CONTRACTOR collects payment for Collection services provided to a Premises.  
185 The Customer may be the Occupant or Owner of the Premises, provided that the Owner of the  
186 Premises shall be responsible for payment of Collection services if an Occupant of a Premises,  
187 which is identified as the Customer of Owner's Premises, fails to make such payment.

188 1.29 Debris Box. An open-top metal Container with a capacity of six (6) to fifty (50)  
189 cubic yards that is serviced by a roll-off Collection vehicle

190 1.30 Designated Waste. Non-Hazardous Waste which may pose special Disposal  
191 problems because of its potential to contaminate the environment and which may be Disposed  
192 of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the  
193 California Department of Health Services. Designated Waste consists of those substances  
194 classified as Designated Waste by the State of California, in California Code of Regulations Title  
195 23, Section 2522.

196 1.31 Discarded Materials. Solid Waste, Recyclable Materials, Organic Materials, or  
197 Construction and Demolition Debris placed by a Generator in a receptacle and/or at a location  
198 that is designated for Collection pursuant to the CITY'S Municipal Code.

199 1.32 Disposal or Dispose (or variation thereof). The final disposition of Solid Waste  
200 and Processing residue at a Disposal Site. Disposal does not include the use of Organic  
201 Materials as ADC so long as CITY and State regulations consider ADC use of Organic Materials  
202 as diversion under the Act.

203 1.33 Disposal Site. A facility for ultimate Disposal of Solid Waste.

204 1.34 Disposal Facility. The Altamont Landfill and Resource Recovery Facility located  
205 at 10840 Altamont Pass Road, Livermore, CA that is owned and operated by CONTRACTOR.

206 1.35 Effective Date. The date on which the latter of the two Parties signs the  
207 Agreement and the date on which CONTRACTOR may begin to take actions and incur costs in  
208 preparation to provide Collection services required by this Agreement.

209 1.36 E-Waste Item. Discarded electronic equipment including, but not limited to,  
210 television sets, computer monitors, cathode ray tubes (CRTs), central processing units (CPUs),  
211 laptop computers, external computer hard drives, computer keyboards, computer mice,  
212 computer printers, DVDs, and VCRs.

213 1.37 Food Scraps. Those materials that will decompose and/or putrefy including: (i)  
214 all kitchen and table food waste, and animal or vegetable waste that attends or results from the  
215 storage, preparation, cooking or handling of food stuffs, and (ii) paper waste contaminated with  
216 food (such as, but not limited to, paper plates, napkins, pizza boxes, and paper towels  
217 contaminated with food). Food Scraps is a subset of Organic Materials.

218 1.38 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,  
219 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a  
220 public enemy, wars, blockades, riots, or other industrial disturbances, eminent domain,  
221 condemnation or other taking, or other events of a similar nature, not caused or maintained by  
222 the CITY or CONTRACTOR, which event is not reasonably within the control of the party  
223 claiming the excuse from its obligations due to such event, to the extent such event has a



224 significant and material adverse effect on the ability of a party to perform its obligations  
225 thereunder. Force Majeure shall not include power outages, fuel shortages, Labor Actions  
226 conducted by the CONTRACTOR, CONTRACTOR'S employees or directed at the  
227 CONTRACTOR or subcontractor. Force Majeure shall include a Change in Law if such Change  
228 in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) no event  
229 relating to the Transfer Station or Disposal Facility or the delivery of Discarded Material to those  
230 facilities shall constitute a Force Majeure under this Agreement unless (and then only to the  
231 extent) that such event prevents the delivery of or acceptance of Discarded Material to or by  
232 those facilities; (ii) no failure of performance by any subcontractor of the CONTRACTOR shall  
233 be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as  
234 provided herein, no event which merely increases CONTRACTOR'S cost of performance shall  
235 be a Force Majeure; and (iv) no event, the effects of which could have been prevented by  
236 reasonable precautions, including compliance with agreements and applicable laws, shall be a  
237 Force Majeure.

238           1.39 Franchise. The exclusive right and privilege of CONTRACTOR to Collect  
239 Discarded Materials in accordance with the terms and conditions of this Agreement.

240           1.40 Franchise Fee. The fee paid by CONTRACTOR to CITY for the privilege to  
241 hold the exclusive rights granted by this Agreement.

242           1.41 Generator. Any Person as defined by the Public Resources Code, whose act  
243 or process produces Solid Waste, Recyclable Materials, or Organic Materials as defined in the  
244 Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

245           1.42 Guarantor. USA Waste of California, Inc. a Delaware Corporation.

246           1.43 Hazardous Substance. Any of the following: (a) any substances defined,  
247 regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials",  
248 "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as  
249 hazardous to human health or the environment, in or pursuant to (i) the Comprehensive  
250 Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et  
251 seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the  
252 Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33  
253 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281,  
254 and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code  
255 §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated  
256 statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic  
257 substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated  
258 under any other Applicable Law currently existing or hereinafter enacted, including, without  
259 limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and  
260 synthetic fuel products, and by-products.

261           1.44 Hazardous Waste. means all substances defined as Hazardous Waste,  
262 acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health  
263 and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or  
264 recodifications of such statutes or identified and listed as Hazardous Waste by the U.S.  
265 Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and  
266 Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and  
267 regulations promulgated thereunder.

268           1.45 Household Hazardous Waste. Hazardous Waste generated at Residential  
269 Premises within the CITY.

270 1.46 Infectious Waste. Biomedical waste generated at hospitals, public or private  
271 medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks,  
272 mortuaries, veterinary facilities and other similar establishments that are identified in Health and  
273 Safety Code Section 25117.5.

274 1.47 Labor Actions. Strikes, work stoppage or slowdown, sickout, lockout, picketing or  
275 other concerted job action.

276 1.48 Major Appliances. Any discarded residential device, including, but not limited  
277 to, washing machines, clothes dryer, hot water heaters, dehumidifiers, conventional ovens,  
278 microwave ovens, stoves, refrigerators, freezers, air-conditioners, trash compactors, and  
279 residential furnaces discarded by Residential Generators.

280 1.49 Multi-Family. Any Residential Premises, other than a Single-Family Premises,  
281 with three (3) or more units used for Residential purposes irrespective of whether residence  
282 therein is transient, temporary, or permanent. Multi-Family Premises include tri-plexes,  
283 condominiums, townhouse complexes, mobile home parks, and cooperative apartments with  
284 three (3) or more units, which receive centralized Collection service for all units on the Premises  
285 which are billed to one (1) Customer at one (1) address or individual Collection service in which  
286 each unit is billed as a separately Customer. If Multi-Family Premises are co-located with or  
287 attached to Commercial Premises, Multi-Family Premises shall receive the Recyclable Materials  
288 Collection services described for Multi-Family Premises.

289 1.50 Occupant. The Person who occupies a Premises.

290 1.51 Organic Materials (“Organics”). Those Discarded Materials that will  
291 decompose and/or putrefy and that the CITY’S Municipal Code permits, directs, and/or requires  
292 Generators to separate from Solid Waste and Recyclable Materials for Collection in specially  
293 designated Containers for Organic materials Collection. Organic materials include Yard  
294 Trimmings and Food Scrap such as, but are not limited to, green trimmings, grass, weeds,  
295 leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces,  
296 other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat  
297 waste, fish waste, paper contaminated with Food Scrap, pieces of unpainted and untreated  
298 wood, and pieces of unpainted and untreated wallboard. No Discarded Material shall be  
299 considered to be Organic materials, however, unless such material is separated from Solid  
300 Waste and Recyclable Material.

301 1.52 Owner. The Person holding legal title to the land or building.

302 1.53 Paper Garden Bag. A paper bag approved by the CITY and purchased by the  
303 Customer from the CONTRACTOR or other vendor for the Collection of Organic Material  
304 overages.

305 1.54 Parent Company. A company owning more than fifty (50) percent of the  
306 shares of another company (subsidiary) or a company that has management control over such  
307 subsidiary.

308 1.55 Party or Parties. The CITY and CONTRACTOR, individually or together.

309 1.56 Person(s). Any individual, firm, association, organization, partnership,  
310 corporation, business trust, joint venture, the United States, the State of California, the County  
311 of Alameda, and special purpose districts.

312 1.57 Premises. Any land or building in the CITY where Discarded Materials are  
313 generated or accumulated.



- 314           1.58    Processing.    To prepare, treat, or convert through some special method.
- 315           1.59    Processing Sites.    Any plant or site used for the purpose of sorting, cleansing,  
316 treating or reconstituting Recyclable Materials for the purpose of making such material available  
317 for reuse.
- 318           1.60    Rate(s).        The service charges and Special Charges for Collection services  
319 under this Agreement, which are provided in Exhibit 1 that CONTRACTOR Bills and collects  
320 from each Customer receiving service under this Agreement.
- 321           1.61    Rate Period.    A 12-month period, commencing May 1 and concluding April 30.
- 322           1.62    Recyclable Materials.    Those materials that the City Code permits, directs and/or  
323 requires Generators to set out in Recyclable Materials containers for Collection for the purpose  
324 of Recycling. No Discarded Materials shall be considered Recyclable Materials unless such  
325 material is separated from Solid Waste and Organic Materials. Recyclable Materials shall  
326 include, but not be limited to: newspaper (including inserts, coupons, and store advertisements);  
327 mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown  
328 paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags,  
329 colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other  
330 similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of  
331 any color (including brown, clear, and green glass bottles and jars); aluminum (including  
332 beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap  
333 metal weighing less than ten (10) pounds and fitting into the Recyclable Materials Collection  
334 container; steel, tin or bi-metal cans; plastic containers (no. 1 to 7); other rigid plastic which is  
335 no more than fifteen (15) inches long in any dimension, except for expanded polystyrene (EPS),  
336 plastic utensils and plastic clothes hangers; aseptic beverage boxes, dry cell household  
337 batteries when placed in a sealed clear heavy-duty bag and set out for Collection in the manner  
338 prescribed herein; cell phones when placed in a sealed clear heavy-duty bag and set out for  
339 Collection in the manner prescribed herein; compact florescent lights (CFL) when placed in the  
340 VaporLok foil bag provided by CONTRACTOR or obtained from CITY and set out for Collection  
341 in the manner prescribed herein; and those materials added by the CONTRACTOR or CITY  
342 from time to time.
- 343           1.63    Recycle or Recycling.    The process of sorting, cleansing, treating and  
344 reconstituting at a Recyclable Materials Processing Site materials that would otherwise be  
345 Disposed of at a landfill for the purpose of returning such materials to the economy in the form  
346 of raw materials for new, reused or reconstituted products, or such other beneficial uses as are  
347 agreed to between CITY and CONTRACTOR.
- 348           1.64    Residential.    Of, from, or pertaining to a Single-Family Premises or Multi-Family  
349 Premises.
- 350           1.65    Re-use Vendor.        A vendor (e.g. St. Vincent DePaul, Goodwill Industries, or  
351 other non-profit or for-profit organizations) that will collect used furniture and other re-usable  
352 items for purposes of reuse rather than Disposal.
- 353           1.66    Salvageable Material.    Those Discarded Materials that may be reused in  
354 their existing form or may be reused after some form of Processing including, but not limited to,  
355 Organic Materials and Recyclable Materials.
- 356           1.67    Service Type.    The following types of Solid Waste, Recyclable Materials, and  
357 Organic Materials Collection services for each of the following types of services: Single-Family  
358 Premises Cart service, Multi-Family Premises Cart service, Multi-Family Premises Bin service,

359 Commercial Cart service, Commercial Bin service, Debris Box service, Residential clean-up  
360 service, and CITY facilities service.

361 1.68 Single-Family. Notwithstanding any contrary definition in the CITY'S  
362 Municipal Code, any detached or attached house or residence designed or used for occupancy  
363 by one or two families, provided that Collection service can feasibly be and is provided to such  
364 Premises as an independent unit.

365 1.69 Solid Waste. All "solid waste" as defined in California Public Resources Code,  
366 Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder that the CITY  
367 Code requires Generators within the CITY to set out for Collection. Excluded from the definition  
368 of Solid Waste are Construction and Demolition Debris, Hazardous Waste, Infectious Waste,  
369 Designated Waste, Source Separated Recyclable Materials, Source Separated Organic  
370 Materials, and radioactive waste. Notwithstanding any provision to the contrary, "Solid Waste"  
371 may include de minimis volumes or concentrations of waste of a type and amount normally  
372 found in Residential Solid Waste after implementation of programs for the safe collection,  
373 recycling, treatment and disposal of Household Hazardous Waste in compliance with Section  
374 41500 and 41802 of the California Public Resources Code. Solid Waste includes Salvageable  
375 Materials only when such materials are included for Collection in a Solid Waste Container.

376 1.70 Source Separated. The segregation, by the waste Generator, of materials  
377 designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

378 1.71 Special Charges. The specific service-related charges provided in Exhibit 1,  
379 and that CONTRACTOR shall bill Customers if appropriate.

380 1.72 Specialty Recyclable Material. Material not specified in the definition of  
381 Recyclable Materials under this Agreement that can be or will be Collected for purposes of  
382 Recycling by any Person other than the CONTRACTOR. Such Specialty Recyclable Material  
383 may include, but is not limited, to scrap metal, high-grade paper (including office mixed paper),  
384 pallets, and plastic film.

385 1.73 State. The State of California.

386 1.74 Subcontractor. A Party who has entered into a contract, express or  
387 implied, with the CONTRACTOR or Guarantor for the performance of an act that is necessary  
388 for the CONTRACTOR'S fulfillment of its obligations under this Agreement.

389 1.75 Ton (or Tonnage). A unit of measure for weight equivalent to two thousand  
390 (2,000) standard pounds where each pound contains sixteen (16) ounces.

391 1.76 Transfer Station. The facility designated by CONTRACTOR and approved by  
392 CITY for the receipt, Processing, and Transfer of the Discarded Materials Collected under the  
393 terms of this Agreement. The Davis Street Transfer Station has been designated by  
394 CONTRACTOR as the Transfer Station and approved by CITY pursuant to this Agreement.

395 1.77 Un-permitted Materials. Materials, including Hazardous Waste, and Designated  
396 Waste that the Transfer Station, Processing Sites or Disposal Facility may not receive under its  
397 permits.

398 1.78 Yard Trimmings. Those Discarded Materials that will decompose and/or  
399 putrefy, including but not limited to, green trimmings, grass, weeds, leaves, prunings, branches,  
400 dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood,  
401 and other types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard



402 Trimmings shall be placed in the Organic Materials Container for Collection and shall not  
403 exceed six (6) inches in diameter and five (5) feet in length.

404 **ARTICLE 2. Term of Agreement**

405 2.01 Initial Term. The term of this Agreement shall continue in full force for a period of  
406 ten (10) years, subject to applicable law from 12.01 a.m. on November 1, 2011 to midnight of  
407 October 31, 2021, unless the Agreement is extended by CITY pursuant to Section 2.02 or  
408 terminated in accordance with the provisions of this Agreement.

409 2.02 Extension of Term. At the CITY'S sole discretion, CITY may extend this  
410 Agreement on two (2) or more occasions of up to five (5) years each beyond October 31, 2021,  
411 provided that the combined extension period(s) do not exceed ten (10) years or extend beyond  
412 October 31, 2031. If the CITY extends the Agreement, it shall give written notice to  
413 CONTRACTOR one hundred eighty (180) calendar days prior to the initial expiration date or  
414 extended expiration date of this Agreement. The CITY'S written notice shall specify the number  
415 of years by which it elects to extend the term of this Agreement and the revised expiration date  
416 of the Agreement.

417 2.03 Effective Date and Commencement Date. The Effective Date of this Agreement  
418 shall be the date the latter of the two Parties signs the Agreement. The Commencement Date  
419 shall be November 1, 2011 and shall be the date on which CONTRACTOR initiates provision of  
420 Collection services required by this Agreement. Between the Effective Date and  
421 Commencement Date, CONTRACTOR shall perform all activities necessary to prepare itself to  
422 start Collection services required by this Agreement on the Commencement Date.

423 2.04 Conditions to Effectiveness of Agreement. The obligation of CITY to permit this  
424 Agreement to become effective and to perform its undertakings provided for in this Agreement is  
425 subject to the satisfaction of all the conditions below, each of which may be waived, in written  
426 form, in whole or in part by CITY.

427 2.04.1 Accuracy of Representations. The representations and warranties  
428 made in Article 3 of this Agreement are true and correct on and as of the effective date.

429 2.04.2 Absence of Litigation. There is no litigation pending on the effective  
430 date in any court challenging the award or execution of this Agreement or seeking to restrain or  
431 enjoin its performance.

432 2.04.3 Furnishings of Insurance and Performance Bond. CONTRACTOR has  
433 furnished evidence of the insurance and performance bond required by Article 11 that is  
434 satisfactory to the CITY.

435 2.04.4 Effectiveness of City Council Action. The City Council shall have taken  
436 action approving this Agreement and all Parties shall have signed the Agreement pursuant to  
437 Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind  
438 has been issued.

439 **ARTICLE 3. Representations and Warranties of CONTRACTOR**

440 The CONTRACTOR, by acceptance of this Agreement, represents and warrants the conditions  
441 presented in this Article.

442           3.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly  
443 existing and in good standing under the laws of the State. It is qualified to transact business in  
444 the State and has the power to own its properties and to carry on its business as now owned  
445 and operated and as required by this Agreement.

446           3.02 Corporate Authorization. CONTRACTOR has the authority to enter this  
447 Agreement and perform its obligations under this Agreement. The Board of Directors of  
448 CONTRACTOR (or the shareholders, if necessary) has taken all actions required by law, its  
449 articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.  
450 The Person signing this Agreement on behalf of CONTRACTOR represents and warrants that  
451 they have authority to do so. This Agreement constitutes the legal, valid, and binding obligation  
452 of the CONTRACTOR.

453           3.03 Agreement Will Not Cause Breach. To the best of CONTRACTOR'S knowledge  
454 after reasonable investigation, the execution or delivery of this Agreement or the performance  
455 by CONTRACTOR of its obligations hereunder does not conflict with, violate, or result in a  
456 breach: (i) of any law or governmental regulation applicable to CONTRACTOR; or (ii) any term  
457 or condition of any judgment, order, or decree of any court, administrative agency or other  
458 governmental authority, or any Agreement or instrument to which CONTRACTOR is a party or  
459 by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default  
460 thereunder.

461           3.04 No Litigation. To the best of CONTRACTOR'S knowledge after reasonable  
462 investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or  
463 by any court or governmental authority, commission, board, agency or instrumentality decided,  
464 pending or threatened against CONTRACTOR wherein an unfavorable decision, ruling or  
465 finding, in any single case or in the aggregate, would:

466                   3.04.1   Materially adversely affect the performance by CONTRACTOR of its  
467 obligations hereunder;

468                   3.04.2   Adversely affect the validity or enforceability of this Agreement; or

469                   3.04.3   Have a material adverse effect on the financial condition of  
470 CONTRACTOR, or any surety or entity guaranteeing CONTRACTOR'S performance under this  
471 Agreement.

472           3.05 No Adverse Judicial Decisions. To the best of CONTRACTOR'S knowledge after  
473 reasonable investigation, there is no judicial decision that would prohibit this Agreement or  
474 subject this Agreement to legal challenge.

475           3.06 No Legal Prohibition. To the best of CONTRACTOR'S knowledge after  
476 reasonable investigation, there is no applicable law in effect on the date CONTRACTOR signed  
477 this Agreement that would prohibit the CONTRACTOR'S performance of its obligations under  
478 this Agreement and the transactions contemplated hereby.

479           3.07 CONTRACTOR'S Statements. CONTRACTOR'S proposal and any other  
480 supplementary information submitted to the CITY, which the CITY has relied on in negotiation  
481 and entering into this Agreement, do not: (i) contain any untrue statement of a material fact, or  
482 (iii) omit to state a material fact that is necessary in order to make the statements made, in light  
483 of the circumstances in which they were made, not misleading.

484           3.08 CONTRACTOR'S Investigation. CONTRACTOR has made an independent  
485 investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement





527 aspects necessary to fulfill its obligations under this Agreement whether such requirements are  
528 enumerated elsewhere in the Agreement or not.

529           4.03 Limitations to Scope. The materials listed below in this Section may be collected  
530 and transported by other Persons. Such Persons shall do so in accordance with the CITY'S  
531 Municipal Code.

532           4.03.1 Commodities. Recyclable Materials, Organic Materials, C&D, and  
533 Specialty Recyclable Materials which Owner or Occupant: (1) separates from Solid Waste, (2)  
534 places in a Container which is not provided by CONTRACTOR, and (3) sells, donates, or is  
535 otherwise compensated for by a collector;

536           4.03.2 Materials Hauled by Owner or Occupant, or Its CONTRACTOR. Solid  
537 Waste, Recyclable Materials, Organic Materials, C&D, and Specialty Recyclable Materials that  
538 are removed from any Premises by the Owner or Occupant and are transported to a Disposal  
539 Site or Processing Site by (i) the Owner or Occupant of such Premises, by full-time employee of  
540 Owner or Occupant that uses the Owner's or Occupant's equipment to transport materials; or (ii)  
541 by a CONTRACTOR whose removal of the Solid Waste, Recyclable Materials, Organic  
542 Materials, C&D, and/or Specialty Recyclable Materials are incidental to the service being  
543 performed and such CONTRACTOR removes materials at no additional or separate fee;

544           4.03.3 Donated Materials. Source Separated Recyclable Materials, Organic  
545 Materials, C&D, and Specialty Recyclable Materials Generated in the CITY that are donated by  
546 the Generator to youth, civic, neighborhood, charitable, or other nonprofit organizations;

547           4.03.4 Containers Recycled. Containers delivered for Recycling under the  
548 California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California  
549 Public Resources Code;

550           4.03.5 On-Site Composting. Organic Materials Composted on a Residential  
551 Premises;

552           4.03.6 Animal and Grease Waste. Animal waste and remains from  
553 slaughterhouse or butcher shops, or grease waste for use as tallow;

554           4.03.7 Sewage Treatment By-Product. By-products of sewage treatment  
555 including sludge, sludge ash, grit, and screenings;

556           4.03.8 Hazardous Wastes. Household Hazardous Waste, Hazardous Waste,  
557 and Designated Waste regardless of its source with the exception of materials CONTRACTOR  
558 is required to Collect in accordance with Section 5.08 of this Agreement;

559           4.03.9 Public School Wastes. Materials generated by public schools located  
560 in the CITY.

561           4.04 CONTRACTOR acknowledges and agrees that the CITY may permit other  
562 Persons besides the CONTRACTOR to Collect any and all types of materials excluded from the  
563 scope of this Franchise, as set forth above, without seeking or obtaining approval of  
564 CONTRACTOR. If other Persons are servicing Collection Containers or are Collecting and  
565 transporting Solid Waste, Recyclable Materials, Organic Materials, and/or C&D in a manner that  
566 is not consistent with the CITY'S Municipal Code, CONTRACTOR shall report the location and  
567 the name of the Person or company to the CITY along with CONTRACTOR'S evidence of the  
568 violation of the exclusiveness of this Franchise. CONTRACTOR'S reporting is not in lieu of any  
569 other rights it has, or may have, to enforce its legal rights.



570           4.05 This Agreement and scope of this Franchise shall be interpreted to be consistent  
571 with Applicable Law, now and during the Term of the Agreement. If future judicial  
572 interpretations of current law or new laws, regulations, or judicial interpretations limit the ability  
573 of the CITY to lawfully provide for the scope of services as specifically set forth herein,  
574 CONTRACTOR agrees that the scope of the Agreement will be limited to those services and  
575 materials which may be lawfully provided and that the CITY shall not be responsible for any lost  
576 profits or losses claimed by CONTRACTOR to arise out of limitations of the scope of the  
577 Agreement set forth herein. In such an event, it shall be the responsibility of CONTRACTOR to  
578 minimize the financial impact of such future judicial interpretations or new laws.

579           4.06 Subcontracting. CONTRACTOR shall not engage any Subcontractors for  
580 Collection of Solid Waste, Recyclable Materials, or Organic Materials without the prior written  
581 consent of the CITY. As of the Effective Date of this Agreement, the CITY has approved  
582 CONTRACTOR'S use of the Subcontractors listed in Exhibit 6. CONTRACTOR'S use of  
583 Subcontractor(s) does not in any way limit the CONTRACTOR'S obligations under this  
584 Agreement. The CITY reserves the right to require CONTRACTOR to replace a Subcontractor  
585 in the event of a regulatory or criminal judgment against a Subcontractor and a legal judgment  
586 against a Subcontractor that is related to performance under this Agreement.

587           4.07 Ownership of Materials. Once Solid Waste, Recyclable Materials, Organic  
588 Materials, or C&D are placed in Containers and at the Collection location, ownership and the  
589 right to possession of such materials shall transfer directly from the Generator to  
590 CONTRACTOR. Once Solid Waste, Recyclable Materials, Organic Materials, or C&D are  
591 deposited by CONTRACTOR at Transfer Station, or Processing Site, such materials shall  
592 become the property of the owner or operator of the facility.

593           4.07.1 CITY may obtain ownership or possession of Solid Waste, Recyclable  
594 Materials, Organic Materials, or C&D placed for Collection upon written notice to  
595 CONTRACTOR of its intent to do so. However, nothing in this Agreement shall be construed as  
596 giving rise to any inference that CITY has such ownership or possession unless such written  
597 notice has been given to CONTRACTOR.

598           4.08 CITY-Directed Changes to Scope.

599           4.08.1 Types of Changes. CITY may direct CONTRACTOR to perform  
600 additional services or modify existing services provided that the CITY-directed changes do not  
601 substantially eliminate the CONTRACTOR'S right, as described in and limited by this  
602 Agreement, to Collect Solid Waste, Recyclable Materials, Organic Materials, and C&D. For  
603 example, and without limitation, the CITY may request the following:

604                           4.08.1.1 Collection of certain materials, which were originally Solid  
605 Waste, but during the term of this Agreement can, in the reasonable opinion of the CITY, be  
606 economically Recycled or Composted;

607                           4.08.1.2 Inclusion of new diversion programs;

608                           4.08.1.3 Expansion of public education activities;

609                           4.08.1.4 Elimination of programs;

610                           4.08.1.5 Modification of the manner in which CONTRACTOR  
611 performs existing services;

612                           4.08.1.6 Performance of pilot programs;

613 4.08.1.7 Implementation of innovative services, which may entail  
614 new Collection methods, targeted routing, different kinds of services, different types of  
615 Collection vehicles, and/or new requirements for Generators;

616 4.09 Procedure for Making Changes in Scope.

617 4.09.1 CONTRACTOR shall present, within sixty (60) calendar days of the  
618 CITY’S written request, a written proposal to provide additional or expanded diversion services.  
619 At a minimum, the proposal shall contain a complete description of the following:

620 4.09.1.1 Collection methodology to be employed (equipment,  
621 manpower, etc.).

622 4.09.1.2 Equipment to be utilized (vehicle number, types, capacity,  
623 age, etc.).

624 4.09.1.3 Labor requirements (number of employees by  
625 classification).

626 4.09.1.4 Type of materials and Containers to be utilized.

627 4.09.1.5 Change in costs.

628 4.09.1.6 Provision for program publicity/education/marketing.

629 4.09.1.7 Five (5) year projection of the financial results of the  
630 program's operations in a balance sheet and operating statement format including  
631 documentation of the key assumptions underlying the projections and the support for those  
632 assumptions, giving full effect to the savings or costs to existing services.

633 4.09.1.8 Plans for implementing the service change.

634 4.09.1.9 Proposed Rates that reflect the service change with  
635 supporting documentation of the calculation and justification for the change in Rates.

636 4.09.2 The CITY shall review the CONTRACTOR’S proposal for the change  
637 in scope of services. If the CONTRACTOR’S proposal is desirable to the CITY, the CITY may  
638 negotiate with the CONTRACTOR to amend the Agreement to reflect the change in scope. If  
639 the CONTRACTOR’S proposal is not desirable to the CITY, the CITY shall provide a written  
640 response to the CONTRACTOR identifying the CITY’S reasons for not wanting to negotiate with  
641 the CONTRACTOR.

642 4.09.3 If the CITY elects to negotiate with the CONTRACTOR and the  
643 CONTRACTOR and CITY cannot agree on terms and conditions of such services in ninety (90)  
644 calendar days from the date when CITY first requests a proposal from CONTRACTOR to  
645 perform such services, CONTRACTOR acknowledges and agrees that CITY may permit other  
646 Persons besides CONTRACTOR to provide additional Solid Waste, Recyclable Materials,  
647 Organic Materials and C&D Collection and diversion services not otherwise included in  
648 CONTRACTOR’S right to Collect certain types of these materials in certain conditions as  
649 described in this Agreement.

650 4.09.4 If the CONTRACTOR and CITY do not reach an agreement on the  
651 change in scope, the CONTRACTOR shall forfeit its exclusive right to Collect such material from  
652 Generators or provide the services under consideration and the CITY may solicit proposals from  
653 one or more other parties for such service and CONTRACTOR shall be invited to submit a  
654 proposal during the process.



655                   4.09.5    If the CITY and CONTRACTOR reach an agreement on the change in  
656 scope, the CITY and CONTRACTOR shall agree to performance standards and expected  
657 results of such change as well as the basis for termination of the program prior to program  
658 implementation. In the event the CONTRACTOR does not provide the services in a manner  
659 materially consistent with or better than the agreed upon performance standards and expected  
660 results, the CITY shall have the right to terminate the new program or service and retain a third  
661 party to provide the service. Performance standards and expected results may focus on  
662 program costs, the cost per ton of materials diverted, level of participation in the program,  
663 comparison of costs to other similar programs, volume of material diverted, and other factors.

664                   4.10    Adjustment to CONTRACTOR'S Compensation. If the CITY directs a change in  
665 scope, CONTRACTOR shall be entitled to an adjustment in its compensation in accordance  
666 with Section 10.06. CONTRACTOR shall not be compensated for the proposal preparation  
667 costs or costs incurred during the negotiation of its proposal for the change in scope of such  
668 services.

669                   4.11    Implementation of New Services. The CONTRACTOR'S implementation of the  
670 new or modified services shall be managed by CONTRACTOR in such a manner as to ensure a  
671 timely, smooth, and seamless manner such that Customers and/or Generators do not  
672 experience disruption in Collection services. CONTRACTOR shall be responsible for managing  
673 implementation of new Collection services, and other related services and shall do so in  
674 accordance with an approved implementation plan.

675                   4.12    Monitoring and Evaluation of Changes in Scope. If the CITY requests, the  
676 CONTRACTOR shall meet with the CITY to describe the progress of the implementation of  
677 each new service. If applicable, CONTRACTOR shall document its compliance with  
678 performance standards and the program results of the new programs on a monthly basis,  
679 including at a minimum the Tonnage diverted by material type, the end use or processor of the  
680 diverted materials and the cost per Ton for transporting and Processing each type of material  
681 and other such information requested by the CONTRACTOR and/or CITY necessary to  
682 evaluate the performance of each program.

683                   4.12.1   At each meeting, the CITY and CONTRACTOR shall have the  
684 opportunity to revise the program based on mutually agreed terms in accordance with  
685 provisions of this Section. The CITY shall have the right to terminate a program if the  
686 CONTRACTOR is not achieving the program's performance goals and expected results. Before  
687 such termination, the CITY shall meet and confer with the CONTRACTOR for a period not to  
688 exceed ninety (90) calendar days to resolve the CITY'S concerns. Thereafter, the CITY may  
689 utilize a third party to perform these services if the CITY reasonably believes the third party can  
690 improve on CONTRACTOR'S performance and/or cost. Notwithstanding these changes,  
691 CONTRACTOR shall continue the program during the meet and confer period and, thereafter,  
692 until the third party takes over the program.

693                   4.13    CITY'S Right to Perform Services and Posses Equipment.

694                   4.13.1    General. The CITY, in its sole discretion, may determine a period of  
695 emergency if both of the following conditions occur: (i) CONTRACTOR, for any reason  
696 whatsoever, fails, refuses, or is unable to perform its Collection obligations, at the time and in  
697 the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and (ii)  
698 the CITY finds that such failure, refusal, or inability endangers or menaces the public health,  
699 safety, or welfare. If the CITY determines a period of emergency, then the CITY shall have the  
700 right during the period of such emergency and no longer to (i) perform, or cause to be

701 performed, such services with its own or other personnel without liability to CONTRACTOR;  
702 and/or (ii) take temporary possession of and use any or all of CONTRACTOR'S equipment used  
703 to provide Collection services. If the CITY chooses to exercise such rights, the CITY shall  
704 provide written notice to the CONTRACTOR twenty four (24) hours prior to its plans to exercise  
705 its rights. The CITY agrees that it assumes complete responsibility for the proper and normal  
706 use of such equipment and facilities while in its possession.

707 4.13.2 The CITY shall provide written notice to CONTRACTOR of the  
708 CONTRACTOR'S failure, refusal, or inability to perform its Collection obligations detailing the  
709 obligations the CITY contends CONTRACTOR did not perform and of the CITY'S intent to  
710 perform Collection services and/or possess CONTRACTOR'S equipment.

711 4.13.3 CONTRACTOR agrees that in such event:

712 4.13.3.1 It will take direction from the CITY to affect the transfer of  
713 possession of equipment to the CITY for CITY'S use.

714 4.13.3.2 It will, if CITY so requests, keep in good repair and  
715 condition all of such equipment, provide all motor vehicles with fuel, oil and other service, and  
716 provide such other service as may be necessary to maintain said equipment in satisfactory  
717 operational condition subject to compensation as provided in Section 4.13.4.

718 4.13.3.3 Subject to provisions of any labor agreements then in  
719 effect, CONTRACTOR shall provide the services of all or any personnel necessary for the  
720 Collection operations including, if CITY so desires, employees then employed by  
721 CONTRACTOR. CONTRACTOR further agrees, if CITY so requests, to furnish CITY the  
722 services of any or all management or office personnel employed by CONTRACTOR whose  
723 services are necessary for Collection operations and for the Billing and collection of fees for  
724 these services.

725 4.13.4 If the interruption or discontinuance of service is caused by any of the  
726 reasons listed in Section 4.13.1 or in Section 12.06 and where the CITY can perform services  
727 and the CONTRACTOR cannot, the CITY shall pay to CONTRACTOR one hundred dollars  
728 (\$100) per Business Day for use of each Collection vehicle and the reasonable rental value of  
729 other equipment and facilities, possession of which is taken by the CITY, for the period of the  
730 CITY'S possession, if any, which extends beyond the period of time for which CONTRACTOR  
731 has rendered bills to Customers in advance of service.

732 4.13.5 Except as otherwise expressly provided in the previous paragraph, the  
733 CITY'S exercise of its rights under this Article: (i) does not constitute a taking of private property  
734 for which compensation must be paid; (ii) will not create any liability on the part of CITY to  
735 CONTRACTOR except for CITY negligence; and (iii) does not exempt CONTRACTOR from the  
736 indemnity provisions of Article 12, which are meant to extend to circumstances arising under  
737 this Section, provided that CONTRACTOR is not required to indemnify CITY against claims and  
738 damages arising from the sole negligence of CITY officers, employees, and agents in the  
739 operation of Collection vehicles during the time the CITY has taken possession of such vehicles.

740 4.14 Duration of CITY'S Possession.

741 4.14.1 CITY has no obligation to maintain possession of CONTRACTOR'S  
742 equipment and/or continue its use in Collection, Transportation, Processing, and Disposal for  
743 any period of time and may, at any time, in its sole discretion, relinquish possession to the  
744 CONTRACTOR.





790 of its Premises. Specifically, the CONTRACTOR shall offer the following Collection service  
791 methodologies to Multi-Family Customers:

792                   5.01.3.1     Individual Cart Service. CONTRACTOR shall allow each  
793 owner or occupant of a Multi-Family dwelling unit to subscribe to Collection services. In such  
794 case, CONTRACTOR shall provide Solid Waste Collection using the same Containers as  
795 described in Section 5.01.2.

796                   5.01.3.2     Centralized Bin or Cart Service. CONTRACTOR shall  
797 allow owners or occupants of Multi-Family dwelling units at one (1) Premises to share Carts or  
798 Bins for Solid Waste Collection. In such case, CONTRACTOR shall provide one (1) or more  
799 Carts or Bins as requested by Customer(s) provided that no less than 96 gallons (or similar  
800 sizes) of Container capacity is provided for every four (4) dwelling unit. CONTRACTOR shall  
801 provide each Customer with a choice of one (1) or more Carts with capacities ranging from 32 to  
802 96 gallons (or similar sizes) or Bins with capacity ranging from 1 to 8 cubic yards (or similar  
803 sizes).

804                   5.01.4     Commercial Premises. CONTRACTOR shall Collect Solid Waste from  
805 all Commercial Premises as frequently as scheduled by the Customer, but not less than once  
806 per week. CONTRACTOR shall Collect Solid Waste from Carts and Bins at a location selected  
807 by the Customer and approved by the CITY. CONTRACTOR shall allow each Commercial  
808 Customer to select a Collection service methodology that best suits the needs of its Premises.  
809 Specifically, the CONTRACTOR shall offer the following Collection service methodologies to  
810 Commercial Customers:

811                   5.01.4.1     Individual Cart or Bin Service. CONTRACTOR shall allow  
812 each Commercial Premises to use Carts or Bins for Solid Waste Collection. CONTRACTOR  
813 shall provide each Customer with a choice of one (1) or more Carts with capacities ranging from  
814 32 to 96 gallons (or similar sizes) or Bins with capacity ranging from 1 to 8 cubic yards (or  
815 similar sizes).

816                   5.01.4.2     Centralized Bin or Cart Service. CONTRACTOR shall  
817 allow each Commercial Premises to use Carts or Bins for Solid Waste Collection that are  
818 shared by the Occupants of two (2) or more adjacent Commercial Premises provided that the  
819 Owner or Occupant of one (1) of the Commercial Premises sharing services takes sole  
820 responsibility for paying the CONTRACTOR for services. In such case, CONTRACTOR shall  
821 provide one (1) or more Carts or Bins as requested by Customer(s) provided that no less than  
822 96 gallons (or similar sizes) of Container capacity is provided for every four (4) Commercial  
823 Premises. CONTRACTOR shall provide each Customer with a choice of one (1) or more Carts  
824 with capacities ranging from 32 to 96 gallons (or similar sizes) or Bins with capacity ranging  
825 from 1 to 8 cubic yards (or similar sizes).

826                   5.01.4.3     Debris Boxes and Compactors. CONTRACTOR shall  
827 allow a Customer to use a Debris Box or Compactor for Solid Waste Collection to meet the  
828 Customer's needs. In such case, CONTRACTOR shall provide Customer with a choice of  
829 Container capacities ranging from 10 to 50 cubic yards. CONTRACTOR shall offer Customers  
830 the option to purchase or lease Compactors through either the CONTRACTOR or an outside  
831 vendor.



832           5.02   Recyclable Materials Collection.

833           5.02.1   General. CONTRACTOR shall Collect Recyclables Materials that are  
834   Commingled in the CONTRACTOR-provided Recyclable Materials Collection Container  
835   provided that the Customer has Source Separated the Recyclable Materials from Solid Waste.

836           5.02.1.1       In accordance with Section 4.08, the CITY may request  
837   CONTRACTOR to modify its scope of service to include Collection of additional types of  
838   Recyclable Materials as defined in Article 1. If the CITY requests Collection of additional  
839   Recyclable Materials, the CONTRACTOR shall not receive additional compensation for such  
840   service if the Recyclable Materials are placed by Generator in the existing Recyclable Materials  
841   Container.

842           5.02.2   Single-Family Premises. CONTRACTOR shall Collect Commingled  
843   Recyclable Materials from CONTRACTOR-provided Carts from all Single-Family Premises once  
844   per week CONTRACTOR shall provide each Customer with a 32-, 64-, or 96-gallon Cart (or  
845   similar sizes) for Recyclable Materials as requested by the Customer. CONTRACTOR shall  
846   Collect Carts from the Curb or an alternative service location (such as the porch, sideyard, or  
847   backyard) if the Occupant is physically unable to place the Container Curbside and is eligible for  
848   such service at no additional charge or the Occupant is willing to pay an additional charge  
849   approved by the CITY for such service.

850           5.02.3   Multi-Family Premises. CONTRACTOR shall Collect Commingled  
851   Recyclable Materials from all Multi-Family Premises as frequently as scheduled by Customer,  
852   but not less than once per week.

853           5.02.3.1       CONTRACTOR shall provide each Customer with  
854   Containers for Recyclable Materials Collection. At a minimum, CONTRACTOR shall provide 96  
855   gallons of Container capacity for Recyclable Materials Collection for every four (4) dwelling units  
856   at the Premises. CONTRACTOR shall offer each Customer with a choice of one (1) or more  
857   Carts with capacities ranging from 32 to 96 gallons (or similar sizes) or Bins with capacities  
858   ranging from 1 to 8 cubic yards (or similar sizes). Carts and Bins may be shared by the  
859   Occupants of the Multi-Family Premises.

860           5.02.3.2       CONTRACTOR shall Collect Recyclable Materials at the  
861   designated location agreed upon by CONTRACTOR and Customer. CONTRACTOR shall work  
862   closely with the property managers and/or owners of Multi-Family complexes in the CITY with  
863   one hundred (100) or more dwelling units to develop a Recyclable Materials Collection program  
864   that is tailored to meet the specific needs of these large Multi-Family complexes. To improve  
865   the Recyclable Materials Collection program at these Multi-Family complexes the  
866   CONTRACTOR shall provide more frequent Collection service (up to five (5) days per week),  
867   compactors for on-going use at the Multi-family complex to densify the Recyclable Materials, or  
868   other equipment or services.

869           5.02.3.3       If the CITY acquires small Recyclable Materials Containers  
870   for in-apartment use, the CONTRACTOR shall distribute the Containers to all Multi-Family units  
871   as directed by the CITY. Occupants of the Multi-Family units shall be responsible for delivering  
872   the Recyclable Materials placed in the small, in-apartment use Recyclable Materials Containers  
873   to a Recyclable Materials Cart, Bin, or Debris Box serviced by the CONTRACTOR.

874           5.02.3.4       If Multi-Family Premises are co-located with or attached to  
875   Commercial Premises, Multi-Family Premises shall receive the Recyclable Materials Collection  
876   services described for Multi-Family Premises.

877                   5.02.4 Commercial Premises. CONTRACTOR shall Collect Commingled  
878 Recyclable Materials from all Commercial Premises as frequently as scheduled by Customer,  
879 but not less than once per week CONTRACTOR may provide Commercial Recyclable  
880 Materials Collection service with Residential Recyclable Materials Collection vehicles.

881                   5.02.4.1       CONTRACTOR shall allow Commercial Customers to  
882 select a Collection service method that best suits the needs of its Premises. Specifically, the  
883 CONTRACTOR shall offer the following choices to Commercial Customers:

884                   5.02.4.1.1. Cart or Bin Service. CONTRACTOR shall allow  
885 Commercial Customers to use Cart(s), or Bin(s) for Recyclable Materials Collection.  
886 CONTRACTOR shall provide each Customer with a choice of Carts with capacities ranging from  
887 32 to 96 gallons (or similar sizes), or Bins with capacity ranging from 1 to 8 cubic yards (or  
888 similar sizes).

889                   5.02.4.1.2. Centralized Cart or Bin Service. CONTRACTOR  
890 shall allow for Commercial Customers to use Cart(s) or Bin(s) for Recyclable Materials  
891 Collection that are shared by the Occupants of two (2) or more Commercial Premises. In such  
892 case, CONTRACTOR shall provide one or more Carts or Bins to such Premises as requested  
893 by Customer(s) provided that a minimum of 96 gallons (or similar volume) of Container capacity  
894 for Recyclable Materials is provided for every four (4) Commercial Premises.

895                   5.02.4.1.3. Debris Boxes and Compactors. CONTRACTOR  
896 shall allow Commercial Customers to use a Debris Box or Compactor for Recyclable Materials  
897 Collection to meet Customer's needs. In such case, CONTRACTOR shall provide Customers  
898 with a choice of Container capacities ranging from 10 to 50 cubic yards. CONTRACTOR shall  
899 offer Customers the option to purchase or lease Compactors through CONTRACTOR or an  
900 outside vendor.

901                   5.02.4.2       CONTRACTOR shall work with Commercial Customers on  
902 Solano and San Pablo Avenues to improve the Recyclable Materials and Organics Collection  
903 programs. CONTRACTOR shall provide Commercial Customers with Collection Containers for  
904 inside use as necessary. On the second anniversary of the Commencement Date of this  
905 Agreement, CONTRACTOR shall have made reasonable efforts to increase the volume of  
906 Recyclable Materials and Organics Collection services provided to these businesses by  
907 servicing more or larger Containers or providing more frequent Collection of materials. At a  
908 minimum, CONTRACTOR'S efforts to increase the volume of Recyclable Materials and  
909 Organics Collection services provided to the Solano and San Pablo Avenue businesses shall  
910 include conducting one (1) meeting with the Commercial Business Owner or property manager  
911 at the Commercial Business Premises to: (i) promote Recyclable Materials and Organics  
912 Collection services; (ii) present potential cost savings associated with increased Recyclable  
913 Materials and Organics Collection services and reduced Solid Waste Collection services; (iii)  
914 perform a visual waste characterization assessment and present recommendations for  
915 Recycling and diversion activities; and (iv) learn about the potential barriers (e.g., space  
916 constraints) to Recyclable Materials and Organics Collection services and identify solutions for  
917 overcoming such barriers.

918                   5.03 Organic Materials Collection.

919                   5.03.1 General. CONTRACTOR shall Collect Organic Materials that are in  
920 the CONTRACTOR provided Organic Materials Collection Container or Garden Paper Bag  
921 provided that the Customer has Source Separated the Organic Materials from Solid Waste.



922                   5.03.2 Single-Family Premises. CONTRACTOR shall Collect Source  
923 Separated Organic Materials from all Single-Family Premises once per week. CONTRACTOR  
924 shall provide each Customer with a 32-, 64-, or 96-gallon Cart (or similar sizes) for Organic  
925 Materials as requested by the Customer. CONTRACTOR shall Collect Carts, and Garden  
926 Paper Bags from the Curb or an alternative service location (such as the porch, side yard, or  
927 backyard) if the Occupant is physically unable to place the Container Curbside and is eligible for  
928 such service at no additional charge or the Occupant is willing to pay an additional charge set  
929 by the CITY for such service. If the CITY acquires small kitchen Containers for Food Scraps,  
930 the CONTRACTOR shall distribute the Containers to all Single-Family Premises as directed by  
931 the CITY.

932                   5.03.3 Multi-Family Premises. CONTRACTOR shall Collect Source  
933 Separated Organic Materials from Multi-Family Premises from Customers voluntarily  
934 subscribing to service as frequently as scheduled by Customer, but not less than once per  
935 week. CONTRACTOR shall provide each Customer with a choice of one (1) or more Carts with  
936 capacities ranging from 32 to 96 gallons. CONTRACTOR shall Collect Organic Materials at the  
937 designated location agreed upon by CONTRACTOR and Customer. If Customer requests  
938 Organic Materials Collection services, CONTRACTOR shall provide requested service and shall  
939 charge Customer for service at CITY approved Rates.

940                   5.03.4 Commercial Premises. CONTRACTOR shall Collect Organic  
941 Materials, including Food Scraps, from Commercial Premises from Customers voluntarily  
942 subscribing to service as frequently as scheduled by Customer, but not less than once per  
943 week. If Customer requests Organic Materials Collection services, CONTRACTOR shall  
944 provide the requested service and shall charge Customer for such service at CITY approved  
945 Rates. CONTRACTOR shall allow Commercial Customers to select a Collection service  
946 method that best suits the needs of its Premises. Specifically, the CONTRACTOR shall offer  
947 the following choices to Commercial Customers:

948                   5.03.4.1 Cart or Bin Service. CONTRACTOR shall allow  
949 Commercial Premises to use Cart(s) or Bin(s) for Organic Materials Collection. CONTRACTOR  
950 shall provide each Customer with a choice of one (1) or more Carts with capacities ranging from  
951 32 to 96 gallons or Bins with capacity ranging from 1 to 8 cubic yards (or similar sizes).

952                   5.03.4.2 Centralized Cart or Bin Service. CONTRACTOR shall  
953 allow for Commercial Premises to use Cart(s) or Bin(s) for Organic Materials Collection, which  
954 are shared by the Occupants of two (2) or more Commercial Premises. In such case,  
955 CONTRACTOR shall provide one or more Carts or Bins to such Premises as requested by  
956 Customer(s) provided that no less than 96 gallons (or similar volume) of Container capacity for  
957 Organic Materials is provided for every four Commercial Premises.

958                   5.03.4.3 Debris Boxes and Compactors. CONTRACTOR shall  
959 allow Premises to use a Debris Box or Compactor for Organic Materials Collection to meet  
960 Customer's needs. In such case, CONTRACTOR shall provide Premises with a choice of  
961 Container capacities ranging from 10 to 50 cubic yards. CONTRACTOR shall offer Customers  
962 the option to purchase or lease Compactors through CONTRACTOR or an outside vendor.

963                   5.04 Overage Bags. CONTRACTOR shall make Bag-It Bags and Paper Garden Bags  
964 readily available to Single Family Residential Customers, through the mail, at CONTRACTOR'S  
965 office at 172 98<sup>th</sup> Avenue, Oakland, CA 94603. CONTRACTOR shall maintain a sufficient  
966 inventory of Bag-It Bags and Paper Garden Bags to accommodate Customers' needs.

967 Collection of Bag-it Bags and Paper Garden Bags shall occur at no additional charge to the  
968 CITY or the Customer

969       5.05 Extra Containers. CONTRACTOR shall provide Single Family Residential  
970 Customers with additional Solid Waste, Recycling or Organics Carts as requested by the  
971 Customer. CONTRACTOR shall be compensated for this service in accordance with the Solid  
972 Waste Cart rates, and the "additional Organics Cart" rate for Organics services in Exhibit 1.  
973 CONTRACTOR shall not be compensated for the provision of additional Recycling Carts.

974       5.06 Annual On-Call Curbside Clean-Up Event.

975           5.06.1 General Requirements. CONTRACTOR shall provide Single-Family  
976 Customers with one (1) on-call Curbside clean-up Collection event per year at no charge to the  
977 Customer. The CONTRACTOR shall also provide a second on-call Curbside clean-up  
978 Collection service to Customers requesting such service. The first three hundred (300) second  
979 on-call events requested and provided each calendar year shall be provided at no charge to the  
980 Customer. Once CONTRACTOR has provided three hundred (300) second on-call events at no  
981 charge in any calendar year, CONTRACTOR shall have the right to charge Customers for all  
982 remaining second on-call events provided during that calendar year in accordance with the  
983 Rates in Exhibit 1. On-call curbside clean-up Collection events shall be scheduled within two  
984 (2) weeks of the request for service.

985           5.06.1.1 The CITY shall approve all advertisements or public  
986 announcements related to such events. CONTRACTOR shall promote the events by preparing  
987 billing inserts to be included in each customer's bill and by advertising in a minimum of two (2)  
988 local area newspapers as approved by the CITY.

989           5.06.2 Accepted Materials. CONTRACTOR shall accept Major Appliances,  
990 Bulky Items, Source Separated Recyclable Materials, Source Separated Yard Trimmings, tires  
991 (four (4) per household; removed from rims; no commercial tires), clean unfinished wood, E-  
992 Waste and rubbish. Residents may not place Curbside more than two (2) Major Appliances.  
993 CONTRACTOR may reject: liquids or sludge, cement; dirt; asphalt; concrete; wood which  
994 exceeds five (5) feet in length; painted or stained wood; Hazardous Waste; or Infectious Waste.  
995 CONTRACTOR may reject a single item that weights more than seventy five (75) pounds  
996 (excluding Major Appliances) unless Customer has paid an additional fee for service.

997           5.06.3 Recycling and Reuse. CONTRACTOR shall design the annual clean-  
998 up program to include the participation of Re-Use Vendor(s) to accept donated clothes or other  
999 reusable items and to Recycle or divert as much of the material as possible. Mattresses shall  
1000 be delivered to a recycler such as St. Vincent de Paul Society of Lane County in Oakland,  
1001 California. Disposal of materials shall be the CONTRACTOR'S last option.

1002           5.06.4 Major Appliances Containing Freon. In the event CONTRACTOR  
1003 Collects Major Appliances that contain freon, CONTRACTOR shall handle such Major  
1004 Appliances in a manner such that the Major Appliances are not subject to regulation as  
1005 Hazardous Waste under applicable state and federal laws or regulations.

1006       5.07 Holiday Tree Collection. Annually, CONTRACTOR shall Collect holiday trees  
1007 from all Residential Customers. CONTRACTOR shall offer to Collect holiday trees from Single-  
1008 Family Customers Curbside and Multi-Family Customers Curbside or from Debris Boxes  
1009 provided at the Premises for Multi-Family complexes with more than one hundred (100) units.  
1010 CONTRACTOR'S Collection of holiday trees shall commence the first Monday in January and



1011 end on the last regularly scheduled Organic Materials Collection day of January for each  
1012 specific route. Holiday trees shall be Collected on the Customer's regular Collection day.

1013 5.07.1 Holiday trees shall be delivered to the Transfer Station or a Processing  
1014 Facility where they will be used to produce mulch or Compost Product or diverted from landfill  
1015 Disposal in an alternative manner to count as diversion in accordance with the Act with the  
1016 exception that holiday trees may not be delivered to a Transfer Station or Processing Facility  
1017 where they will be used as ADC or for transformation fuel without prior written approval from  
1018 the CITY.

1019 5.08 Used Motor Oil and Oil Filter Collection. On a weekly basis, CONTRACTOR  
1020 shall Collect from Single-Family and Multi-Family Customers used motor oil and used motor oil  
1021 filters placed Curbside for Collection in CONTRACTOR-provided containers. CONTRACTOR  
1022 shall not be required to Collect more than three (3) gallons of used motor oil per individual  
1023 dwelling unit per week.

1024 5.08.1 CONTRACTOR shall provide one-gallon translucent plastic containers  
1025 with screw on tops for used motor oil Collection and 6-mil plastic ziplock bags for used oil filter  
1026 Collection to Single-Family and Multi-Family Occupants upon Occupant's request within three  
1027 (3)Business Days of such request.

1028 5.09 Collection from CITY Facilities. CONTRACTOR shall Collect Discarded  
1029 Materials from CITY locations at the service levels and Collection frequency identified in Exhibit  
1030 3. Such Collection shall occur at least once per week or more frequently as requested by the  
1031 CITY. CONTRACTOR shall provide and maintain Collection Containers for the CITY'S use,  
1032 with the exception of public litter and public recycling cans that shall be provided and maintained  
1033 by the CITY.

1034 5.09.1 CONTRACTOR may integrate Collection of Solid Waste, Recyclable  
1035 Materials, and Organic Materials from CITY facilities with other Collection services, provided  
1036 that CONTRACTOR attributes estimated Tonnage Collected from CITY facilities separately from  
1037 other Customers.

1038 5.09.2 No later than November 1, 2012, CONTRACTOR shall provide fifteen  
1039 (15) "Waste Management Solar Compactors Powered by Big Belly" litter cans for the  
1040 commercial area of the CITY. The litter cans shall include the CITY logo and be marked in a  
1041 manner as directed by CITY. Upon delivery, CITY shall own such litter cans and shall be  
1042 responsible for maintenance and upkeep of the litter cans.

1043 5.09.3 CONTRACTOR shall provide the services required by this Section at  
1044 no charge to the CITY. The CONTRACTOR shall not be obligated to Collect Construction and  
1045 Demolition Debris generated from Public Works Projects at no charge to the CITY. For  
1046 purposes of this section, Public Works Projects shall mean the acquisition and improvement of  
1047 any publicly-owned sites, and shall include, but not be limited to, the construction, modification,  
1048 demolition, and/or alteration of any public buildings, structures, parks, public open spaces,  
1049 streets, roadways, sidewalks, airports, water supply systems (including when incidental to a  
1050 public works projects (1) highways, streets, bridges and other street and highway structures,  
1051 and (2) plan preparation and equipment), and any other publicly-owned and -operated facilities,  
1052 including, but not limited to, sewage treatment and disposal plants and sanitation facilities.

1053 5.10 Collection from Special Events. CONTRACTOR shall Collect Solid Waste and  
1054 Recyclable Materials at the following special events: the annual Solano Stroll (held on Solano  
1055 Avenue), annual Coastal Clean-Up event, July 4<sup>th</sup> in the Park, three (3) annual Chamber of

1056 Commerce promotional events, and three (3) other events selected by the CITY.  
1057 CONTRACTOR shall provide an adequate number and type of Collection Containers for the  
1058 special events and shall coordinate its Collection services with the CITY. CONTRACTOR shall  
1059 prepare and distribute information to the public during such events describing the Collection  
1060 options available and promoting Recycling. The CONTRACTOR shall report the estimated  
1061 Tonnage of material Collected to the CITY within ten (10) Business Days of each event.

1062           5.10.1   CONTRACTOR shall provide the services required by this Section at  
1063 no charge to the CITY.

1064           5.11   Abandoned Waste Collection. CONTRACTOR shall direct its Collection vehicle  
1065 drivers to note (i) the addresses of any Premises at which the driver observes that Solid Waste,  
1066 Recyclable Materials, and/or Organic Materials is accumulating; and (ii) the address, or other  
1067 location description, at which Solid Waste, Recyclable Materials, and/or Organic Materials has  
1068 been dumped in an apparently unauthorized manner. CONTRACTOR shall deliver the address  
1069 or description to CITY within five (5) Business Days of such observation.

1070           5.11.1   CONTRACTOR shall Collect Solid Waste and Bulky Items abandoned  
1071 on public property within the CITY upon direction from the CITY. CONTRACTOR shall dispatch  
1072 a truck to Collect abandoned materials at locations in the CITY identified by CONTRACTOR or  
1073 at locations identified by the CITY. When the CONTRACTOR has received a verbal request  
1074 from the CITY to Collect abandoned materials at a specific location, CONTRACTOR shall  
1075 Collect such materials within forty eight (48) hours of receiving the request unless the  
1076 CONTRACTOR is notified on a Friday, in which case the CONTRACTOR shall Collect such  
1077 materials by 10:00 a.m. on the Monday following such request or if special circumstances  
1078 warrant a longer period. In this case, CONTRACTOR shall notify the CITY of such  
1079 circumstances and the need for additional time to Collect such materials within twenty four (24)  
1080 hours of the CITY'S verbal notice to Collect abandoned waste. If CONTRACTOR fails to Collect  
1081 abandoned waste within forty eight (48) hours unless special circumstances warrant a longer  
1082 period, the CONTRACTOR shall pay the CITY Liquidated Damages as described in Section  
1083 12.05.

1084           5.11.2   CONTRACTOR shall be responsible for Collection, transportation, and  
1085 Disposal of such material. CONTRACTOR shall record the date, time, location, and description  
1086 of material Collected including the volume of such material; location where such material was  
1087 Disposed; and cost of Disposal. Copies of receipts from Disposal Site for Disposal of  
1088 abandoned Solid Waste shall be made available by CONTRACTOR upon request by the CITY.  
1089 Tonnage or volume of material Collected shall be separately recorded and reported to the CITY  
1090 on a quarterly basis.

1091           5.12   Construction and Demolition Debris Collection. CONTRACTOR shall Collect  
1092 C&D from Residential and Commercial Customers and shall deliver such C&D to the Transfer  
1093 Station or other approved Processing Site. CONTRACTOR shall track the C&D Tonnage  
1094 Collected and delivered to the Transfer Station and provide supporting documentation (in the  
1095 form of weigh tickets) if requested by the CITY.

1096           5.13   Household Battery Collection. CONTRACTOR shall Collect household batteries  
1097 that are contained in a Customer provided sealed heavy-duty plastic bag and placed on the top  
1098 of the Recycling Cart as part of SFD Recyclable Materials Collection service.

1099           5.14   Cell Phone Collection. CONTRACTOR shall Collect cell phones that are  
1100 contained in a Customer provided sealed heavy-duty plastic bag and placed on the top of the  
1101 Recycling Cart as part of SFD Recyclable Materials Collection service.





1147                   6.01.3    If CONTRACTOR fails to perform some or all of the requirements of  
1148 the public education program described in this Section and in the annual public education plan,  
1149 the CONTRACTOR shall pay the CITY Liquidated Damages as described in Section 12.05.

1150                   6.01.4    Public Education Budget. CITY and CONTRACTOR acknowledge  
1151 CONTRACTOR'S start-up public education/outreach budget is ten thousand dollars (\$10,000)  
1152 for calendar year 2012. Beginning in calendar year 2013, CONTRACTOR'S annual budget will  
1153 be at least five thousand dollars (\$5,000) which beginning with calendar year 2013 will be  
1154 increased by the annual average change in the Consumer Price Index as set forth in Exhibit 2  
1155 and as calculated as part of the annual RRI calculation each year. At the direction of CITY, Any  
1156 unexpended amounts from a given year shall accumulate for CITY'S future public education  
1157 use. Beginning January 1, 2012 partial years shall be prorated. CONTRACTOR shall inform  
1158 CITY of funds expended on public education by quarter.

1159                   6.02    Billing.

1160                   6.02.1    General. The CITY shall establish the Rates that CONTRACTOR may  
1161 charge Customers for Solid Waste, Recyclable Materials, and Organic Materials Collection  
1162 services. CONTRACTOR shall bill all Customers and collect billings in accordance with CITY  
1163 approved rates. If a Premises includes both Multi-Family and Commercial uses, the  
1164 CONTRACTOR bill the Customer at Commercial rates if the Commercial square footage of the  
1165 Premises is greater than the Multi-Family Premises, and shall bill Customer at Multi-Family  
1166 rates if the Multi-Family square footage of the Premises is greater than the Commercial  
1167 Premises.

1168                   6.02.1.1    The CONTRACTOR shall prepare, mail, and collect bills  
1169 (or shall issue written receipts for cash payments) for Collection services provided by  
1170 CONTRACTOR.

1171                   6.02.1.2    CONTRACTOR shall make arrangements to allow its  
1172 Customers to pay bills through the following means: check, cash, credit card, internet payment  
1173 service, or automatic withdrawal from banking account.

1174                   6.02.1.3    CONTRACTOR shall maintain copies of all billings and  
1175 receipts, each in chronological order, for three (3) years for inspection and verification by CITY  
1176 at any reasonable time upon request. The CONTRACTOR may, at its option, maintain those  
1177 records in computer form, on microfiche, or in any other manner, provided that the records can  
1178 be preserved and retrieved for inspection and verification in a timely manner.

1179                   6.02.1.4    CONTRACTOR shall be responsible for collection of  
1180 payment from Customers with past due accounts ("bad debt"). CONTRACTOR shall make  
1181 reasonable efforts to obtain payment from delinquent accounts through issuance of late  
1182 payment notices, telephone requests for payments, and assistance from collection agencies. If  
1183 the average monthly bad debt ratio for a six (6) month period exceeds one and one-half (1.5)  
1184 percent, the CITY and CONTRACTOR shall meet and confer on measures that can be taken to  
1185 collect the bad debt and/or reduce the level of Collection service provided to the Customer. The  
1186 bad debt shall be calculated as the balance of accounts receivables that are past due ninety  
1187 (90) days as a percentage of the balance of total accounts receivable.

1188                   6.02.2    Special Assessment Process. CONTRACTOR shall have the right to  
1189 utilize the special assessment process set forth in Exhibit 7 for all accounts that are delinquent  
1190 for ninety (90) or more days. CITY will cooperate with CONTRACTOR in the implementation of  
1191 the special assessment process and the collection of the special assessment. All funds



1192 collected as part of the special assessment process representing the unpaid cost of service  
1193 shall be remitted to the CONTRACTOR and any remaining funds collected shall be retained by  
1194 CITY.

1195           6.03   Customer-Specific Billing Instructions.

1196                   6.03.1   Single-Family Billing. Bills for Single-Family service shall be mailed to  
1197 Customers quarterly in advance of the provision of service.

1198                   6.03.2   Multi-Family Billing. Bills for Multi-Family service shall be mailed to  
1199 Customers monthly following the provision of service. CONTRACTOR shall bill Owner or  
1200 property manager of the Multi-Family Premises or the owner or occupant of an individual Multi-  
1201 Family unit if such Customer separately subscribes to Collection service.

1202                   6.03.3   Commercial Billing. Bills for Commercial service (including Debris Box  
1203 and Compactor services) shall be mailed to Customers monthly following the provision of  
1204 service. If Commercial Customers have centralized service (in which Containers are shared by  
1205 more than one Commercial Premises), CONTRACTOR shall bill one Customer for centralized  
1206 services or, at the request of the Commercial Customers sharing the Containers,  
1207 CONTRACTOR shall treat each Commercial Premises as a separate Customer and shall bill  
1208 each Customer for service costs equal to the service rate divided by the number of Commercial  
1209 Premises sharing the service provided that the Owner or Occupant of one of the Commercial  
1210 Premises sharing services takes sole responsibility for paying the CONTRACTOR for services  
1211 in the event the other parties fail to do so.

1212           6.04   Bill Inserts. CITY may direct CONTRACTOR to insert mailers (which shall be a  
1213 single sheet of paper no larger than eight and one half (8.5) inches by eleven (11) inches, that  
1214 may tri-folded, relating to service with the Bills. The mailers shall be printed on double-sided,  
1215 post-consumer-content paper and shall fit in standard envelopes. CONTRACTOR also agrees  
1216 to insert with the billings, mailers describing activities of the CITY government. CITY will  
1217 provide not less than thirty (30) calendar days' notice to CONTRACTOR before the mailing date  
1218 of any proposed mailing to permit CONTRACTOR to make appropriate arrangements for  
1219 inclusion of the CITY'S materials. CITY will provide CONTRACTOR the mailers at least fifteen  
1220 (15) calendar days before the mailing date. The cost of such inserts and any additional postage  
1221 shall either be paid for by the CITY or included in the costs upon which rates are based.

1222           6.05   Review of Billings. CONTRACTOR shall review its billings to Customers to  
1223 determine (i) if the amount the CONTRACTOR is billing each Customer is correct in terms of the  
1224 level of service (i.e., frequency of Collection, size of Container, location of Container)  
1225 CONTRACTOR is providing such Customer, and (ii) that all parties receiving service are  
1226 invoiced for service. CONTRACTOR shall review Residential Customer accounts and  
1227 Commercial Customer accounts at least every other year, unless CITY directs CONTRACTOR  
1228 to do otherwise. CONTRACTOR shall submit to CITY every year, a written report of the billing  
1229 review thirty (30) days after the end of each Rate Period. The scope of the review, the  
1230 CONTRACTOR'S work plan, and the format of the report (including supporting exhibits) shall be  
1231 submitted to the CITY for approval no later than sixty (60) days prior to commencement of the  
1232 billing review process. The CITY may perform this review itself or through use of an agent.

1233           6.06   Administration of Exemptions and Special Rates.

1234                   6.06.1   Service Location Exemptions. CONTRACTOR shall allow for Persons  
1235 that have a disability that are Occupants of Single-Family Premises to receive Collection  
1236 services at a location other than Curbside. For the purposes of this Agreement, a disability shall

1237 be as defined by the Americans with Disabilities Act of 1990 (Public Law 101 – 336) (ADA), as  
1238 amended, as these titles appear in volume 42 of the United States Code. CONTRACTOR shall  
1239 review all applications made by Customers to determine conformance with this exemption  
1240 provision and shall grant exemptions if applicable. With regards to all requirements of this  
1241 Section, the CONTRACTOR shall make reasonable accommodations concerning Container and  
1242 Collection requirements (e.g., Container size, type, placement of Containers for collection, etc.).  
1243 CONTRACTOR and CITY shall develop procedures to allow for Occupants of Single-Family  
1244 Premises who are unable to bring their Containers to the curb because of the nature of the  
1245 terrain between the Container storage area and Curbside (e.g., stairs, steep hills) to receive  
1246 Collection services at a location other than Curbside.

1247           6.06.2    Small Volume Solid Waste Generator Exemption – Use of 10-gallon  
1248 Can. The CITY allows for Single-Family Customers that generate small volumes of Solid Waste  
1249 to use a 10-gallon Can for weekly Solid Waste Collection. The CONTRACTOR shall provide an  
1250 application to all Single-Family Customers requesting the use of a 10-gallon Can. The  
1251 application shall inform the Customer that the ability to use the small volume solid waste  
1252 generator exemption may be withdrawn if CONTRACTOR encounters frequent overages or  
1253 notes frequent occurrences of Solid Waste placed in the Customer's Recyclable Material or  
1254 Organic Material Collection Container. The CONTRACTOR'S review of the application shall be  
1255 completed within fifteen (15) Business days of receipt of the application.

1256           6.06.2.1       CONTRACTOR and CITY shall develop a procedure to  
1257 assess the correct usage of the 10-gallon Can. Such procedure shall include corrective actions  
1258 to be taken if CONTRACTOR encounters consistent (more than three times a quarter) overages  
1259 or contamination of the Customer's Recyclable Material or Organic Material Collection  
1260 Containers with Solid Waste. CONTRACTOR shall document such instances.

1261           6.06.2.2       These exemptions shall be effective for a period of one (1)  
1262 year from the date the CONTRACTOR approves the application.

1263           6.06.3    Senior Citizen Rate. The CITY offers a reduced Rate for Residential  
1264 Customers that are senior citizens, where a senior citizen is defined as a Person sixty two (62)  
1265 years or older. The CONTRACTOR shall review all applications for the Senior Citizen Rate to  
1266 verify (based on a driver's license or other form of identification) that the Customer is eligible for  
1267 the reduced Rate. The CONTRACTOR'S review of the application shall be completed within  
1268 fifteen (15) Business Days of receipt of the application.

1269           6.07    Customer Service Program.

1270           6.07.1   Program Requirements.

1271           6.07.1.1       Office Location. CONTRACTOR shall maintain a business  
1272 office in Alameda County that handles customer service inquiries related to this Agreement.  
1273 CONTRACTOR shall arrange for telephone calls from Customers to its office are billed to  
1274 Customer as "local calls" by all telephone companies.

1275           6.07.1.2       Office Hours. CONTRACTOR'S Customer service office  
1276 shall be open to the public from 7 a.m. to 5 p.m. Monday through Friday. The office may be  
1277 closed on Saturdays, Sundays and Holidays.

1278           6.07.1.3       Availability of Representatives. A representative of the  
1279 CONTRACTOR shall be available from 7 a.m. to 5 p.m. Monday through Friday to communicate  
1280 with the public in person and by telephone. A message machine shall be available for



1281 Customers to leave messages during non-business hours. Calls received during non-business  
1282 hours shall be returned no later than noon of the following Business Day.

1283                   6.07.1.4     Telephone. CONTRACTOR shall maintain a telephone  
1284 system in operation at its office from 7 a.m. to 5 p.m. and shall have staff available to answer  
1285 calls. CONTRACTOR shall install telephone equipment sufficient to handle the volume of calls  
1286 typically experienced on the busiest days and such telephone equipment shall be capable of  
1287 recording the responsiveness to call. If Persons are unable with reasonable effort to reach  
1288 CONTRACTOR'S office by phone, or are subject to waiting time "on hold" of more than three (3)  
1289 minutes prior to reaching a Customer service representative, CITY may require that  
1290 CONTRACTOR install additional telephone lines or hire additional Customer service  
1291 representatives. An answering machine shall record Customer calls and voice messages  
1292 between 5:00 p.m. and 7:00 a.m. Penalties may be levied for CONTRACTOR'S failure to meet  
1293 customer service standards provided in Exhibit 4 in accordance with Section 12.05.

1294                   6.07.1.5     Customer Satisfaction Survey. The CITY may conduct a  
1295 Customer satisfaction survey every year.

1296                   6.07.1.6     Training. Customer service representatives shall receive  
1297 training during each quarter of the calendar year on CITY-specific service requirements. During  
1298 the training, a CITY specific Collection service and fee information sheet, training agenda, and  
1299 associated documentation shall be provided to employees.

1300                   6.07.2     Service Complaints. CONTRACTOR shall be responsible for the  
1301 prompt and courteous attention to, and prompt and reasonable resolution of, all Complaints.  
1302 CONTRACTOR shall record in a separate log all Complaints, noting the name and address of  
1303 complainant, date and time of Complaint, nature of Complaint, and nature and date of  
1304 resolution. The CONTRACTOR shall retain this Complaint log for the Term. In addition,  
1305 CONTRACTOR shall compile a summary statistical table of the Complaint log, satisfactory to  
1306 the CITY, and submit the table to CITY each month.

1307                   6.07.2.1     CONTRACTOR shall respond to all Complaints received  
1308 within twenty four (24) hours, weekends and Holidays excluded. In particular, if a Complaint  
1309 involves a failure to Collect Solid Waste, Recyclable Materials or Organic Materials from a  
1310 Premises in the CITY, CONTRACTOR shall Collect the material in question within twenty four  
1311 (24) hours of receipt of the Complaint, provided that Generator has properly placed materials for  
1312 Collection in accordance with the CITY'S Municipal Code. CONTRACTOR shall have e-mail  
1313 capabilities to enable Persons to communicate Complaints to CONTRACTOR via e-mail.

1314                   6.08     Provision of Emergency Services. CONTRACTOR shall provide emergency  
1315 services at the CITY'S request in the event of major accidents, disruptions, or natural calamities.  
1316 Emergency services may include, but are not limited to, assistance handling salvaged materials,  
1317 Processing, Composting, or Recycling materials, or Disposing Solid Waste following a major  
1318 accident, disruption, or natural calamity. CONTRACTOR shall be capable of providing  
1319 emergency services within twenty four (24) hours of notification by the CITY or as soon  
1320 thereafter as is reasonably practical in light of the circumstances. Emergency services, which  
1321 exceed the CONTRACTOR'S obligations, shall be compensated in accordance with Section  
1322 10.06. If CONTRACTOR cannot provide the requested emergency services, the CITY shall  
1323 have the right to take possession of the CONTRACTOR'S equipment for the purposes of  
1324 providing emergency services.

1325 **ARTICLE 7. Standards and Requirements For Services, Equipment,**  
1326 **and Personnel**

1327 7.01 Collection Hours and Schedules.

1328 7.01.1 Hours of Collection. CONTRACTOR vehicles shall be permitted on  
1329 CITY streets only during the Collection hours described below.

1330 7.01.1.1 Residential Premises. Collection from Residential  
1331 Premises shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through  
1332 Friday.

1333 7.01.1.2 Commercial Premises. Collection from Commercial  
1334 Premises that are two hundred (200) feet or less from Residential Premises shall only occur  
1335 between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday. Collection from  
1336 Commercial Premises more than two hundred (200) feet from Residential Premises shall only  
1337 occur between the hours of 7:00 a.m. and 6:00 p.m. Collection of Commercial Premises  
1338 receiving regularly scheduled Saturday Collection service shall commence no earlier than 7:00  
1339 a.m. and terminate no later than 6:00 p.m. The City Manager may require modifications to hours  
1340 for Collection from Commercial Premises to resolve noise Complaints, and, in such case, the  
1341 City Manager may change the allowable Collection hours.

1342 7.01.1.3 Exceptions. In the event of an unforeseen circumstance,  
1343 the CONTRACTOR may Collect from Residential Premises or Commercial Premises that are  
1344 two hundred (200) feet or less from Residential Premises between the hours of 5:00 a.m. and  
1345 10:00 p.m., Monday through Friday, upon prior written approval from the City Manager.

1346 7.01.2 Collection Route Schedules. CONTRACTOR shall provide CITY with  
1347 route maps and daily Collection schedules for each collection service. Such maps and  
1348 schedules shall be reviewed and approved by the CITY.

1349 7.01.2.1 CONTRACTOR may not change its regularly scheduled  
1350 Residential Collection days without prior written approval from the CITY. Such written approval  
1351 shall be obtained from the CITY thirty (30) calendar days before the effective date of the  
1352 schedule change. Once approved, CONTRACTOR shall notify any Residential Customer four  
1353 (4) weeks prior to any Collection schedule changes. CONTRACTOR shall not permit any  
1354 Customer to go more than seven calendar days without service during a Collection schedule  
1355 change.

1356 7.01.2.2 CONTRACTOR may change any Commercial Customer's  
1357 regularly scheduled Collection days without prior written approval from the CITY.

1358 7.01.3 Holiday Collection Schedule. CONTRACTOR, at its sole discretion,  
1359 may choose not to provide Collection services on a Holiday. In such event, CONTRACTOR  
1360 shall provide Collection services on the day following the Holiday. The CONTRACTOR shall  
1361 provide Customers notice of Holiday-related changes in Collection schedules at least two (2)  
1362 weeks prior to the change; but in no case, shall CONTRACTOR notice Customers three (3)  
1363 weeks prior to the change.

1364 7.01.4 Contingency Plan. CONTRACTOR shall submit to CITY, on or before  
1365 the November 1, 2011, a written contingency plan demonstrating CONTRACTOR'S  
1366 arrangements to provide vehicles and personnel and to maintain uninterrupted service during  
1367 mechanical breakdowns, and in case of natural disaster or other emergencies.



1368           7.02   Collection Standards.

1369                   7.02.1   Implementation of Services. The CONTRACTOR'S implementation of  
1370 the new services required under this Agreement shall occur in a smooth and seamless manner  
1371 so that Customers and/or Generators do not experience disruption in Collection services.  
1372 CONTRACTOR shall be responsible for managing implementation of new Collection services  
1373 and other related services.

1374                   7.02.2   Servicing Containers. CONTRACTOR shall pick up and return each  
1375 Container to the location where the Occupant properly placed the Container for Collection.  
1376 CONTRACTOR shall place the Containers upright with lids properly secured. The CITY may  
1377 levy fines for repeat occurrences of Container misplacement in accordance with Section 12.05  
1378 of this Agreement.

1379                   7.02.2.1       CONTRACTOR shall use due care when handling  
1380 Containers. Containers shall not be thrown from trucks, roughly handled, damaged, or, broken.

1381                   7.02.2.2       CONTRACTOR, at the request of Customers, shall provide  
1382 special services including: unlocking Containers; accessing Container enclosures with a key; or  
1383 pulling or pushing Containers to the Collection vehicle. CONTRACTOR shall charge Customers  
1384 for extra services in accordance with CITY-approved Rates set forth in Exhibit 1.

1385                   7.02.3   Weighing Materials Separately from Other Jurisdictions. Solid Waste,  
1386 Recyclable Materials, and Organic Materials Collected in the CITY (with the exception of  
1387 Organic Materials Collected from Commercial Customers) shall not be commingled (mixed) with  
1388 other materials collected from other jurisdictions before the CITY'S material has been accurately  
1389 weighed and recorded.

1390                   7.02.4   Instructions to Customers. CONTRACTOR shall instruct Customers  
1391 as to any preparation of Solid Waste, Recyclable Materials, or Organic Materials and the proper  
1392 placement of Containers. If Customers are not adhering to CONTRACTOR'S instructions,  
1393 CONTRACTOR shall notify such Customers. In cases of extreme or repeated failure to comply  
1394 with the instructions, CONTRACTOR may decline to pick-up the Solid Waste, Recyclable  
1395 Materials, or Organic Materials provided that CONTRACTOR leaves a tag at least two inches by  
1396 six inches (2" x 6") in size on the Container indicating the reason for refusing to Collect the  
1397 material and identifying the steps Generator must take to recommence Collection service. If  
1398 Recyclable Materials or Organic Materials set out for Collection contain ten (10) percent or one  
1399 (1) percent respectively or greater by volume of Solid Waste, CONTRACTOR shall Collect  
1400 materials and leave a warning notice for the Customer. CONTRACTOR shall report to the CITY  
1401 any warning notices issued to Customers within twenty four (24) hours of issuance, and may  
1402 terminate Recyclable Materials and Organic Materials Collection service if, after ten (10)  
1403 Business Days, high contamination levels continue, unless instructed otherwise by the CITY.

1404                   7.02.5   Overages. CONTRACTOR shall direct its employees not to Collect  
1405 Solid Waste beyond each Customer's subscription level of service unless the business office of  
1406 CONTRACTOR has granted prior authorization to make such Collection.

1407                   7.02.6   Care of Private Property. CONTRACTOR shall not damage private  
1408 property. CONTRACTOR shall ensure that its employees: (i) close all gates opened in making  
1409 Collections, unless otherwise directed by the Generator, (ii) do not cross landscaped areas, and  
1410 (iii) do not climb or jump over hedges and fences.

1411                   7.02.6.1       CITY shall refer Complaints about damage to private  
1412 property to CONTRACTOR. CONTRACTOR shall repair all damage to private property caused

1413 by its employees. Any damages to public property will be repaired during the remediation to the  
1414 previous condition. In the event of repeat occurrences of property damage, the CONTRACTOR  
1415 shall pay Liquidated Damages in accordance with Section 12.05.

1416 7.02.7 Litter Abatement.

1417 7.02.7.1 Minimization of Spills. CONTRACTOR shall use due care  
1418 to prevent Solid Waste, Recyclable Materials, Organic Materials, vehicle oil, and vehicle fuel  
1419 from being spilled or scattered during the Collection or transportation process. If any materials  
1420 are spilled or scattered during Collection, the CONTRACTOR shall promptly clean-up all spilled  
1421 and scattered materials. CONTRACTOR shall not transfer loads from one vehicle to another on  
1422 any public street, unless it is necessary to do so because of mechanical failure, hot load  
1423 (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the  
1424 CITY.

1425 7.02.7.2 Clean-Up. During Collection, the CONTRACTOR shall  
1426 clean-up litter in the immediate vicinity of any Container storage area (including the areas where  
1427 Containers are delivered for Collection) whether or not CONTRACTOR has caused the litter.  
1428 Each Collection vehicle shall carry protective gloves, a broom, and shovel at all times for the  
1429 purpose of cleaning up litter. Cat-litter or similar absorbent material shall be used by  
1430 CONTRACTOR for cleaning up liquid spills. The CONTRACTOR shall discuss instances of  
1431 repeated spillage not caused by it with the Customer of the Premise where spillage occurs, and  
1432 CONTRACTOR shall report such instances to CITY. If the CONTRACTOR has attempted to  
1433 have a Customer stop creating spillage but is unsuccessful, the CITY will attempt to rectify such  
1434 situation with the Customer.

1435 7.02.7.3 Covering of Loads. CONTRACTOR shall cover all open  
1436 Debris Boxes, with an approved cover, at the pickup location before Transporting materials to  
1437 the Approved Disposal Location or Processing Sites.

1438 7.02.8 Noise. All Collection operations shall be conducted as quietly as  
1439 possible and shall conform to applicable Federal, state, county and CITY noise level  
1440 regulations. CONTRACTOR will promptly resolve any Complaints of noise during the morning  
1441 or evening hours of the day to the satisfaction of the CITY. In the event of repeat occurrences  
1442 of noise levels in excess of seventy five (75) dbA, the CONTRACTOR shall pay Liquidated  
1443 Damages in accordance with Section 12.05.

1444 7.03 Vehicle Requirements.

1445 7.03.1 General. CONTRACTOR shall provide a fleet of Collection vehicles  
1446 sufficient in number and capacity to efficiently perform the work required by the Agreement in  
1447 strict accordance with its terms. CONTRACTOR shall have available sufficient back-up vehicles  
1448 for each type of Collection vehicle used (e.g., side loader, front loader, and roll-off vehicles) to  
1449 respond to Complaints and emergencies. Vehicles shall be owned or leased by  
1450 CONTRACTOR.

1451 7.03.1.1 CONTRACTOR shall confer with the CITY before  
1452 purchasing any new Collection vehicles during the Term, including extensions, as described in  
1453 Section 2.02. The specifications for all vehicles shall be submitted to the CITY for review and  
1454 approval before acquisition.

1455 7.03.2 Specifications. All Collection vehicles shall be registered with the  
1456 California Department of Motor Vehicles. All such vehicles shall have watertight bodies  
1457 designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with California



1458 Environmental Protection Agency (EPA) noise emission and air quality regulations and other  
1459 applicable noise control regulations.

1460           7.03.3 Alternative Fuel Vehicles. On or before January 1, 2013  
1461 CONTRACTOR shall replace all diesel powered Collection vehicles providing Collection  
1462 services under the terms of this Agreement with Collection vehicles powered by Compressed  
1463 Natural Gas (CNG).

1464           7.03.4 Vehicle Identification. CONTRACTOR'S name, local telephone  
1465 number, and a unique vehicle identification number for each vehicle shall be prominently  
1466 displayed on all vehicles, in letters and numbers that are a minimum of four (4) inches high.  
1467 CONTRACTOR shall not place the CITY'S logo on its vehicles.

1468           7.03.5 Inventory. CONTRACTOR shall furnish sufficient equipment to provide  
1469 all service required by this Agreement in a timely fashion. CONTRACTOR shall furnish the  
1470 CITY a written inventory of all vehicles used in providing service, and shall update the inventory  
1471 report annually. The inventory shall list all vehicles by manufacturer, ID number, date of  
1472 acquisition, type, capacity, decibel rating, average weight of load, and average loaded axle  
1473 weights.

1474           7.03.6 Cleaning and Maintenance.

1475                   7.03.6.1 General. CONTRACTOR shall maintain all of its  
1476 properties, facilities, and equipment in a safe, neat, clean and operable condition at all times.

1477                   7.03.6.2 Cleaning. Collection vehicles shall be thoroughly washed  
1478 and thoroughly steam cleaned on a minimum of one (1) time per week, or more frequently if  
1479 necessary, to present a clean appearance of the exterior and interior compartment of the  
1480 vehicle. CITY may inspect vehicles at any time to determine compliance with sanitation  
1481 requirements. CONTRACTOR shall make vehicles available to the Alameda County Health  
1482 Department for inspection, at any frequency it requests.

1483                   7.03.6.3 Maintenance. CONTRACTOR shall inspect each vehicle  
1484 daily to ensure that all equipment is operating properly. Vehicles that are not operating properly  
1485 shall be taken out of service until they are repaired and operate properly. CONTRACTOR shall  
1486 perform all scheduled maintenance functions in accordance with the manufacturer's  
1487 specifications and schedule or in accordance with California Highway Patrol standards  
1488 whichever are more stringent. All vehicles shall be painted in a uniform manner that does not  
1489 create a resemblance between CONTRACTOR'S vehicles and CITY utility vehicles.  
1490 CONTRACTOR shall keep accurate records of all vehicle maintenance, recorded according to  
1491 date and mileage, and shall make such records available to the CITY upon request to the extent  
1492 necessary to perform the inspections described in Sections 7.08.2 and 8.01.3.

1493                   7.03.6.4 Repairs. CONTRACTOR shall repair, or arrange for the  
1494 repair of, all of its vehicles and equipment for which repairs are needed because of accident,  
1495 breakdown or any other cause so as to maintain all equipment in a safe and operable condition.  
1496 If an item of repair is covered by a warranty, CONTRACTOR shall obtain warranty performance.  
1497 CONTRACTOR shall maintain accurate records of repair, which shall include the date/mileage,  
1498 nature of repair and the signature of a maintenance supervisor that the repair has been properly  
1499 performed.

1500                   7.03.6.5 Storage. CONTRACTOR shall arrange to store all  
1501 vehicles and other equipment in safe and secure location(s) in accordance with CITY'S  
1502 applicable zoning regulations.

1503                   7.03.7    Operation. Vehicles shall be operated in compliance with the California  
1504 Vehicle Code, and all applicable safety and local ordinances. CONTRACTOR shall not load  
1505 vehicles in excess of the manufacturer's recommendations or limitations imposed by State or  
1506 local weight restrictions for vehicles and roads. CONTRACTOR shall have each Collection  
1507 vehicle weighed at the Approved Disposal Location or Processing Sites to determine the  
1508 unloaded weight ("tare weight") of the vehicle. CONTRACTOR vehicles shall be permitted on  
1509 CITY streets only during the Collection hours described in Section 7.01.

1510                   7.03.8    CITY Signs on Vehicles. If during the Term of the Agreement, the  
1511 CONTRACTOR allows Persons to post signs, announcements, or advertisements on the  
1512 Vehicles, the CONTRACTOR shall obtain CITY approval of the material to be posted on the  
1513 Vehicles ten (10) days prior to posting such materials, and the CITY shall receive fifty (50)  
1514 percent of gross revenue the CONTRACTOR receives from Persons requesting posting of  
1515 material. In addition, CONTRACTOR shall allow the CITY to periodically attach signs to the  
1516 Vehicles that promote events or programs or convey CITY announcements at no charge to the  
1517 CITY. CONTRACTOR shall provide personnel that will attach and remove CITY-provided  
1518 Vehicles signs when requested by the CITY.

1519                   7.04    Container Requirements.

1520                   7.04.1    General. CONTRACTOR shall provide all Carts, Bins, and Debris  
1521 Boxes to all Customers as part of its services. CONTRACTOR-provided Containers shall be  
1522 designed and constructed to be watertight and prevent the leakage of liquids. All Containers  
1523 with a capacity of 1 cubic yard or more shall meet applicable federal, state, and local regulations  
1524 for Bin safety and be covered with industry-standard attached lids. All Carts purchased as part  
1525 of this Agreement shall be manufactured by injection or rotational molding methods and shall be  
1526 of a standard that is greater or equal to that of the Carts currently in use. The useful life of  
1527 Carts, Bins, and Debris Boxes provided to Customers shall be equal to or longer than the initial  
1528 Term of the Agreement. Containers shall be depreciated over ten (10) years. All Containers,  
1529 except Carts, shall be painted the CONTRACTOR'S standard color. All Containers shall  
1530 prominently display the name and telephone number of the CONTRACTOR.

1531                   7.04.2    Cleaning, Painting, and Maintenance. All Containers shall be  
1532 maintained in a safe, serviceable, and functional condition. CONTRACTOR shall steam clean  
1533 and repaint all Containers, except Carts, as needed to present a clean appearance.  
1534 CONTRACTOR shall provide CITY with a list of Containers and the date each Container was  
1535 painted and maintained. Customers using Carts shall be responsible for cleaning such Carts. If  
1536 any Container is impacted by graffiti, CONTRACTOR shall remedy the situation within forty  
1537 eight (48) hours.

1538                   7.04.3    Repair and Replacement. CONTRACTOR shall repair or replace all  
1539 Containers damaged by Collection operations within a one (1) week period. If the repair or  
1540 replacement cannot be completed within one (1) week, the CONTRACTOR shall notify  
1541 Customer and a Container of the same size or larger shall be made available until the proper  
1542 Container can be replaced.

1543                   7.04.3.1       At no additional cost, CONTRACTOR shall replace  
1544 Customer Carts that have been stolen or damaged once per year. CONTRACTOR shall allow  
1545 Customer to exchange Containers for a Container of a different size at no additional cost once  
1546 per year. CONTRACTOR shall charge Customers for additional Cart replacements at CITY-  
1547 approved Rates.



1548                   7.04.4    CITY'S Rights to Containers. Upon expiration or early termination of  
1549 this Agreement, all Carts, Bins, Compactors and Debris Boxes (for permanent Customers)  
1550 purchased by CONTRACTOR and put into service at Customer's Premises before the first  
1551 anniversary of the Commencement Date shall become property of the CITY. All Carts, Bins,  
1552 Containers, and Debris Boxes (for permanent Customers) purchased or leased and put into  
1553 service at Customers' Premises on or after the first anniversary of the Commencement Date  
1554 that have not been fully depreciated shall be available to the CITY, at the CITY'S option, at their  
1555 net book value.

1556                   7.04.4.1       At its sole discretion, the CITY may elect not to exercise its  
1557 rights with regards to this Section and, in such case the Containers shall become the property of  
1558 the CONTRACTOR upon the expiration date of this Agreement or date of its earlier termination  
1559 of this Agreement. In such case, CONTRACTOR shall be responsible for removing all  
1560 Containers in service from Premises.

1561           7.05    Personnel.

1562                   7.05.1    General.     CONTRACTOR shall furnish such qualified drivers,  
1563 mechanical, supervisory, Customer service, clerical and other personnel as may be necessary  
1564 to provide the services required by this Agreement in a safe and efficient manner.

1565                   7.05.2    Approval of Management. CONTRACTOR recognizes the importance  
1566 of establishing a successful relationship between its management and CITY staff. Therefore,  
1567 the CONTRACTOR will allow the CITY the right to approve the selection of the  
1568 CONTRACTOR'S field representative and the CONTRACTOR'S Compliance Manager as  
1569 designated by the CONTRACTOR, provided that the CITY'S approval is not unreasonably  
1570 withheld. The CITY shall have the right to request the CONTRACTOR to replace the Person  
1571 that serves as the CITY'S main contact with CONTRACTOR (e.g., field representative and the  
1572 CONTRACTOR'S Compliance Manager for the CITY as designated by the CONTRACTOR, if  
1573 Liquidated Damages levied for events listed in Exhibit 4, with the exception of damages levied  
1574 for Collection reliability and Collection quality events items 1, 3, and 10 of Exhibit 4, in any three  
1575 (3) month period exceed two thousand dollars (\$2,000) or if Liquidated Damages levied for  
1576 Collection reliability and Collection quality events items 1, 3, and 10 of Exhibit 4 in any three (3)  
1577 month period exceed forty five thousand dollars (\$45,000). If replacement of the field  
1578 representative and the CONTRACTOR'S Compliance Manager as designated by the  
1579 CONTRACTOR is requested by the CITY, the CONTRACTOR shall have ninety (90) calendar  
1580 days to replace the field representative or Compliance Manager and shall seek the CITY'S  
1581 approval of the replacement manager prior to hiring such person.

1582                   7.05.3    Provision of Field Supervision. CONTRACTOR shall designate at  
1583 least one qualified employee as supervisor of field operations and such Person shall devote at  
1584 least twenty five (25) percent of his or her time in the field checking on Collection operations,  
1585 including responding to Complaints.

1586                   7.05.4    Driver Qualifications. All drivers shall be trained and qualified in the  
1587 operation of Collection vehicles and must have in effect a valid license, of the appropriate class,  
1588 issued by the California Department of Motor Vehicles. CONTRACTOR shall use the Class II  
1589 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers  
1590 for safety.

1591                   7.05.5    Customer Service Representative Training. Customer service  
1592 representatives shall be trained on specific CITY service requirements, a minimum of once per  
1593 quarter. A CITY information sheet shall be provided to each Customer service representative

1594 for easy reference of CITY requirements and general Customer needs. The information sheet,  
1595 training agenda, and associated documentation shall be forwarded to the CITY each quarter  
1596 after the training.

1597           7.05.6   Safety Training. CONTRACTOR shall provide suitable operational and  
1598 safety training for all of its employees who operate Collection vehicles or equipment or who are  
1599 otherwise directly involved in such Collection. CONTRACTOR shall train its employees  
1600 involved in Collection to identify, and not to collect, Hazardous Waste or Infectious Waste.

1601           7.05.7   No Gratuities. CONTRACTOR shall not permit its employees to  
1602 demand or solicit, directly or indirectly, any additional compensation, or gratuity from members  
1603 of the public for Collection.

1604           7.05.8   Employee Conduct and Courtesy. CONTRACTOR shall use its best  
1605 efforts to assure that all employees present a neat appearance and conduct themselves in a  
1606 courteous manner. CONTRACTOR shall regularly train its employees in Customer courtesy,  
1607 shall prohibit the use of loud or profane language, and shall instruct Collection employees to  
1608 perform the work as quietly as possible. If any employee is found not to be courteous or not to  
1609 be performing services in the manner required by this Agreement, CONTRACTOR shall take all  
1610 appropriate corrective measures. The CITY may require CONTRACTOR to reassign an  
1611 employee, if the employee has conducted himself or herself inconsistently with the terms of this  
1612 Agreement.

1613           7.05.9   Uniforms. While performing services under this Agreement, all of the  
1614 CONTRACTOR'S employees performing field service shall be dressed in clean uniforms that  
1615 include the employee's name and/or employee number, and CONTRACTOR'S name, as  
1616 approved by the CITY. No portion of this uniform may be removed while working. No portion of  
1617 the uniform shall contain advertising from the public sector.

1618           7.06    Un-permitted Materials Inspection and Handling.

1619           7.06.1   Inspection Program and Training. CONTRACTOR shall develop a load  
1620 inspection program that includes the following components: (i) Personnel and training; and (ii)  
1621 load checking activities.

1622           7.06.1.1   CONTRACTOR'S Collection vehicle drivers, shall be  
1623 trained in (i) the effects of Hazardous Substances on human health and the environment; (ii)  
1624 identification of prohibited materials; and (iii) emergency notification and response procedures.  
1625 Collection vehicle drivers shall inspect Containers before Collection when practical.

1626           7.06.2   Response to Un-permitted Materials Identified During Collection. If  
1627 CONTRACTOR determines that material placed in any Container for Collection is Un-permitted  
1628 Materials, or other material that may not legally be Disposed of at the Disposal Facility or  
1629 handled at the Transfer Station or Processing Sites, or presents a hazard to CONTRACTOR'S  
1630 employees, the CONTRACTOR shall have the right to refuse to accept such material. The  
1631 Generator shall be contacted by the CONTRACTOR and requested to arrange proper Disposal.  
1632 If the Generator cannot be reached immediately, the CONTRACTOR shall, before leaving the  
1633 Premises, leave a tag at least two inches by six inches (2" x 6") in size which indicates the  
1634 reason for refusing to Collect the material and lists the phone number for the Alameda County  
1635 Household Hazardous Waste Facility located in Oakland, CA. CONTRACTOR'S environmental  
1636 technician shall be notified to handle the issue with the Generator. The CONTRACTOR'S  
1637 environmental technician shall be notified by the CONTRACTOR and shall guide the Generator  
1638 to safely containerizing the Un-permitted Materials and shall explain the Generator's options for



1639 proper disposition of such material. Under no circumstances shall CONTRACTOR'S employees  
1640 knowingly Collect Un-permitted Materials or remove unsafe or poorly containerized Un-  
1641 permitted Materials from a Collection Container.

1642                   7.06.2.1       If Un-permitted Materials is found in a Collection Container  
1643 or Collection area that could possibly result in imminent danger to people or property, the  
1644 CONTRACTOR shall immediately notify the CITY'S Fire Department using the 911 emergency  
1645 number. The CONTRACTOR shall notify the CITY of any Un-permitted Materials identified in  
1646 Containers or left at any Premises within twenty four (24) hours of identification of such material.

1647                   7.06.3       Response to Un-permitted Materials Identified at Transfer Station or  
1648 Processing Sites.       If Un-permitted Material is delivered to the Transfer Station or  
1649 Processing Sites by CONTRACTOR before its presence is detected, and the Generator cannot  
1650 be identified or fails to remove the material after being requested to do so, the CONTRACTOR  
1651 shall arrange for its proper Disposal and pay for costs of such Disposal. The CONTRACTOR  
1652 shall make a good faith effort to recover the cost of Disposal from the Generator, and the cost of  
1653 this effort, as well as the cost of Disposal shall be chargeable to the Generator.

1654                   7.06.4       Regulations and Record Keeping. CONTRACTOR shall comply with  
1655 emergency notification procedures required by applicable laws and regulatory requirements. All  
1656 records required by regulations shall be maintained at the CONTRACTOR'S facility. These  
1657 records shall include: waste manifests, waste inventories, waste characterization records,  
1658 inspection records, incident reports, and training records.

1659                   7.07       Non-Discrimination. CONTRACTOR shall not discriminate in the provision of  
1660 service or the employment of Persons engaged in performance of this Agreement on account of  
1661 race, color, religion, sex, age, physical handicap or medical condition in violation of any  
1662 Applicable Law.

1663                   7.08       Communication and Cooperation with CITY.

1664                   7.08.1       Communications. If requested, the CONTRACTOR shall meet with the  
1665 CITY or its agent at least once each month to discuss service issues. The CONTRACTOR'S  
1666 field representative and the CONTRACTOR'S responsible representative as designated by the  
1667 CONTRACTOR in accordance with Section 22.02 shall have e-mail capabilities to enable the  
1668 CITY and the CONTRACTOR'S responsible representative to communicate via e-mail.

1669                   7.08.2       Inspection by CITY. The CITY or its designated representatives shall  
1670 have the right to observe and review CONTRACTOR operations and enter Premises for the  
1671 purposes of such observation and review during reasonable hours with reasonable notice.

1672                   7.08.3       Cooperate with CITY-Initiated Studies. CONTRACTOR shall  
1673 cooperate with and assist the CITY or its agent with performance of CITY-initiated studies of  
1674 Solid Waste, Recyclable Materials, and Organic Materials such as, but not limited to, waste  
1675 characterization and composition studies.

## 1676                   **ARTICLE 8. Record Keeping and Reporting**

1677                   8.01       General.

1678                   8.01.1       Maintenance of Records. CONTRACTOR shall maintain accounting,  
1679 operational, statistical, and other records related to its performance as shall be necessary to  
1680 develop the financial statements and other reports required by this Agreement, to support any  
1681 claim by CONTRACTOR under Section 10.05, and to respond to any reasonable request of the

1682 CITY under Sections 4.08 or 10.05. Also, CONTRACTOR agrees to conduct data collection,  
1683 information and record keeping, and reporting activities needed to comply with and to meet the  
1684 reporting and Solid Waste program management needs of CITY, the Act, and other Applicable  
1685 Laws, and the requirements of this Agreement.

1686                   8.01.1.1       Because it is not possible to accurately anticipate all of the  
1687 conditions giving rise to the need for information, to the extent, such requirements are set out in  
1688 this and other Articles of this Agreement, they shall not be considered limiting or necessarily  
1689 complete. In particular, this Article is intended to only highlight the general nature of records  
1690 and reports and their minimum content and is not meant to comprehensively define what the  
1691 records and reports are to be and their content. Further, with the written direction by or  
1692 approval of CITY, the records, and reports to be maintained and provided by CONTRACTOR in  
1693 accordance with this and other Articles of the Agreement shall be adjusted in number, format, or  
1694 frequency, and if such adjustment results in significant additional costs to the CONTRACTOR,  
1695 the CITY shall compensate CONTRACTOR for its increased record keeping and reporting  
1696 costs. Records and reporting may be revised to reflect current record keeping and reporting  
1697 requirements.

1698                   8.01.1.2       To adjust CONTRACTOR'S Compensation in the event of  
1699 CITY-directed changes in accordance with Section 4.08 or in the event of special Rate review in  
1700 accordance with Section 10.05 and support its obligations under Section 10.06 of this  
1701 Agreement, CONTRACTOR must maintain accurate, detailed, financial and operational  
1702 information in a consistent format, and must make such information available to the CITY in a  
1703 timely fashion.

1704                   8.01.2 Retention of Records. Unless otherwise required in this Article,  
1705 CONTRACTOR shall retain all records and data required to be maintained by this Agreement  
1706 for the Term of this Agreement plus five (5) years after its expiration or earlier termination.  
1707 Records and data shall be in chronological and organized form and readily and easily  
1708 accessible. At the CITY'S request, records and data required to be maintained that are  
1709 specifically directed to be retained shall be retrieved in a timely manner by CONTRACTOR and  
1710 made available to the CITY.

1711                   8.01.2.1       Records and data required to be maintained that are not  
1712 specifically directed to be retained and that are not material to a rate review nor required for the  
1713 determination of the CONTRACTOR'S performance, need not be retrieved by CONTRACTOR.  
1714 In such a case and when such records and data are required to but are not retained by the  
1715 CONTRACTOR, the CITY may make reasonable assumptions regarding what information is  
1716 contained in such records and data, and such assumption(s) shall be conclusive in whatever  
1717 action the CITY takes.

1718                   8.01.3 Inspection of Records. The CITY, its auditors and other agents, shall  
1719 have the right, during regular business hours, and with twenty four (24) hour written notice  
1720 identifying the information desired and the types of records that may contain that information, to  
1721 conduct on-site inspections of accounting systems, payroll tax reports, specific documents or  
1722 records required by this Agreement, or any other similar records or reports of the  
1723 CONTRACTOR and all companies conducting operations addressed in this Agreement, that the  
1724 CITY shall deem, at its sole discretion, necessary to evaluate annual reports, rate review  
1725 applications, and the CONTRACTOR'S performance provided for in this Agreement. The CITY  
1726 may make copies of any documents it deems relevant to this Agreement, subject to Waste  
1727 Management's confidentiality requirements.



1728                    8.01.4 Record Security. CONTRACTOR shall maintain adequate record  
1729 security to preserve records from events that can be reasonably anticipated such as a fire, theft,  
1730 and an earthquake. Electronically-maintained data and records shall be protected and backed-  
1731 up.

1732                    8.02 Records.

1733                    8.02.1 Financial and Operational Records. CONTRACTOR shall maintain  
1734 accurate and complete accounting records containing the underlying financial and operating  
1735 data relating to and showing the basis for computation of all costs associated with providing  
1736 services. The accounting records shall be prepared in accordance with Generally Accepted  
1737 Accounting Principles (GAAP) consistently applied.

1738                    8.02.2 Collection Service Records. Records shall be maintained by  
1739 CONTRACTOR for CITY relating to:

1740                    8.02.2.1            Customer services and billing including service exemption  
1741 information;

1742                    8.02.2.2            Weight and volume of material Collected by type (e.g.,  
1743 Solid Waste, Recyclable Materials, and Organic Materials). Where possible, information is to be  
1744 separated by Service Type;

1745                    8.02.2.3            Routes;

1746                    8.02.2.4            Facilities, equipment and personnel used;

1747                    8.02.2.5            Facilities and equipment operations, maintenance and  
1748 repair;

1749                    8.02.2.6            Tonnage of Solid Waste, Recyclable Materials, and  
1750 Organic Materials listed by Processing Site or Disposal Site where such materials were  
1751 delivered;

1752                    8.02.2.7            Recyclable Materials and Organic Materials Collection  
1753 participation and setout rates;

1754                    8.02.3 Other Programs Records. Records for other programs shall be tailored  
1755 to specific needs. In general, the records shall include:

1756                    8.02.3.1            Plans, tasks, and milestones; and

1757                    8.02.3.2            Accomplishments in terms such as dates, activities  
1758 conducted, quantities of products used, produced or distributed, and numbers of participants  
1759 and responses.

1760                    8.02.4 Customer Service Records. Records shall be maintained by  
1761 CONTRACTOR for CITY related to:

1762                    8.02.4.1            Number of calls;

1763                    8.02.4.2            Average hold time for calls; percentage of calls answered  
1764 in 30 seconds; percentage of calls answered in three (3) minutes;

1765                    8.02.4.3            Categories (missed pickups, Complaints, damage, etc.) of  
1766 calls;

1767                    8.02.4.4            Training materials and records;

1768 8.02.4.5 Complaint log noting the name and address of  
1769 complainant, date and time of Complaint, nature of Complaint, and nature and date of  
1770 resolution;

1771 8.02.4.6 New Customer log.

1772 8.02.5 CERCLA Defense Records. CITY views its ability to defend itself  
1773 against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)  
1774 and related litigation as a matter of great importance. For this reason, the CITY regards its  
1775 ability to prove where Solid Waste Collected in the CITY was taken for Transfer or Disposal, as  
1776 well as where it was not taken, to be matters of concern. CONTRACTOR shall maintain, retain  
1777 and preserve records which can establish where Solid Waste Collected in the CITY was  
1778 Disposed (and therefore establish where it was not). This provision shall survive the expiration  
1779 or earlier termination of this Agreement. CONTRACTOR shall maintain these records for a  
1780 minimum of ten (10) years beyond expiration or earlier termination of the Agreement.  
1781 CONTRACTOR shall provide these records to CITY (upon request or at the end of the record  
1782 retention period) in an organized and indexed manner rather than destroying or disposing of  
1783 them.

1784 8.02.6 General Reporting Requirements. Records shall be maintained in  
1785 forms and by methods that facilitate flexible use of data contained in them to structure reports,  
1786 as needed. Reports are intended to compile recorded data into useful forms of information that  
1787 can be used to, among other things:

1788 8.02.6.1 Set Rates;

1789 8.02.6.2 Evaluate the financial efficacy of operations;

1790 8.02.6.3 Evaluate past and expected progress towards achieving  
1791 the CONTRACTOR'S diversion goals and objectives;

1792 8.02.6.4 Determine needs for adjustment to programs; and,

1793 8.02.6.5 Evaluate Customer service and Complaints.

1794 8.02.7 CONTRACTOR may propose report formats that are responsive to the  
1795 objectives and audiences for each report. The format of each report shall be approved by CITY.  
1796 CONTRACTOR agrees to mail a copy of all reports and submit all reports on computer discs, by  
1797 e-mail or by modem in a format compatible with CITY'S software and computers in the event it  
1798 may do so at no significant additional cost. CONTRACTOR will provide a certification  
1799 statement, under penalty of perjury, by the responsible CONTRACTOR official, that the report  
1800 being submitted is true and correct to the best knowledge of such official after their reasonable  
1801 inquiry.

1802 8.02.8 Monthly reports shall be submitted within thirty (30) calendar days after  
1803 the end of the reporting month. Quarterly reports shall be submitted within forty five (45)  
1804 calendar days after the end of the report quarter. Annual reports shall be submitted no later  
1805 than forty five (45) calendar days after the end of the each Rate Period.

1806 8.02.9 All reports shall be submitted to:

1807 City Manager  
1808 CITY of Albany  
1809 1000 San Pablo Avenue  
1810 San Pablo, CA 94706



1811  
1812           8.03   Monthly Reports. Reports shall present the following information. The CITY may  
1813 review and approve CONTRACTOR'S report formats and content.

1814           8.03.1   Solid Waste Services. Total Tonnage Collected and Disposed by  
1815 Service Type.

1816           8.03.2   Recyclable Materials Services. Tonnage Collected and Recycled by  
1817 Service Type and Tonnage of Residue Disposed by Service Type. If the Processing Site  
1818 handles Recyclable Materials Collected in the CITY and from other parties, provide a  
1819 description of how the quantities of Recyclable Materials are tracked and allocated to the CITY.

1820           8.03.3   Organic Materials Services. Tonnage Collected and Composted by  
1821 Service Type. If the Processing Site handles Organic Materials Collected in the CITY and from  
1822 other parties, provide a description of how the quantities of Organic Materials are tracked and  
1823 allocated to the CITY.

1824           8.03.4   C&D Services. Tonnage Collected, Processed, Disposed, and  
1825 diverted from Disposal. If the Processing Site handles C&D Collected in the CITY and from  
1826 other parties, provide a description of how the quantities of C&D are tracked and allocated to  
1827 the CITY.

1828           8.03.5   Customer Service.

1829                   8.03.5.1   Number of Customer, Generator, or other Person calls by  
1830 category (e.g., missed pickups, scheduled clean-ups, Billing concerns, damage claims, etc.).

1831                   8.03.5.2   Number of Complaints, resolved Complaints, and number  
1832 of Complaints which were unresolved for more than five (5) Business Days. Provide  
1833 explanations on unresolved calls.

1834                   8.03.5.3   Number of new Commercial Recyclable Materials, Organic  
1835 Materials, and Food Scraps Customers by Cart, Bin, and Debris Box services.

1836                   8.03.5.4   Customer Service Summary that provides year-to-date  
1837 customer service performance statistics corresponding to the performance standards set for  
1838 Liquidated Damages items 1 through 25 in Exhibit 4. Significant trends and variances from the  
1839 standards should be noted and explained.

1840           8.03.6   Account Information. In table format, the number of Customers and  
1841 service levels for all Service Types and the number of service location exemptions granted.

1842           8.04   Quarterly Reports. Reports shall present the following information by each  
1843 month's data in the reported quarter and include a quarterly average. In addition, each quarterly  
1844 report shall show the past four (4) quarters average for data comparison.

1845           8.04.1   Solid Waste Services.

1846                   8.04.1.1   Quarterly summary of monthly report required in Section  
1847 8.03.1.

1848                   8.04.1.2   Accounts collected by Service Type. Include number of  
1849 accounts, as well as number of total yards for Bin service; and number of pulls, deliveries, and  
1850 pickups for Debris Box and Compactor Service.

1851                   8.04.1.3   Solid Waste Tonnage Disposed listed separately by  
1852 Disposal Site.

1853                    8.04.2    Recyclable Materials Services.

1854                    8.04.2.1      Quarterly summary of monthly report required in Section

1855    8.03.2.

1856                    8.04.2.2      Accounts collected by Service Type. Include number of

1857    accounts, as well as number of total yards for Bin service; and number of pulls, deliveries, and

1858    pickups for Debris Box and Compactor Service.

1859                    8.04.2.3      Participation percentage by Service Type (number of

1860    accounts actually serviced / number of accounts scheduled for service).

1861                    8.04.2.4      Tonnage by Recyclable Materials commodities and

1862    Service Type.

1863                    8.04.3    Organic Materials Service.

1864                    8.04.3.1      Quarterly summary of monthly report required in Section

1865    8.03.3.

1866                    8.04.3.2      Accounts collected by Service Type. Include number of

1867    accounts, as well as number of total yards for Bin service; and number of pulls, deliveries, and

1868    pickups for Debris Box and Compactor Service.

1869                    8.04.3.3      Participation percentage by Service Type (number of

1870    accounts actually serviced / number of accounts scheduled for service).

1871                    8.04.4    C&D Service.

1872                    8.04.4.1      Quarterly summary of monthly report required in Section

1873    8.03.4

1874                    8.04.4.2      Accounts collected by Service Type. Include number of

1875    pulls, deliveries, and pickups for Debris Box Service.

1876                    8.04.5    Customer Service.

1877                    8.04.5.1      Quarterly summary of monthly report required in Section

1878    8.03.5.

1879                    8.04.5.2      Customer Service overview sheet, training agenda, and

1880    other training supplements provided at the quarterly Customer service meeting.

1881                    8.04.5.3      Call center reports documenting the number of calls

1882    received per month (or quarter), the percentage of calls answered within thirty (30) seconds,

1883    and the percentage of calls answered within three (3) minutes.

1884                    8.04.6    Annual Residential Clean-Up Event.

1885                    8.04.6.1      Disposal Tonnage.

1886                    8.04.6.2      Diversion Tonnage by commodity.

1887                    8.04.6.3      Number of participants.

1888                    8.04.6.4      Names of Re-use Vendors that participated.

1889                    8.04.7    Holiday Tree Service. In the first quarterly report of the calendar year,

1890    Tonnage of Holiday trees collected.



- 1891                    8.04.8    Abandoned Waste Collection.    Quarterly report in accordance with  
1892    Section 5.11
- 1893                    8.04.9    Education Activities.
- 1894                    8.04.9.1    Public education materials produced and total number of  
1895    each distributed.
- 1896                    8.04.9.2    Dates, times, and group names of meetings attended.
- 1897                    8.04.9.3    Dates, times, and names of school where presentations  
1898    were performed.
- 1899                    8.04.10    Pilot and New Programs.    For each pilot and/or new program, activity-  
1900    related and narrative reports on goals and milestones and accomplishments; description of  
1901    problems encountered, actions taken, and any recommendations to facilitate progress; and  
1902    description of vehicles, personnel, and equipment utilized for each program.
- 1903                    8.04.11    Summary Assessment.
- 1904                    8.04.11.1    Summary assessment of the overall Solid Waste,  
1905    Recyclable Materials, and Organic Materials program from CONTRACTOR'S perspective  
1906    relative to financial and physical status of program. Description of the physical status is to relate  
1907    to how well the program is operating for efficiency, economy, and effectiveness relative to  
1908    meeting all the goals and objectives of this Agreement including particularly the  
1909    CONTRACTOR'S diversion goals.
- 1910                    8.04.11.2    Recommendations and plans to improve.
- 1911                    8.04.11.3    Highlights of significant accomplishments and problems.
- 1912                    8.04.12    Other Reports.    In addition to the quarterly report as described above,  
1913    the CONTRACTOR is to provide, as part of the quarterly report, a summary, including monthly  
1914    Tonnage Collected if applicable, of the following:
- 1915                    8.04.12.1    Special events (Section 5.10)
- 1916                    8.04.12.2    Warnings to Customers (Section 7.02.4)
- 1917                    8.04.12.3    Un-permitted Materials incidents (Section 7.06.2)
- 1918                    8.05    Annual Reports.
- 1919                    8.05.1    Annual Report Requirements.    The annual report shall be in the form of  
1920    the quarterly reports and shall provide the same type of information as required pursuant to  
1921    Section 8.04 of this Agreement, summarized for the preceding four (4) quarters. The annual  
1922    report shall also include a complete inventory of equipment used to provide all service.
- 1923                    8.05.2    CONTRACTOR Officers and Board Members.    Provide a list of  
1924    CONTRACTOR'S officers and members of its board of directors with the annual report.
- 1925                    8.05.3    Operational Information.    In addition to requirements stated elsewhere  
1926    in this Agreement, the annual report shall include the following information:
- 1927                    8.05.3.1    Routes by Service Type.
- 1928                    8.05.3.1.1.    Number of routes per day.
- 1929                    8.05.3.1.2.    Types of vehicles.

- 1930 8.05.3.1.3. Crew size per route.
- 1931 8.05.3.1.4. Number of full time equivalent (FTE) routes.
- 1932 8.05.3.1.5. Number of accounts per route.
- 1933 8.05.3.1.6. Total hours per Service Type per day and per year.
- 1934 8.05.3.2 Personnel.
- 1935 8.05.3.2.1. Organizational chart.
- 1936 8.05.3.2.2. Job classifications and number of employees (e.g.
- 1937 administrative, Customer service representatives, drivers, supervisors,
- 1938 educational staff).
- 1939 8.05.3.2.3. Number of full time equivalents (FTE) positions for
- 1940 each job classification.
- 1941 8.05.3.2.4. Number of hours per job classification per day and
- 1942 per year.
- 1943 8.05.3.3 Productivity Statistics.
- 1944 8.05.3.3.1. Number of accounts per Service Type.
- 1945 8.05.3.3.2. Number of setouts per Service Type.
- 1946 8.05.3.3.3. Tons per route per day.
- 1947 8.05.3.4 Operational Changes.
- 1948 8.05.3.4.1. Number of routes.
- 1949 8.05.3.4.2. Staffing.
- 1950 8.05.3.4.3. Supervision.
- 1951 8.05.3.4.4. Collection services.
- 1952 8.05.3.5 Equipment. An inventory of equipment in accordance with
- 1953 Section 7.03.5.
- 1954 8.05.3.6 Billing. Billing review report in accordance with Section
- 1955 6.05.
- 1956 8.06 Event-Specific Reporting.
- 1957 8.06.1 Special Event Collection. As required by Section 5.10, the
- 1958 CONTRACTOR shall submit to the CITY a written report identifying the Tonnage of Solid Waste
- 1959 and Recyclable Materials Collected and any suggestions CONTRACTOR proposes for the next
- 1960 event. The report shall be submitted no later than ten (10) Business Days following each event.
- 1961 8.06.2 Report of Unauthorized Dumping. As required by Section 5.11,
- 1962 CONTRACTOR shall report: (i) the addresses of any Premises at which the driver observes
- 1963 Solid Waste, Recyclable Materials, and/or Organic Materials accumulating; and report (ii) the
- 1964 address, or other location description, at which Solid Waste, Recyclable Materials, and/or
- 1965 Organic Materials has been dumped in an apparently unauthorized manner. The report shall be
- 1966 delivered to the CITY within five (5) Business Days of such observation.



1967                    8.06.3    Hazardous Waste. As required by Section 7.06, the CONTRACTOR  
1968 shall notify the CITY of any Un-permitted Materials including Hazardous Waste identified in  
1969 Containers or left at any Premises within twenty four (24) hours of identification of such material.

1970                    8.06.4    Warning Notices for High Level of Contaminates. As required by  
1971 Section 7.02.4, CONTRACTOR shall report to the CITY any warning notices issued to  
1972 Customers for high levels of contaminants found in the Recyclable Materials or Yard Trimming  
1973 Containers. The report shall be delivered to the CITY within twenty four (24) hours of issuance  
1974 of the warning notice.

1975                    **ARTICLE 9. Franchise Fees and Other Fees**

1976                    9.01    General. CONTRACTOR shall collect the fees described in Sections 9.02 – 9.05  
1977 of this Article from Customers through CONTRACTOR'S regular billings and remit collected  
1978 amounts to CITY on a monthly basis as described in Section 9.07. CONTRACTOR may be  
1979 required to separately identify each fee and other specific costs on bills as determined and  
1980 directed by CITY. CONTRACTOR shall pay the CITY fees described in this Article for revenues  
1981 collected from all Customers with the exception that CONTRACTOR shall not pay fees  
1982 described in this Article for revenues collected from the University of California if  
1983 CONTRACTOR is prohibited by law from collecting such fees from the University of California.  
1984 CONTRACTOR shall not be required to pay fees (described in this Article) on revenues derived  
1985 from activities on University of California properties unless and until said properties, or the  
1986 commercial or residential improvements on said properties, become legally subject to fees  
1987 (described in this Article) by virtue of inclusion of collection services at said properties within the  
1988 exclusive scope of this Agreement. If, on the other hand, collection of fees from the University  
1989 of California, or its lessees, assigns, or users of its property or services, is permissible for any  
1990 reason, CONTRACTOR shall collect and remit all fees to the fullest extent allowable under the  
1991 law.

1992                    9.02    Franchise Fee. In consideration of the exclusive rights provided CONTRACTOR  
1993 herein, CONTRACTOR shall pay Franchise Fees to the CITY each month equal to ten (10)  
1994 percent of actual gross revenues remitted by Customers for Collection services provided in  
1995 CITY.

1996                    9.03    Administrative Fee. CONTRACTOR shall pay an administrative fee to the CITY  
1997 each month equal to one (1) percent of actual gross revenues remitted by Customers for  
1998 Collection services provided in CITY.

1999                    9.04    Street Sweeping Fee. CONTRACTOR shall pay a street sweeping fee to the  
2000 CITY each month equal to two and fifty eight one hundred (2.58) percent of actual gross  
2001 revenues remitted by Customers for Collection services provided in CITY.

2002                    9.05    Other Fees. The CITY may set or adjust "other" fees, such as a vehicle impact  
2003 fee, as it deems necessary. The amount, time, and method of payment and adjustment process  
2004 will be set in a manner similar to that for other fees described in this Article, and any  
2005 adjustments or increases shall be an allowable pass-through cost for which CONTRACTOR'S  
2006 compensation shall be adjusted in accordance with Section 10.05.

2007                    9.06    Adjustment to Fees. CITY shall adjust the fees established in this Article  
2008 annually as required during the Term of this Agreement.

2009                    9.07    Payment Schedule and Late Fees. On or before the twentieth (20<sup>th</sup>) day of each  
2010 month during the term of this Agreement, CONTRACTOR shall remit to CITY Franchise Fees

2011 and other fees as described in this Article. If such remittance is not paid to the CITY on or  
2012 before the twentieth (20<sup>th</sup>) day of any month, CONTRACTOR shall pay the fees due plus  
2013 interest compounded daily, where interest shall be calculated using the annual yield rate for the  
2014 California Local Agency Investment Fund (LAIF) most-recently published by the California State  
2015 Treasurer's office.

2016 9.07.1 Each monthly remittance to CITY shall be accompanied by a statement  
2017 itemizing each fee paid; detailing calculation of all fees; and stating actual gross revenues, by  
2018 Service Type, for the monthly period collected from all operations conducted or permitted by this  
2019 Agreement.

2020 9.08 Agreement Negotiations Fee. No later November 15, 2011, CONTRACTOR  
2021 shall submit a one (1) time only agreement negotiation fee to the CITY in the amount of twenty  
2022 thousand dollars (\$20,000).

2023 9.09 Sustainability Coordinator Fee. No later November 15, 2011, and annually  
2024 thereafter during the term of this Agreement, CONTRACTOR shall submit an annual  
2025 sustainability coordinator fee to the CITY in the amount of fifty four thousand dollars (\$54,000).

2026 **ARTICLE 10.**  
2027 **CONTRACTOR'S Compensation And Rates**

2028 10.01 CONTRACTOR'S Compensation. The CONTRACTOR'S Compensation for  
2029 performance of all its obligations under this Agreement shall be the actual gross Rate revenues  
2030 remitted to CONTRACTOR by Customers less fees due to the CITY in accordance with Article  
2031 9. CONTRACTOR'S compensation provided for in this Article shall be the full, entire, and  
2032 complete compensation due to CONTRACTOR pursuant to this Agreement for all labor,  
2033 equipment, materials and supplies, Processing and Disposal fees, taxes, insurance, bonds,  
2034 overhead, operations, profit and all other things necessary to perform all the services in the  
2035 manner required by this Agreement.

2036 10.01.1 If CONTRACTOR'S costs are more than actual gross revenues  
2037 retained by CONTRACTOR, CONTRACTOR shall not be compensated for the difference in  
2038 costs and revenues. If CONTRACTOR'S costs are less than the actual gross revenues retained  
2039 by the CONTRACTOR, CONTRACTOR shall retain the difference. In addition, calculations of  
2040 CONTRACTOR'S Compensation or Rates shall not be adjusted for past variances of actual  
2041 costs or revenues.

2042 10.02 Rates. Under this Agreement, CONTRACTOR shall have the right and obligation  
2043 to charge and collect from Customers Rates, which are established by the CITY.  
2044 CONTRACTOR shall charge Customers Rates approved by the CITY. The CONTRACTOR  
2045 shall collect payments from Customers in accordance with the CITY approved Rates.

2046 10.02.1 The Rates shall be fixed, as per Exhibit 1, for the period commencing  
2047 November 1, 2011 and ending April 30, 2012, and shall not be adjusted to reflect increases in  
2048 costs above those anticipated by CONTRACTOR, nor decreased to reflect decreases in costs  
2049 below those anticipated by CONTRACTOR.

2050 10.02.2 Service Rate Elements. Collection service Rates shall consist of some  
2051 combination of the following elements: a Collection service element, which shall be the funds  
2052 collected by the CONTRACTOR from the Customer for the provision of Collection services and  
2053 retained by CONTRACTOR, a Franchise Fee element, which shall be the funds collected by the  
2054 CONTRACTOR from the Customer for the provision of Collection services and remitted to the



2055 CITY, an administrative fee element, which shall be the funds collected by the CONTRACTOR  
2056 from the Customer on behalf of the CITY for CITY administrative services and remitted to the  
2057 CITY, a street sweeping element, which shall be the funds collected by the CONTRACTOR  
2058 from the Customer on behalf of the CITY for street sweeping services and remitted to the CITY  
2059 and such other elements as may be added during the term of this Agreement.

2060           10.03 Adjustments to Service Rates. Beginning on May 1, 2012 and annually  
2061 thereafter, Collection Service Rates may be adjusted using the Refuse Rate Index methodology  
2062 as set forth in this Article and in Exhibit 1 to this Agreement.

2063           10.03.1 Refuse Rate Index (RRI) Adjustment. The RRI adjustment shall be as  
2064 set forth in Exhibit 2 the lower of seven and one half (7.5) percent or the sum of the weighted  
2065 percentage change in the annual average of each RRI index number between the base  
2066 calendar year, which shall be the prior preceding calendar year and the preceding calendar year  
2067 exclusive of changes in governmental or regulatory fees or assessments which shall be a pass-  
2068 through. However, in any year that the RRI, including any prior year adjustment is more than  
2069 seven and one half (7.5) percent, the amount above seven and one half (7.5) percent, up to ten  
2070 (10) percent shall be carried over to the next adjustment period and added to the calculated RRI  
2071 for that period. However, the RRI adjustment for the last rate period of this Agreement shall  
2072 include any unused RRI carry forward without limitation. In the event the RRI adjustment is less  
2073 than zero (0) percent, the RRI adjustment for that year shall be zero (0) percent and the  
2074 negative amount shall not be carried forward to the next adjustment period. Therefore, the first  
2075 rate adjustment will be based on the percentage changes between the annual average of the  
2076 RRI indices for the calendar year ending December 31, 2010 and the annual average of the RRI  
2077 indices for the calendar year ending December 31, 2011.

2078           10.03.1.1 Annual adjustments shall be made only in units of one cent  
2079 (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making adjustments.  
2080 The indices shall be truncated at four (4) decimal places for the adjustment calculations.

2081           10.03.1.2 If the any of the RRI indices are discontinued or revised  
2082 during the Term by the United States Department of Labor, such other government index or  
2083 computation with which it is replaced shall be used in order to obtain substantially the same  
2084 result as would be obtained if the index had not been discontinued or revised.

2085           10.04 Annual Rate Application Process.

2086           10.04.1 On or before February 1, 2012 and annually thereafter,  
2087 CONTRACTOR shall submit an application requesting the Rate adjustment for the following  
2088 Rate Period. The application shall present each Rate for the current Rate Period and  
2089 calculation of each adjusted Rate for the following Rate Period. The application shall include all  
2090 supporting documentation for calculation of the adjusted Rates including RRI data along with  
2091 financial information for the specific services performed under this Agreement for the preceding  
2092 full or partial calendar year. Such financial information shall be in the format as set forth in  
2093 Exhibit 2, or as may be further revised by CITY from time to time. If CONTRACTOR fails to  
2094 submit the rate application and the financial information in the required format by February 1<sup>st</sup>, it  
2095 is agreed that CONTRACTOR shall be deemed to have waived the annual rate adjustment for  
2096 that year unless such failure is due to Force Majeure. In such case, all Rates shall be adjusted  
2097 to be effective the first of the month of the next Residential billing cycle following authorization  
2098 by the CITY. In addition, no retroactive adjustment will be made to allow the CONTRACTOR to  
2099 recover revenues that it would have collected had the Rate adjustment been implemented in  
2100 accordance with the prescribed schedule.

2101                   10.04.2 The CONTRACTOR'S Rate application shall be reviewed by the CITY.  
2102 The CITY may elect to have the adjusted Rates reviewed and authorized by the City Council or  
2103 to approve them administratively. The CITY shall act in good faith to authorize such Rate  
2104 adjustments by March 1<sup>st</sup> of each year so that approved Rates take effect on May 1<sup>st</sup> of each  
2105 year. Notwithstanding the provisions of Section 10.03, the adjusted Rates will not take effect  
2106 until the CITY has authorized such Rates.

2107                   10.04.3 If the CITY does not authorize Rates to be effective on or before May  
2108 31<sup>st</sup> of a Rate Period, the CITY shall include a Rate surcharge on the Rates that shall be  
2109 effective for the remainder of the Rate Period to recover revenues lost by the CONTRACTOR, if  
2110 any. If the effective date of the Rates is July 1<sup>st</sup> or later, the CITY shall adjust the Rates to  
2111 recoup lost revenues, if any, as well as interest due the CONTRACTOR on lost revenues,  
2112 where interest shall be calculated using the annual yield rate for the California Local Agency  
2113 Investment Fund (LAIF) most-recently published by the California State Treasurer's office. To  
2114 determine the amount of lost revenues, if any, the CITY and CONTRACTOR shall meet and  
2115 confer to determine the effect the delay in adopting Rates has on the CONTRACTOR'S  
2116 revenue. The assessment of the revenue impact shall consider the CONTRACTOR'S billing  
2117 cycle (e.g., impact to Customers billed in advance and to Customers billed in arrears), the ability  
2118 of CONTRACTOR to delay issuance of bills, the payment cycle of Customers, and other  
2119 variables.

2120                   10.05 Special Rate Review.

2121                   10.05.1 Eligible Items. The CONTRACTOR is entitled to apply to the CITY for  
2122 consideration of a special Rate review, or the CITY may initiate such a review, should one (1) or  
2123 more of the following occur:

2124                   10.05.1.1 Documented significant changes in the cost to provide  
2125 services required in this Agreement as a result of an agreed-upon CITY-directed change in  
2126 scope as provided for under Section 4.08.

2127                   10.05.1.2 Flood, earthquake, other acts of nature, war, civil  
2128 insurrection, riots, or other similar catastrophic events beyond the control of CONTRACTOR.

2129                   10.05.1.3 Change in Law after the Effective Date that: (1) was not  
2130 reasonably known to the CONTRACTOR before the Effective Date, (2) the CONTRACTOR  
2131 substantiates, and (3) results in an increase of more than \$0.05 per month for the Rate  
2132 Residential Customers pay for 32-gallon Solid Waste Collection, Recyclable Materials  
2133 Collection, and Yard Trimming Collection services ("32-gallon Rate"), provided that the increase  
2134 was calculated assuming the increase is apportioned equally to all Customers. Should the  
2135 Change in Law result in a Rate increase of less than \$0.05 per month for the 32-gallon Rate, but  
2136 otherwise qualify for an adjustment, then Rates shall be adjusted for this Change in Law during  
2137 the next regularly scheduled Rate adjustment provided in accordance with Section 10.02.

2138                   10.05.1.4 CITY-initiated changes to the amount of Franchise Fees,  
2139 street sweeping fees, administration fees, or other fees in accordance with Article 9.

2140                   10.05.2 Ineligible Items. The CONTRACTOR will not be compensated over the  
2141 term of this Agreement for:

2142                   10.05.2.1 Increases in the cost of Solid Waste, Recyclable Materials,  
2143 or Organic Materials Collection, transportation, Processing, or Disposal costs that may be  
2144 impacted by change in the Disposal Facility, Processing Sites, or Transfer Station operating  
2145 conditions unless such change is initiated by or at the direction of the CITY.



2146                                   10.05.2.2    Decreases in revenues from the sale of Recyclable Materials  
2147 or Organic Materials.

2148                                   10.05.2.3    Growth or decline in the number of Customers or their  
2149 subscription levels; however, the CONTRACTOR shall be entitled to bill all Customers at the  
2150 Rates set forth herein and retain all Rate revenues net fees due to CITY collected from its  
2151 Customers for Collection services provided under this Agreement.

2152                                   10.05.2.4    Changes in accounts related to Container sizes or frequency  
2153 of Collection; however, the CONTRACTOR shall be entitled to bill all Customers at the Rates  
2154 set forth herein and retain all Rate revenues net fees due to CITY collected from its Customers  
2155 for Collection services provided under this Agreement.

2156                                   10.05.2.5    Change in the composition of Solid Waste, Recyclable  
2157 Materials, or Organic Materials.

2158                                   10.05.3   Review of Costs. If the CONTRACTOR or the CITY requests a special  
2159 Rate review, the CITY shall have the right to review any or all financial and operating records of  
2160 CONTRACTOR and its Affiliates associated with the CONTRACTOR'S services under this  
2161 Agreement in accordance with Article 8. CONTRACTOR shall pay the CITY for costs  
2162 associated with the review incurred by the CITY and its agents unless said review is initiated by  
2163 the CITY.

2164                                   10.05.4   Submittal of Request. The CONTRACTOR must submit its request for  
2165 a special review of Rates, and reasonable cost and operational data, in a form and manner  
2166 specified by the CITY at least six (6) months before the proposed effective date of any Rate  
2167 adjustment.

2168                                   10.05.5   Burden of Justification. CONTRACTOR shall bear the burden of  
2169 justifying to the CITY by substantial evidence any entitlement to a Rate increase under this  
2170 Section. If the CITY determines that the CONTRACTOR has not met its burden, the  
2171 CONTRACTOR may request one hearing to produce additional evidence. Upon request, the  
2172 CITY shall permit said additional hearing. In the event the CITY denies CONTRACTOR'S  
2173 request, CONTRACTOR shall have the right to present its claim in a court of competent  
2174 jurisdiction.

2175                                   10.05.6   Grant of Request. Based on evidence the CONTRACTOR submits,  
2176 the CITY Council may grant some, all or none of the requested increase.

2177                                   10.05.7   Rate Adjustment. The CITY shall adjust Rates, in good faith,  
2178 coincident with any adjustment made pursuant to this Section.

2179                                   10.05.8   Compensation. The party requesting the special Rate review shall  
2180 bear all costs of both parties for participating in such review and such costs shall not be  
2181 reimbursed through Rates charged customers.

2182                                   10.06   Rates for Changes in Scope.

2183                                   10.06.1   In the event either the CITY or CONTRACTOR requests a change in  
2184 scope in accordance with Section 4.08, the CONTRACTOR shall furnish the CITY with  
2185 projected operational and cost data for the change in scope to support any adjustment to Rates.  
2186 For the purposes of analyzing cost impacts of changes in scope, the CONTRACTOR'S profit  
2187 shall be calculated using an operating ratio to be agreed upon between CITY and  
2188 CONTRACTOR. The CITY reserves the right to require that the CONTRACTOR supply any  
2189 additional cost data or other information it may reasonably need to ascertain the appropriate

2190 Rate Fee adjustment, if any, for the change in scope. The CITY shall review this operational  
2191 and cost data, and the CITY Council shall establish Rates for the change in scope, if warranted.

2192 10.06.2 The granting of any change in scope shall be contingent upon CITY  
2193 approval and establishment of new Rates. The CITY shall adjust Rates, in good faith,  
2194 coincident with any adjustment made pursuant to this Section so that the change in scope and  
2195 the corresponding Rates become effective on the same date.

2196 10.07 Notice of Rate.

2197 10.07.1 The CONTRACTOR shall provide all Customers with advance written  
2198 notice of approved Rate changes, in the form of a bill insert at least thirty (30) days before the  
2199 effective date of such changes.

2200 **ARTICLE 11.**

2201 **Indemnity, Insurance, and Performance Bond**

2202 11.01 General Indemnification.

2203 11.01.1 CONTRACTOR shall indemnify, defend with counsel acceptable to the  
2204 CITY, protect and hold harmless CITY Council, the CITY, its officers, employees, volunteers,  
2205 and agents (collectively, indemnitees) from and against all claims, damages (including but not  
2206 limited to special, consequential, natural resources and punitive damages), injuries, costs,  
2207 (including without limit any and all response, remediation and removal costs), losses, demands,  
2208 debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest,  
2209 fines, charges, penalties, and expenses (including without limit attorneys' expert witness fees  
2210 and costs incurred in connection with defending against any of the foregoing or in enforcing this  
2211 indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or  
2212 asserted against, indemnitees arising from or attributable to the acts or omissions of  
2213 CONTRACTOR whether or not negligent or otherwise culpable, in connection with or related to  
2214 the performance of this Agreement, including without limit damages arising from or attributable  
2215 to any operations, repair, clean-up or detoxification, or other plan (regardless of whether  
2216 undertaken due to governmental action) concerning any Hazardous Substance or Hazardous  
2217 Waste Collected in the CITY. Notwithstanding the foregoing, however, CONTRACTOR shall  
2218 not be required to indemnify the CITY for the costs for any claims arising from the Disposal of  
2219 Solid Waste at the Disposal Facility, from Processing of Recyclable Materials at the Recyclable  
2220 Materials Processing Facility, and/or from Processing Organic Materials at the Organics  
2221 Processing Facility including, but not limited to, claims arising under the Comprehensive  
2222 Environmental Response, Comprehensive and Liability Act (CERCLA) unless claim is a direct  
2223 result of CONTRACTOR'S actions or negligence. This indemnity afforded indemnitees, shall  
2224 only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitees,  
2225 and as provided below. The foregoing indemnity is intended to operate as an Agreement  
2226 pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and  
2227 Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to  
2228 defend, protect, hold harmless, and indemnify CITY from liability.

2229 11.01.2 This provision is in addition to all other provisions in this Agreement  
2230 and is intended to survive the expiration or earlier termination of this Agreement. Nothing in this  
2231 paragraph shall prevent CITY from seeking indemnification or contribution from Persons or  
2232 entities other than indemnitees, for any liabilities incurred by CITY or the indemnitees. As  
2233 appropriate, CONTRACTOR'S Guaranty Agreement shall extend to the indemnification  
2234 obligation hereunder.



2235           11.02 AB 939 Indemnification. In addition to all other relief provided CONTRACTOR  
2236 and CITY under this Agreement, CONTRACTOR agrees to defend, indemnify, and hold  
2237 harmless, CITY Council, the CITY, its officers, employees, volunteers, and agents from and  
2238 against all fines and/or penalties imposed by the California Integrated Waste Management  
2239 Board if the requirements of the Act are not met by the CONTRACTOR with respect to the  
2240 waste stream Collected under this Agreement, and such failure is (i) due to the failure of  
2241 CONTRACTOR to meet its obligations under this Agreement or (ii) due to CONTRACTOR  
2242 delays in providing information that prevents CONTRACTOR or CITY from submitting reports  
2243 required by the Act in a timely manner.

2244           11.03 Proposition 218 Indemnification. CONTRACTOR shall indemnify, defend and  
2245 hold harmless CITY Council, the CITY, its officers, employees, agents, and volunteers,  
2246 (collectively, indemnitees) from and against all claims, damages, injuries, costs, including  
2247 demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings,  
2248 interest fines, charges, penalties and expenses (including reasonable attorneys' and expert  
2249 witness fees, expenditures for investigation and administration) and costs of any kind  
2250 whatsoever paid, imposed upon, endured or suffered by or assessed against any of the  
2251 indemnitees resulting in any form from the CITY'S setting or approval of Rates for service under  
2252 this Agreement or in connection with the application of California Constitution, Article XIII C and  
2253 Article XIII D to the imposition, payment or collection of Rates and fees for services provided by  
2254 CONTRACTOR under this Agreement. Notwithstanding the foregoing, this indemnity shall not  
2255 extend to any addition to or increase in Rates that are not associated with the cost of providing  
2256 service under this Agreement except for a reasonable Franchise Fee.

2257           11.04 Indemnification Related to Personnel. CONTRACTOR shall defend, hold  
2258 harmless, and indemnify CITY Council, the CITY, its officers, employees, volunteers, and  
2259 agents, for all loss, damages, liability, claims, suits, costs or expenses whatsoever, including  
2260 reasonable attorneys' fees, regardless of the merits or outcome of any such claim or suit arising  
2261 from or in any manner related to the CITY'S request to remove or reassign any employee  
2262 pursuant to Section 7.05.

2263           11.05 Insurance.

2264                   11.05.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

2265                           11.05.1.1 Insurance Services Office form number GL 0002 covering  
2266 Commercial General Liability and Insurance Services Office form number GL 0404 covering  
2267 Broad Form Comprehensive General Liability; or Insurance Services Office Commercial  
2268 General Liability coverage ("occurrence" form CG 0001).

2269                           11.05.1.2 Insurance Services Office form number CA 0001 (or  
2270 equivalent) covering Automobile Liability, code 1 "any auto", and endorsement CA 0025.

2271                           11.05.1.3 Workers' Compensation insurance as required by the  
2272 Labor Code of the State of California and Employers Liability insurance.

2273                           11.05.1.4 Commercial Crime Insurance

2274                           11.05.1.5 Pollution Legal Liability.

2275 11.05.2 Minimum Limits of Insurance. CONTRACTOR shall maintain limits no  
2276 less than:

2277 11.05.2.1 Commercial General Liability: ten million dollars  
2278 (\$10,000,000) combined single limit per occurrence for bodily injury, personal injury, and  
2279 property damage.

2280 11.05.2.2 Automobile Liability: ten million dollars (\$10,000,000)  
2281 combined single limit per accident for bodily injury and property damage.

2282 11.05.2.3 Workers' Compensation and Employers Liability: Workers'  
2283 compensation limits as required by the Labor Code of the State of California and Employers  
2284 Liability limits of five million dollars (\$5,000,000) for each employee per accident or disease.

2285 11.05.2.4 Commercial Crime Insurance covering employee  
2286 dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside) with limits of  
2287 twenty five million dollars (\$25,000,000) per occurrence.

2288 11.05.2.5 Pollution Legal Liability: ten million dollars (\$10,000,000)  
2289 for bodily injury, property damage, and remediation of contaminated site.

2290 11.05.3 Deductibles and Self-Insured Retentions. Any deductibles or self-  
2291 insured retentions shall be for the account of the CONTRACTOR and payment of such shall be  
2292 made entirely by Contractor without contribution from the CITY. The deductible provisions of the  
2293 policies are secured by adequate financial instruments as required by the carrier.

2294 11.05.4 Other Insurance Provisions. The policies are to contain, or be  
2295 endorsed to contain, the following provisions:

2296 11.05.4.1 Commercial General Liability and Automobile Liability  
2297 Coverages.

2298 11.05.4.1.1. The CITY, its officials, employees and volunteers  
2299 are to be covered as additional insureds as respects: liability arising out of activities performed  
2300 by or on behalf of the CONTRACTOR; products and completed operations of the  
2301 CONTRACTOR; premises owned, leased or used by the Contractor; or automobiles owned,  
2302 leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special  
2303 limitations on the scope of protection afforded to the CITY, its officials, employees, or  
2304 volunteers. The automobile liability is endorsed to contain MCS-90 coverage.

2305 11.05.4.1.2. The CONTRACTOR'S insurance coverage shall be  
2306 primary insurance as respects the CITY, its officials, employees, and volunteers. Any insurance  
2307 or self-insurance maintained by the CITY, its officials, employees, or volunteers shall be excess  
2308 of the CONTRACTOR'S insurance and shall not contribute with it.

2309 11.05.4.1.3. Coverage shall state that the CONTRACTOR'S insurance  
2310 shall apply separately to each insured against whom claim is made or suit is brought, except  
2311 with respect to the limits of the insurer's liability.

2312 11.05.4.2 Workers' Compensation and Employers Liability Coverage.  
2313 The insurer shall agree to waive all rights of subrogation against the CITY, its officers,  
2314 employees, and volunteers for losses arising from work performed by the CONTRACTOR for  
2315 the CITY.



2316                           11.05.4.3    All Coverage. Each insurance policy required by this  
2317 clause shall be endorsed to state that coverage shall not be canceled except after thirty (30)  
2318 calendar days' prior written notice has been given to the CITY.

2319                           11.05.5    Acceptability of Insurers. The insurance policies required by this  
2320 Section 11.05 shall be issued by an insurance company or companies authorized to do  
2321 business in the State of California and with a rating in the most recent edition of Best's  
2322 Insurance Reports of size category VII or larger and a rating classification of A or better.

2323                           11.05.6    Verification of Coverage. CONTRACTOR shall furnish  
2324 CONTRACTOR'S insurance agent a copy of these specifications, and direct the agent to  
2325 provide the CITY with certificates of insurance and with original endorsements affecting  
2326 coverage required by this clause. Issuance of documentation indicates the Contractor's  
2327 insurance complies with these provisions. The certificates and endorsements for each  
2328 insurance policy are to be signed by a Person authorized by that insurer to issue coverage on  
2329 its behalf. The certificates and endorsements are to be received and approved by the CITY  
2330 before work commences

2331                           11.05.6.1    Upon request of CITY, CONTRACTOR shall allow City  
2332 Attorney to review and return, but not to copy, any and all insurance policies, together with all  
2333 endorsements, required under the terms of this Agreement.

2334                           11.05.7    Required Endorsements.

2335                           11.05.7.1    The Workers' Compensation policy shall contain an  
2336 endorsement in substantially the following form:

2337 "Thirty calendar days' prior written notice shall be given to the CITY of Albany in the event of  
2338 cancellation or non-renewal of this policy. Such notice shall be sent to:

2339                           City Manager  
2340                           CITY of Albany  
2341                           1000 San Pablo Avenue  
2342                           Albany, CA 94706"

2343                           11.05.7.2    The Commercial General Liability Business and  
2344 Automobile Liability policies shall contain endorsements in substantially the following form:

2345 "Thirty calendar days' prior written notice shall be given to the CITY of Albany in the event of  
2346 cancellation or non-renewal of this policy. Such notice shall be sent to:

2347                           City Manager  
2348                           CITY of Albany  
2349                           1000 San Pablo Avenue  
2350                           Albany, CA 94706"

2351                           11.05.7.2.1. As respects to Commercial General Liability policy,  
2352 "The CITY of Albany, its officers, employees, and agents are additional insureds on this policy."  
2353 The CITY requires form CG2010 1185.

2354                           11.05.7.2.2. As respects to Commercial General Liability policy  
2355 and the liabilities assumed by CONTRACTOR under this Agreement, "This policy shall be  
2356 considered primary insurance as respects any other valid and collectible insurance maintained  
2357 by the CITY of Albany, including any self-insured retention or program of self-insurance, and  
2358 any other such insurance shall be considered excess insurance only."

2359                   11.05.8 Delivery of Proof of Coverage. Simultaneously with the execution of  
2360 this Agreement, CONTRACTOR shall furnish the CITY certificates of each policy of insurance  
2361 required hereunder, in form and substance satisfactory to CITY. Such certificates shall show  
2362 the type and amount of coverage, effective dates and dates of expiration of policies and shall  
2363 have all required endorsements. If the CITY requests, to reviews each policy, together with all  
2364 endorsements, such review shall be provided as set forth in Section 11.05.6.1 above.

2365                   11.05.8.1       Renewal certificates will be furnished periodically to CITY  
2366 to demonstrate maintenance of the required coverage throughout the Term.

2367                   11.05.9 Other Insurance Requirements.

2368                   11.05.9.1       If any services are delegated to a subcontractor, the  
2369 CONTRACTOR shall require such subcontractor to provide statutory workers' compensation  
2370 insurance and employer's liability insurance for all of the subcontractor's employees engaged in  
2371 the work in accordance with Section 11.05.2.2 and Section 11.05.4.2. The liability insurance  
2372 required by Section 11.05.2.2 shall cover all Subcontractors or the Subcontractor must furnish  
2373 evidence of insurance provided by it meeting all of the requirements of this Section 11.05.

2374                   11.05.9.2       The CONTRACTOR shall comply with all requirements of  
2375 the insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from  
2376 any obligation under this Agreement. If any claim exceeding the amount of any deductibles or  
2377 self-insured reserves is made by any third person against the CONTRACTOR or any  
2378 subcontractor on account of any occurrence related to this Agreement, the CONTRACTOR shall  
2379 promptly report the facts in writing to the insurance carrier and to the CITY.

2380                   11.05.9.3       If CONTRACTOR fails to procure and maintain any  
2381 insurance required by this Agreement, the CITY may take out and maintain, at the  
2382 CONTRACTOR'S expense, such insurance as it may deem proper and deduct the cost thereof  
2383 from any monies due the CONTRACTOR.

2384                   11.05.9.4       Any failure to comply with reporting provisions of the  
2385 policies shall not relieve CONTRACTOR of its obligation to cover an otherwise insurable loss.

2386                   11.05.10       Notice of Policy Changes. CONTRACTOR shall provide  
2387 thirty (30) calendar days' prior written notice to CITY in the event of suspension, voiding,  
2388 cancellation or reduction in coverage, or limits of this policy.

2389                   11.05.11 The Comprehensive General and Automobile Liability insurance  
2390 required by this Article shall be written on an "occurrence," rather than a "claims made" basis, if  
2391 such coverage is obtainable. If it is not obtainable, CONTRACTOR must arrange for a thirty six  
2392 (36) month "tail coverage" to protect the CITY from claims filed after the expiration or  
2393 termination of this Agreement relating to incidents which occurred prior to such expiration or  
2394 termination.

2395                   11.06 Performance Bond. CONTRACTOR shall furnish a performance bond to ensure  
2396 performance of this Agreement and each and every condition of this Agreement in a form  
2397 acceptable to CITY no more than thirty (30) days after execution of this Agreement. The  
2398 performance bond shall be equal to seven hundred thousand dollars (\$700,000) to remain in  
2399 force for the duration of this Agreement. The premium for the bond described above shall be  
2400 paid by CONTRACTOR. The Surety or Sureties shall be a company or companies satisfactory  
2401 to CITY. Any surety shall be duly authorized to conduct business in the State of California..





2446 12.01.5 A court having jurisdiction shall enter a decree or order for relief in  
2447 respect of the CONTRACTOR, in any involuntary case brought under any bankruptcy,  
2448 insolvency, debtor relief, or similar law now or hereafter in effect, or CONTRACTOR shall  
2449 consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or  
2450 order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar  
2451 official) of the CONTRACTOR or for any part of the CONTRACTOR'S operating equipment or  
2452 assets, or orders the winding up or liquidation of the affairs of CONTRACTOR.

2453 12.01.6 CONTRACTOR fails to provide reasonable assurances of performance  
2454 as required under Section 12.07.

2455 12.02 Right to Terminate upon Default. Upon a default by CONTRACTOR, the CITY  
2456 may terminate this Agreement within ten (10) calendar days of the default but no later than one  
2457 hundred eighty (180) days after the default. Such termination shall be effective ten (10)  
2458 calendar days following the CITY'S written notice to CONTRACTOR, and such termination shall  
2459 be effective without the need for any hearing, suit or legal action.

2460 12.03 Possession of Property upon Termination. In the event of termination for default,  
2461 the CITY shall have the right to take possession of any and all of CONTRACTOR'S equipment  
2462 used in the Collection of Solid Waste, Recyclable Materials, Organic Materials, or C&D and the  
2463 Billing and collection of fees for these services and to use such equipment. For a period of up  
2464 to one hundred Eighty (180) calendar days from termination, the CITY shall have the right to  
2465 retain the possession of such equipment until other suitable arrangements can be made for the  
2466 provision of Solid Waste, Recyclable Materials, Organic Materials, or C&D Collection services,  
2467 which may include the award of an Agreement to another waste hauling company. If the CITY  
2468 retains possession thereof after the period of time for which CONTRACTOR has already been  
2469 paid by means of bills issued in advance of providing service for the class of service involved,  
2470 the CONTRACTOR shall be entitled to the reasonable rental value of such equipment (which  
2471 shall be offset against any damages due the CITY for the CONTRACTOR'S default).

2472 12.03.1 CONTRACTOR shall furnish the CITY with immediate access to all of  
2473 its business records related to its Customers and Billing of accounts for Collection services.

2474 12.04 CITY'S Remedies Cumulative; Specific Performance. The CITY'S right to  
2475 terminate the Agreement under Section 12.02 and to take possession of the CONTRACTOR'S  
2476 properties under Section 12.03 are not exclusive, and the CITY'S termination of the Agreement  
2477 and/or the imposition of Liquidated Damages shall not constitute an election of remedies.  
2478 Instead, these rights shall be in addition to any and all other legal and equitable rights and  
2479 remedies which the CITY may have.

2480 12.04.1 By virtue of the nature of this Agreement, the urgency of timely,  
2481 continuous and high quality service, the lead time required to effect alternative service, and the  
2482 rights granted by CITY to the CONTRACTOR, the remedy of damages for a breach hereof by  
2483 CONTRACTOR is inadequate and CITY shall be entitled to injunctive relief.

2484 12.05 Liquidated Damages.

2485 12.05.1 General. The Parties find that as of the time of the execution of this  
2486 Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages  
2487 which shall be incurred by CITY as a result of a breach by CONTRACTOR of its obligations  
2488 under this Agreement. The factors relating to the impracticability of ascertaining damages  
2489 include, but are not limited to, the fact that: (i) damage may result to members of the public who  
2490 are denied services or denied quality or reliable service; (ii) such breaches cause



2491 inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to  
2492 individual members of the general public for whose benefit this Agreement exists, which are  
2493 incapable of measurement in precise monetary terms; (iii) the monetary loss resulting from  
2494 denial of services or denial of quality or reliable services is impossible to calculate in precise  
2495 monetary terms; and (iv) the termination of this Agreement for such breaches, and other  
2496 remedies are, at best, a means of future correction and not remedies which make the public  
2497 whole for past breaches.

2498                   12.05.2 Service Performance Standards; Liquidated Damages for Failure to  
2499 Meet Standards. The Parties further acknowledge that consistent, reliable Solid Waste,  
2500 Recyclable Materials, Organic Materials, and C&D Collection service is of utmost importance to  
2501 CITY and that CITY has considered and relied on CONTRACTOR'S representations as to its  
2502 quality of service commitment in awarding the Agreement to it. The Parties recognize that some  
2503 quantified standards of performance are necessary and appropriate to ensure consistent and  
2504 reliable service and performance. The Parties further recognize that if CONTRACTOR fails to  
2505 achieve the performance standards, or fails to submit required documents in a timely manner,  
2506 CITY and its residents and businesses will suffer damages and that it is and will be impractical  
2507 and extremely difficult to ascertain and determine the exact amount of damages which CITY will  
2508 suffer. Therefore, without prejudice to CITY'S right to treat such non-performance as an event  
2509 of default under this Section, the Parties agree that the Liquidated Damages amounts  
2510 established in Exhibit 4 of this Agreement and the following Liquidated Damage amounts  
2511 represent a reasonable estimate of the amount of such damages considering all of the  
2512 circumstances existing on the Effective Date of this Agreement, including the relationship of the  
2513 sums to the range of harm to CITY that reasonably could be anticipated and that proof of actual  
2514 damages would be costly or impractical.

2515                   12.05.2.1 CONTRACTOR agrees to pay (as Liquidated Damages  
2516 and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit 4.

2517                   12.05.2.2 Parties agree that Liquidated Damages shall not be  
2518 assessed and payable by CONTRACTOR for any events giving rise to Liquidated Damages  
2519 which (i) occur within 45 days after CONTRACTOR began providing the service for which the  
2520 Liquidated Damages are being assessed (ii) pertain to Collection of Solid Waste and/or Organic  
2521 Material from Commercial Premises, are related to Labor Action(s), and occur during the first  
2522 two (2) Business Days after commencement of such Labor Action(s), or (iii) pertain to Collection  
2523 of Recyclable Materials from Commercial Premises or Collection of Solid Waste, Organic  
2524 Material and/or Recyclable Materials from Residential Premises, are related to Labor Action(s),  
2525 and occur during the first five (5) Business Days after commencement of such Labor Action(s).

2526                   12.05.2.3 CITY may determine the occurrence of events giving rise  
2527 to Liquidated Damages through the observation of its own employees or representative or  
2528 investigation of Complaints by Customers, Occupants, and Generators.

2529                   12.05.2.4 Liquidated Damages will only be assessed after  
2530 CONTRACTOR has been given the opportunity but failed to rectify the conduct subject to  
2531 Liquidated Damages described in this Agreement. Before assessing Liquidated Damages,  
2532 CITY shall give CONTRACTOR notice of its intention to do so. The notice will include a brief  
2533 description of the incident(s) and non-performance. The CITY may review (and make copies at  
2534 its own expense) all information in the possession of CONTRACTOR relating to incident(s) and  
2535 non-performance. CITY may, within ten (10) calendar days after issuing the notice, request a  
2536 meeting with CONTRACTOR. CITY may present evidence of non-performance in writing and  
2537 through testimony of its employees and others relevant to the incident(s) and non-performance.

2538 CITY will provide CONTRACTOR with a written explanation of his or her determination on each  
2539 incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages  
2540 under this Section 12.05.2.4. The decision of CITY shall be final and CONTRACTOR shall not  
2541 be subject to, or required to exhaust, any further administrative remedies.

2542           12.05.3 Amount. CITY may assess Liquidated Damages for each calendar day  
2543 or event, as appropriate, that CONTRACTOR is determined to be liable in accordance with this  
2544 Agreement in the amounts specified in Exhibit 4. If the amount of Liquidated Damages for any  
2545 three (3) month period exceeds the thresholds established in Section 7.05.2, the CITY shall  
2546 have the right to request replacement of the CONTRACTOR'S field representative and the  
2547 CONTRACTOR'S Compliance Manager as designated by the CONTRACTOR as described in  
2548 Section 7.05.2.

2549           12.05.4 Timing of Payment. CONTRACTOR shall pay any Liquidated  
2550 Damages assessed by CITY within ten (10) calendar days of the date the Liquidated Damages  
2551 are assessed. If they are not paid within the ten (10) day period, the CONTRACTOR shall pay  
2552 the CITY the Liquidated Damage payment due plus interest compounded daily, where interest  
2553 shall be calculated using the annual yield rate for the California Local Agency Investment Fund  
2554 most-recently published by the California State Treasurer's office; and the CITY shall send  
2555 written notice to the CONTRACTOR and the CONTRACTOR'S performance bond company  
2556 stating CONTRACTOR'S failure to pay Liquidated Damages and the CITY'S right to terminate  
2557 the Agreement and proceed against the performance bond if payment is not received within  
2558 ninety (90) days of the date Liquidated Damages were assessed

2559           12.05.4.1 If the Liquidated Damages payment is thirty (30) days past  
2560 due, the CONTRACTOR shall pay the CITY double the Liquidated Damages payment due plus  
2561 interest compounded daily, where interest shall be calculated as described above. If the  
2562 Liquidated Damages payment is sixty (60) days or more past due, the CITY shall notice the  
2563 CONTRACTOR and the CONTRACTOR'S performance bond company of the CITY'S intent to  
2564 terminate the Agreement and proceed against the performance bond if Liquidated Damages are  
2565 not paid within ninety (90) days of the date of assessment. If the Liquidated Damages payment  
2566 is ninety (90) days or more past due and the CITY provided CONTRACTOR with thirty (30) day  
2567 advance written notice of its intent to terminate the Agreement for failure to pay Liquidated  
2568 Damages, the CITY may terminate the Agreement, in which case the provisions of Section  
2569 12.03 shall apply and the CITY may proceed against the performance bond required by the  
2570 Agreement.

2571           12.05.5 Appeals. If CONTRACTOR has filed a written appeal of the  
2572 assessment of Liquidated Damages levied by the CITY, the CITY may not terminate the  
2573 Agreement for breach of performance standards for which the Liquidated Damages were  
2574 assessed conditioned upon receipt of CONTRACTOR'S payment of the Liquidated Damages  
2575 assessed in accordance with Section 12.05.4 accompanied by a statement indicating such  
2576 payment is made under protest and identifying the date the appeal was filed. If the  
2577 CONTRACTOR prevails in the appeal process, the CITY shall pay CONTRACTOR any  
2578 Liquidated Damages paid under protest plus interest compounded daily, where interest shall be  
2579 calculated using the annual yield rate for the California Local Agency Investment Fund most-  
2580 recently published by the California State Treasurer's office. If the CONTRACTOR does not  
2581 prevail in the appeal process, the CITY shall retain the Liquidated Damages paid under protest  
2582 and CONTRACTOR shall pay an additional Liquidated Damages due.

2583           12.06 Excuse from Performance. The Parties shall be excused from performing their  
2584 respective obligations hereunder if they are prevented from so performing by reason of floods,



2585 earthquakes, other acts of nature, war, terrorism, civil insurrection, riots, acts of any government  
2586 (including judicial action), and other similar catastrophic events which are beyond the control of  
2587 and not the fault of the Party claiming excuse from performance hereunder. Labor Actions  
2588 conducted by CONTRACTOR'S employees or directed at CONTRACTOR is not an excuse from  
2589 performance and CONTRACTOR shall be obligated to continue to provide service  
2590 notwithstanding the occurrence of any or all of such events , except that if CONTRACTOR is not  
2591 providing such services to other municipalities affected by the Labor Actions, CONTRACTOR  
2592 shall be excused from the Collection of Solid Waste and/or Organic Material from Commercial  
2593 Premises during the first two (2) Business Days after commencement of such Labor Action(s),  
2594 and from the Collection of Recyclable Materials from Commercial Premises and Collection of  
2595 Solid Waste, Organic Material and/or Recyclable Materials from Residential Premises during the  
2596 first five (5) Business Days after commencement of such Labor Action(s). In the case of labor  
2597 unrest or job action directed at a third party over whom CONTRACTOR has no control, the  
2598 inability of CONTRACTOR to provide Solid Waste, Recyclable Materials, or Organic Materials  
2599 Collection services due to the unwillingness or failure of the third party to provide reasonable  
2600 assurance of the safety of CONTRACTOR'S employees while providing Solid Waste,  
2601 Recyclable Materials, or Organic Materials Collection services or to make reasonable  
2602 accommodations with respect to Container placement and point of delivery, time of Collection or  
2603 other operating circumstances to minimize any confrontation with pickets or the number of  
2604 Persons necessary to make Collections shall, to that limited extent, excuse performance and  
2605 provided further that the foregoing excuse shall be conditioned on CONTRACTOR'S  
2606 cooperation in making Collection at different times and in different locations.

2607           12.06.1 The Party claiming excuse from performance shall, within two (2)  
2608 Business Days after such Party has received notice of such cause, give the other Party notice of  
2609 the facts constituting such cause and asserting its claim to excuse under this Section.

2610           12.06.2 If either Party validly exercises its rights under this Section, the Parties  
2611 hereby waive any claim against each other for any damages sustained thereby.

2612           12.06.3 The partial or complete interruption or discontinuance of  
2613 CONTRACTOR'S services caused by one or more of the events described in this Article shall  
2614 not constitute a default by CONTRACTOR under this Agreement. Notwithstanding the  
2615 foregoing, however, (i) the existence of an excuse from performance will not affect the CITY'S  
2616 rights under Section 4.13; and (ii) if CONTRACTOR is excused from performing its obligations  
2617 hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or  
2618 more, other than as the result of third party labor disputes where service cannot be provided for  
2619 reasons described earlier in this Section, the CITY shall nevertheless have the right, in its sole  
2620 discretion, to terminate this Agreement by giving ten (10) calendar days notice to  
2621 CONTRACTOR unless CONTRACTOR has demonstrated, by the thirtieth (30<sup>th</sup>) calendar day, to  
2622 the satisfaction of the CITY that the CONTRACTOR will resume services no later than the  
2623 sixtieth (60<sup>th</sup>) calendar day following the date service was interrupted or discontinued by  
2624 CONTRACTOR. If the CITY terminates the Agreement under this provision, the provisions of  
2625 Section 12.03 shall apply.

2626           12.07 Right to Demand Assurances of Performance. If CONTRACTOR (i) is the  
2627 subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other  
2628 concerted job action; (ii) appears in the reasonable judgment of CITY to be unable to regularly  
2629 pay its bills as they become due; or (iii) is the subject of a civil or criminal judgment or order  
2630 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and the  
2631 CITY believes in good faith that CONTRACTOR'S ability to perform under the Agreement has

2632 thereby been placed in substantial jeopardy, the CITY may, at its option and in addition to all  
2633 other remedies it may have, demand from CONTRACTOR reasonable assurances of timely and  
2634 proper performance of this Agreement, in such form and substance as the CITY believes in  
2635 good faith is reasonably necessary in the circumstances to evidence continued ability to perform  
2636 under the Agreement. If CONTRACTOR fails or refuses to provide satisfactory assurances of  
2637 timely and proper performance in the form and by the date required by CITY, such failure or  
2638 refusal shall be an event of default for purposes of Section 12.01.

2639 **ARTICLE 13. Relationship of Parties**

2640 13.01 The Parties intend that CONTRACTOR shall perform the services required by  
2641 this Agreement as an independent CONTRACTOR engaged by CITY and not as an officer or  
2642 employee of the CITY nor as a partner of or joint venturer with the CITY. No employee or agent  
2643 of CONTRACTOR shall be or shall be deemed to be an employee or agent of the CITY. Except  
2644 as expressly provided herein, CONTRACTOR shall have the exclusive control over the manner  
2645 and means of conducting the Solid Waste, Recyclable Materials, and Organic Materials  
2646 Collection services performed under this Agreement, and all Persons performing such services.  
2647 CONTRACTOR shall be solely responsible for the acts and omissions of its officers, employees,  
2648 subcontractors and agents. Neither CONTRACTOR nor its officers, employees, subcontractors  
2649 and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any  
2650 other benefits which accrue to CITY employees by virtue of their employment with the CITY.

2651 **ARTICLE 14. Compliance with Law**

2652 14.01 CONTRACTOR shall at all times, at its sole cost, comply with all Applicable  
2653 Laws, permits and licenses of the United States, the State and the CITY and with all applicable  
2654 regulations promulgated by Federal, State, regional or local administrative and regulatory  
2655 agencies, now in force and as they may be enacted, issued or amended during the Term.

2656 **ARTICLE 15. Governing Law**

2657 15.01 This Agreement shall be governed by, and construed and enforced in  
2658 accordance with, the laws of the State of California.

2659 **ARTICLE 16. Jurisdiction**

2660 16.01 Any lawsuits between the Parties arising out of this Agreement shall be brought  
2661 and concluded in the courts of Alameda County in the State of California, which shall have  
2662 exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this  
2663 Agreement is made in and will be performed in Alameda County.

2664 **ARTICLE 17. Binding on Successors**

2665 17.01 The provisions of this Agreement shall inure to the benefit to and be binding on  
2666 the successors and permitted assigns of the Parties.

2667 **ARTICLE 18. Assignment**

2668 18.01 Neither Party shall assign its rights nor delegate or otherwise transfer its  
2669 obligations under this Agreement to any other Person without the prior written consent of the



2670 other Party. Any such assignment made without the consent of the other Party shall be void  
2671 and the attempted assignment shall constitute a material breach of this Agreement.

2672 18.02 For purposes of this Section, "assignment" shall include, but not be limited to (i) a  
2673 sale, exchange or other transfer of substantially all of CONTRACTOR'S assets dedicated to  
2674 service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10)  
2675 percent or more of the outstanding common stock of CONTRACTOR; (iii) any reorganization,  
2676 consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling  
2677 Agreement, escrow arrangement, liquidation or other transaction to which CONTRACTOR or  
2678 any of its shareholders is a party which results in a change of ownership or control of thirty (30)  
2679 percent or more of the value or voting rights in the stock of CONTRACTOR; and (iv) any  
2680 combination of the foregoing (whether or not in related, contemporaneous or sequential  
2681 transactions) which has the effect of any such transfer or change of ownership and/or control of  
2682 CONTRACTOR. For purposes of this Section, the term "proposed assignee" shall refer to the  
2683 proposed transferee(s) or other successor(s) in interest pursuant to the assignment.  
2684 Assignment shall exclude a change in ownership of CONTRACTOR'S assets or stocks which  
2685 occurs for interfamilial planning purposes only and does not involve a change in the  
2686 management of the Agreement or services performed thereunder.

2687 18.03 CONTRACTOR acknowledges that this Agreement involves rendering a vital  
2688 service to CITY'S residents and businesses, and that CITY has selected CONTRACTOR to  
2689 perform the services specified herein based on (i) CONTRACTOR'S experience, skill and  
2690 reputation for conducting its Solid Waste, Recyclable Materials, and Organic Materials  
2691 management operations in a safe, effective and responsible fashion, at all times in keeping with  
2692 Applicable Laws, regulations and good waste management practices, and (ii) CONTRACTOR'S  
2693 financial resources to maintain the required equipment and to support its indemnity obligations  
2694 to CITY under this Agreement. CITY has relied on each of these factors, among others, in  
2695 choosing CONTRACTOR to perform the services to be rendered by CONTRACTOR under this  
2696 Agreement.

2697 18.04 If CONTRACTOR requests CITY'S consideration of and consent to an  
2698 assignment, the CITY may deny or approve such request in its sole discretion. The CITY does  
2699 not have to consider a request by CONTRACTOR for consent to an assignment until  
2700 CONTRACTOR has met the following requirements.

2701 18.04.1 CONTRACTOR shall undertake to pay CITY its reasonable expenses  
2702 for attorney's fees and investigation costs necessary to investigate the suitability of any  
2703 proposed assignee, and to review and finalize any documentation required as a condition for  
2704 approving any such assignment;

2705 18.04.2 CONTRACTOR shall furnish CITY with audited financial statements of  
2706 the proposed assignee's operations for the immediately preceding three (3) operating years;

2707 18.04.3 CONTRACTOR shall furnish CITY with satisfactory proof: (i) that the  
2708 proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, and  
2709 Organic Materials management experience on a scale equal to or exceeding the scale of  
2710 operations conducted by CONTRACTOR under this Agreement; (ii) that in the last five (5)  
2711 years, the proposed assignee has not suffered any citations or other censure from any Federal,  
2712 State or local CONTRACTOR having jurisdiction over its waste management operations due to  
2713 any significant failure to comply with state, Federal or local waste management laws and that  
2714 the assignee has provided the CITY with a complete list of such citations and censures; (iii) that  
2715 the proposed assignee has at all times conducted its operations in an environmentally safe and

2716 conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste, Recyclable  
2717 Materials, and Organic Materials management practices in accordance with sound waste  
2718 management practices in full compliance with all Applicable Laws regulating the Collection of  
2719 Solid Waste, Recyclable Materials, and Organic Materials, including Hazardous Waste as  
2720 identified in Title 22 of the California Code of Regulations; and (v) that any other information  
2721 required by CITY demonstrates that the proposed assignee can fulfill the terms of this  
2722 Agreement in a timely, safe and effective manner.

2723 18.05 Under no circumstances shall any proposed assignment be considered by CITY  
2724 if CONTRACTOR is in default at any time during the period of consideration.

2725 **ARTICLE 19. Parties in Interest**

2726 19.01 Nothing in this Agreement, whether express or implied, is intended to confer any  
2727 rights on any Persons other than the Parties to the Agreement and their representatives,  
2728 successors and permitted assigns.

2729 **ARTICLE 20. Waiver**

2730 20.01 The waiver by either Party of any breach or violation of any provisions of this  
2731 Agreement shall not be deemed to be a waiver of any breach or violation of any other provision  
2732 nor of any subsequent breach or violation of the same or any other provision. The subsequent  
2733 acceptance by either Party of any monies which become due hereunder shall not be deemed to  
2734 be a waiver of any pre-existing or concurrent breach or violation by the other Party of any  
2735 provision of this Agreement.

2736 **ARTICLE 21. Notice Procedures**

2737 21.01 All notices, demands, requests, proposals, approvals, consents, and other  
2738 communications which this Agreement requires, authorizes or contemplates, except as provided  
2739 in Section 4.13.1, shall be in writing and shall either be personally delivered to a representative  
2740 of the Parties at the address below or deposited in the United States mail, first class postage  
2741 prepaid, addressed as follows:

2742 If to City:  
2743 City Manager  
2744 City of Albany  
2745 1000 San Pablo Avenue  
2746 Albany, CA 94706

2747 With a copy to the City attorney at the same address.

2748  
2749 As to CONTRACTOR:  
2750 Area Vice President  
2751 Waste Management of Alameda County, Inc.  
2752 172 98<sup>th</sup> Street  
2753 Oakland, CA 54603

2754 With a copy to  
2755 Vice President and Group General Council  
2756 USA Waste of California



2757 7025 N. Scottsdale Road, #200  
2758 Scottsdale, AZ 85253

2759 21.01.1 The address to which communications may be delivered may be  
2760 changed from time to time by a notice given in accordance with this Section.

2761 21.01.2 Notice shall be deemed given on the day it is personally delivered or, if  
2762 mailed, three (3) calendar days from the date it is deposited in the mail.

2763 **ARTICLE 22. Representative of the Parties**

2764 22.01 References in this Agreement to the "CITY" shall mean the CITY Council and all  
2765 actions to be taken by the CITY shall be taken by the CITY Council except as provided below.  
2766 The CITY Council may delegate, in writing, authority to the City Manager, the Director of Public  
2767 Facilities and Services, and/or to other CITY officials and may permit such officials, in turn, to  
2768 delegate in writing some or all of such authority to subordinate officers. The CONTRACTOR  
2769 may rely upon actions taken by such delegates if they are within the scope of the authority  
2770 properly delegated to them.

2771 22.02 The CONTRACTOR shall, by the Effective Date, designate in writing a  
2772 responsible representative, who has the authority to bind the CONTRACTOR and who shall  
2773 serve as the representative of the CONTRACTOR in all matters related to the Agreement and  
2774 shall inform the CITY in writing of such designation and of any limitations upon his or her  
2775 authority to bind the CONTRACTOR. The CITY may rely upon action taken by such designated  
2776 representative as actions of the CONTRACTOR unless they are outside the scope of the  
2777 authority delegated to him/her by the CONTRACTOR as communicated to CITY.

2778 **ARTICLE 23. Criminal Activity of CONTRACTOR**

2779 23.01 Criminal Activity of CONTRACTOR. For purpose of this Section, Criminal  
2780 Activity shall mean any of the following events or circumstances:

2781 23.01.1 Convictions. The entry against any CONTRACTOR Party of a criminal  
2782 conviction or a permanent mandatory or prohibitory injunction from a court, municipality or  
2783 regulatory agency of competent jurisdiction based on acts taken in his or her official capacity on  
2784 behalf of CONTRACTOR with respect to:

2785 23.01.1.1 Fraud or criminal offense in connection with obtaining,  
2786 attempting to obtain, procuring or performing a public or private agreement related to municipal  
2787 Solid Waste, Recyclable Materials, or Organic Materials services of any kind (including  
2788 Collection, transportation, transfer, Processing, composting or Disposal), including this  
2789 Agreement or any amendment thereto;

2790 23.01.1.2 Bribery or attempting to bribe a public officer or employee  
2791 of a local, State, or Federal agency;

2792 23.01.1.3 Embezzlement, extortion, racketeering, false claims, false  
2793 statements, forgery, falsification or destruction of records, obstruction of justice, knowingly  
2794 receiving stolen property, theft, or misprision (failure to disclose) of a felony;

2795 23.01.1.4 Unlawful disposal of Hazardous Waste or Designated  
2796 Waste the occurrence of which any of CONTRACTOR Party knew or should have known;

2797 23.01.1.5 Violation of antitrust laws, including laws relating to price-  
2798 fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade  
2799 practices laws, including with respect to inflation of fees for Solid Waste, Recyclable Materials or  
2800 Organic Materials Collection, transportation, Processing, or Disposal;

2801 23.01.1.6 Violation of securities laws;

2802 23.01.1.7 Felonies.

2803 23.01.2 Pleas. Entry of a plea of “guilty,” “nolo contendere” or “no contest” by  
2804 a Contracting Party based on acts taken in his, her, or its official capacity on behalf of  
2805 CONTRACTOR with respect to the conduct described in Section 23.01.1.1.

2806 23.02 Notice. CONTRACTOR shall notify CITY in writing within five (5) calendar days  
2807 of becoming aware of the occurrence of any Criminal Activity.

2808 23.03 CONTRACTOR’S Cure. Upon occurrence of any Criminal Activity,  
2809 CONTRACTOR shall immediately do or cause to be done all of the following:

2810 23.03.1 Terminate from employment or remove from office any offending  
2811 individual CONTRACTOR Party, unless otherwise directed or ordered by a court or regulatory  
2812 agency of competent jurisdiction or authority, and unless that termination would constitute a  
2813 breach of any labor agreement entered into by CONTRACTOR, and

2814 23.03.2 Eliminate participation by any individual offending CONTRACTOR  
2815 Party in any management, supervision, or decision activity that affects or could affect, directly or  
2816 indirectly, the performance of the CONTRACTOR under this Agreement.

2817 23.04 Transfer and Hiring. CONTRACTOR shall not allow or cause to be allowed the  
2818 hire or transfer of any individual from any Parent Company or subsidiary company or business  
2819 entity of CONTRACTOR who has committed Criminal Activity as a CONTRACTOR  
2820 representative, field supervisor, officer, or director who is directly or indirectly responsible for  
2821 performance of this Agreement without obtaining prior written consent of CITY, following full  
2822 disclosure to CITY of the facts and circumstances surrounding such Criminal Activity.

2823 23.05 CITY’S Remedy. In the event of any occurrence of Criminal Activity, the CITY, in  
2824 its sole discretion, may terminate the Agreement within thirty (30) calendar days written notice to  
2825 CONTRACTOR, or may impose other sanctions (which may include financial sanctions,  
2826 temporary suspensions, or any other condition deemed appropriate short of termination) as it  
2827 will deem proper, in the following events:

2828 23.05.1 CONTRACTOR fails to comply with the foregoing obligation of this  
2829 Section, or

2830 23.05.2 The Criminal Activity concerns or relates directly or indirectly to this  
2831 Agreement.

2832 23.05.3 CONTRACTOR shall be given the opportunity to present evidence in  
2833 mitigation during the thirty (30) calendar day notice period.

2834 **ARTICLE 24. Public Hearing on CONTRACTOR’S Performance**

2835 24.01 At any time, but no more than once annually, the CITY may hold a public hearing  
2836 at which CONTRACTOR may be required by CITY to attend and participate in, to review the  
2837 CONTRACTOR’S performance and to solicit feedback from the public regarding  
2838 CONTRACTOR’S performance of services under this Agreement. The purpose of the public



2839 hearing shall be to provide for discussion and review of technological, economic, and regulatory  
2840 changes in order to achieve a continuing, state-of-the-art Collection system and to ensure  
2841 services are being provided with adequate quality, effectiveness, and economy. Input provided  
2842 during the public hearing may be used by the CITY at its discretion.

2843 **ARTICLE 25. Binding Arbitration**

2844 25.01 Upon the request by written notice of CONTRACTOR or CITY, unresolved  
2845 disputes relating respectively to events of default, the CITY'S right to terminate the Agreement,  
2846 excuse from performance, assurance of performance and liquidated damages, shall be limited  
2847 to arbitration as described herein. A party to this Agreement alleging a breach of a provision  
2848 subject to arbitration may initiate arbitration by giving the other party a written arbitration  
2849 demand notice. The parties shall jointly select a single arbitrator who is knowledgeable of the  
2850 general subject matter. If the parties are unable to agree upon an arbitrator within thirty (30)  
2851 Business Days of the arbitration demand notice, the party alleging a breach shall request from  
2852 the American Arbitration Association a list of five (5) arbitrators who conduct arbitrations in the  
2853 greater Bay Area. The parties shall alternately strike names from the list until one name  
2854 remains. The arbitrator whose name remains shall be appointed as the arbitrator.

2855 25.02 The arbitration of this dispute shall commence no later than ninety (90) days after  
2856 the appointment of the arbitrator and shall be conducted in a location agreed by the parties,  
2857 according to the commercial arbitration rules of the American Arbitration Association, except as  
2858 modified herein. The arbitrator shall set the time and other limits for the presentation of each  
2859 party's case, memoranda, and other submissions, and shall issue a written decision supported  
2860 by law and substantial evidence as promptly as circumstances demand and permit. The  
2861 arbitrator shall have no authority in excess of the authority of a court having jurisdiction over the  
2862 matter. Additionally, the arbitrator shall not alter, revoke, or suspend any provision, term, or  
2863 condition of this Agreement. The arbitration award shall be binding and deemed enforceable in  
2864 any court of competent jurisdiction. Each party acknowledges that it is giving up judicial rights  
2865 to a jury trial, discovery, and most grounds for appeal under this section.

2866 25.03 The cost of arbitration incurred pursuant to this paragraph shall be born equally  
2867 by the parties.

2868 **ARTICLE 26. Entire Agreement**

2869 26.01 This Agreement, including the Exhibits, represents the full and entire Agreement  
2870 between the Parties with respect to the matters covered herein.

2871 **ARTICLE 27. Section Headings**

2872 27.01 The article headings and section headings in this Agreement are for convenience  
2873 of reference only and are not intended to be used in the construction of this Agreement nor to  
2874 alter or affect any of its provisions.

2875 **ARTICLE 28. References to Laws**

2876 28.01 All references in this Agreement to laws shall be understood to include such laws  
2877 as they may be subsequently amended or recodified, unless otherwise specifically provided.

2878 **ARTICLE 29. Interpretation**  
2879 29.01 This Agreement shall be interpreted and construed reasonably and neither for  
2880 nor against either Party, regardless of the degree to which either Party participated in its  
2881 drafting.

2882 **ARTICLE 30. Amendment**  
2883 30.01 This Agreement may not be modified or amended in any respect except in writing  
2884 signed by the Parties.

2885 **ARTICLE 31. Severability**  
2886 31.01 If any non-material provision of this Agreement is for any reason deemed to be  
2887 invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any  
2888 of the remaining provisions of this Agreement which shall be enforced as if such invalid or  
2889 unenforceable provision had not been contained herein.

2890 **ARTICLE 32. Counterparts**  
2891 32.01 This Agreement may be executed in counterparts each of which shall be  
2892 considered an original.

2893 **ARTICLE 33. Exhibits**  
2894 33.01 Each of the Exhibits identified as Exhibit 1 through 7 is attached hereto and  
2895 incorporated herein and made a part hereof by this reference.  
2896



2897 IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day  
2898 and year first above written.

2899  
2900  
2901

2902 *CITY OF ALBANY*

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

2903  
2904  
2905

2906 By: \_\_\_\_\_.

By: \_\_\_\_\_.

2907 Beth Pollard, City Manager

Barry Skolnick, Area Vice President

2908  
2909

\_\_\_\_\_.

\_\_\_\_\_.

2910 Date

Date

2911  
2912

2913 APPROVED AS TO FORM:

2914 \_\_\_\_\_.

2915 City Attorney

2916  
2917

\_\_\_\_\_.

2918 City Clerk

2919  
2920  
2921  
2922

2923

# EXHIBITS



## Exhibit 1 Rate Tables

## City of Albany

<b>RESIDENTIAL RATES (Effective 11/1/2011)</b>			
	STANDARD	SENIOR DISCOUNT	PERCENT
10 GAL Toter	16.24		
20 GAL Toter	32.48	6.50	20%
32 GAL Toter	36.37	7.27	20%
64 GAL Toter	62.86	12.57	20%
96 GAL Toter	89.35	17.87	20%
BACK YARD SERVICE	\$ 13.17		
EXCESS GALLONS	\$ 0.99		
ADDITIONAL BULKY YARDS	\$ 47.17		
EXTRA PICK UP (On regular route day - 25% of Monthly Rate)			
10 GAL Toter	NA		
20 GAL Toter	NA		
32 GAL Toter	\$ 9.09		
64 GAL Toter	\$ 15.72		
96 GAL Toter	\$ 22.34		
SPECIAL PICK UP (Not on regular route day - 50% of Monthly Rate)			
10 GAL Toter	NA		
20 GAL Toter	NA		
32 GAL Toter	\$ 18.19		
64 GAL Toter	\$ 31.43		
96 GAL Toter	\$ 44.68		
ADDITIONAL ORGANICS CART	\$ 6.00		

<b>Exhibit 1 Rate Sheets (Cont.)</b>							
<b>COMMERCIAL MSW RATES (Effective 11/1/2011)</b>							
<b>COMMERCIAL MSW BINS</b>				<b>\$ 144.94 PER YARD</b>			
<b>FREQUENCY</b>							
<b>SIZE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>1</b>	\$ 144.94	\$ 289.88	\$ 434.82	\$ 579.76	\$ 724.70	\$ 869.64	
<b>1.5</b>	\$ 217.41	\$ 434.82	\$ 652.23	\$ 869.64	\$ 1,087.05	\$ 1,304.46	
<b>2</b>	\$ 289.88	\$ 579.76	\$ 869.64	\$ 1,159.52	\$ 1,449.40	\$ 1,739.28	
<b>3</b>	\$ 434.82	\$ 869.64	\$ 1,304.46	\$ 1,739.28	\$ 2,174.10	\$ 2,608.92	
<b>4</b>	\$ 579.76	\$ 1,159.52	\$ 1,739.28	\$ 2,319.04	\$ 2,898.80	\$ 3,478.56	
<b>6</b>	\$ 869.64	\$ 1,739.28	\$ 2,608.92	\$ 3,478.56	\$ 4,348.20	\$ 5,217.84	
<b>7</b>	\$ 1,014.58	\$ 2,029.16	\$ 3,043.74	\$ 4,058.32	\$ 5,072.90	\$ 6,087.48	
<b>COMMERCIAL MSW COMPACTORS</b>				<b>\$ 289.88 PER YARD</b>			
<b>FREQUENCY</b>							
<b>SIZE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>1</b>	\$ 289.88	\$ 579.76	\$ 869.64	\$ 1,159.52	\$ 1,449.40	\$ 1,739.28	
<b>1.5</b>	\$ 434.82	\$ 869.64	\$ 1,304.46	\$ 1,739.28	\$ 2,174.10	\$ 2,608.92	
<b>2</b>	\$ 579.76	\$ 1,159.52	\$ 1,739.28	\$ 2,319.04	\$ 2,898.80	\$ 3,478.56	
<b>3</b>	\$ 869.64	\$ 1,739.28	\$ 2,608.92	\$ 3,478.56	\$ 4,348.20	\$ 5,217.84	
<b>4</b>	\$ 1,159.52	\$ 2,319.04	\$ 3,478.56	\$ 4,638.08	\$ 5,797.60	\$ 6,957.12	
<b>6</b>	\$ 1,739.28	\$ 3,478.56	\$ 5,217.84	\$ 6,957.12	\$ 8,696.40	\$ 10,435.68	
<b>7</b>	\$ 2,029.16	\$ 4,058.32	\$ 6,087.48	\$ 8,116.64	\$ 10,145.80	\$ 12,174.96	
<b>COMMERCIAL MSW TOTERS</b>				<b>\$ 30.77 PER 32 GALLONS</b>			
<b>FREQUENCY</b>							
<b>RATE</b>	<b>SIZE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
\$ 30.77	<b>32</b>	\$ 30.77	\$ 61.54	\$ 92.31	\$ 123.08	\$ 153.85	\$ 184.62
\$ 61.54	<b>64</b>	\$ 61.54	\$ 123.08	\$ 184.62	\$ 246.16	\$ 307.70	\$ 369.24
\$ 92.31	<b>96</b>	\$ 92.31	\$ 184.62	\$ 276.93	\$ 369.24	\$ 461.55	\$ 553.86
<b>Multiple containers are multiplied by the 1 container rate.</b>							
<b>EXTRA PICK UP (On regular route day)</b>							
<b>BINS</b>	<b>25% Of monthly rate</b>						
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 36.24	\$ 54.35	\$ 72.47	\$ 108.71	\$ 144.94	\$ 217.41	\$ 253.65
<b>COMPACTORS</b>							
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 72.48	\$ 108.70	\$ 144.94	\$ 217.42	\$ 289.88	\$ 434.82	\$ 507.30
<b>TOTERS</b>							
<b>SIZE</b>	<b>32</b>	<b>64</b>	<b>96</b>				
	\$ 7.69	\$ 15.39	\$ 23.08				
<b>SPECIAL PICK UP (Other than regular route day)</b>							
<b>BINS</b>	<b>50% Of monthly rate</b>						
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 72.47	\$ 108.71	\$ 144.94	\$ 217.41	\$ 289.88	\$ 434.82	\$ 507.29
<b>COMPACTORS</b>							
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 144.94	\$ 217.41	\$ 289.88	\$ 434.82	\$ 579.76	\$ 869.64	\$ 1,014.58
<b>TOTERS</b>							
<b>SIZE</b>	<b>32</b>	<b>64</b>	<b>96</b>				
	\$ 15.39	\$ 30.77	\$ 46.16				



<b>Exhibit 1 Rate Sheets (Cont.)</b>							
<b>COMMERCIAL ORG_GREEN RATES (Effective 11/1/2011)</b>							
<b>COMMERCIAL ORG_GREEN BINS</b>				<b>\$ 72.47 PER YARD</b>			
<b>FREQUENCY</b>							
<b>SIZE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
1	\$ 72.47	\$ 144.94	\$ 217.41	\$ 289.88	\$ 362.35	\$ 434.82	
1.5	\$ 108.71	\$ 217.41	\$ 326.12	\$ 434.82	\$ 543.53	\$ 652.23	
2	\$ 144.94	\$ 289.88	\$ 434.82	\$ 579.76	\$ 724.70	\$ 869.64	
3	\$ 217.41	\$ 434.82	\$ 652.23	\$ 869.64	\$ 1,087.05	\$ 1,304.46	
4	\$ 289.88	\$ 579.76	\$ 869.64	\$ 1,159.52	\$ 1,449.40	\$ 1,739.28	
6	\$ 434.82	\$ 869.64	\$ 1,304.46	\$ 1,739.28	\$ 2,174.10	\$ 2,608.92	
7	\$ 507.29	\$ 1,014.58	\$ 1,521.87	\$ 2,029.16	\$ 2,536.45	\$ 3,043.74	
<b>COMMERCIAL ORG_GREEN COMPACTORS</b>				<b>\$ 144.94 PER YARD</b>			
<b>FREQUENCY</b>							
<b>SIZE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
1	\$ 144.94	\$ 289.88	\$ 434.82	\$ 579.76	\$ 724.70	\$ 869.64	
1.5	\$ 217.41	\$ 434.82	\$ 652.23	\$ 869.64	\$ 1,087.05	\$ 1,304.46	
2	\$ 289.88	\$ 579.76	\$ 869.64	\$ 1,159.52	\$ 1,449.40	\$ 1,739.28	
3	\$ 434.82	\$ 869.64	\$ 1,304.46	\$ 1,739.28	\$ 2,174.10	\$ 2,608.92	
4	\$ 579.76	\$ 1,159.52	\$ 1,739.28	\$ 2,319.04	\$ 2,898.80	\$ 3,478.56	
6	\$ 869.64	\$ 1,739.28	\$ 2,608.92	\$ 3,478.56	\$ 4,348.20	\$ 5,217.84	
7	\$ 1,014.58	\$ 2,029.16	\$ 3,043.74	\$ 4,058.32	\$ 5,072.90	\$ 6,087.48	
<b>COMMERCIAL ORG_GREEN TOTERS</b>				<b>\$ 15.39 PER 32 GALLONS</b>			
<b>FREQUENCY</b>							
<b>RATE</b>	<b>SIZE</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
\$ 15.39	32	\$ 15.39	\$ 30.78	\$ 46.17	\$ 61.56	\$ 76.95	\$ 92.34
\$ 30.78	64	\$ 30.78	\$ 61.56	\$ 92.34	\$ 123.12	\$ 153.90	\$ 184.68
\$ 46.17	96	\$ 46.17	\$ 92.34	\$ 138.51	\$ 184.68	\$ 230.85	\$ 277.02
Multiple containers are multiplied by the 1 container rate.							
<b>EXTRA PICK UP (On regular route day)</b>							
<b>BINS</b>		<b>25% Of monthly rate</b>					
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 18.12	\$ 27.18	\$ 36.24	\$ 54.35	\$ 72.47	\$ 108.71	\$ 126.82
<b>COMPACTORS</b>							
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 36.24	\$ 54.36	\$ 72.48	\$ 108.70	\$ 144.94	\$ 217.42	\$ 253.64
<b>TOTERS</b>							
<b>SIZE</b>	<b>32</b>	<b>64</b>	<b>96</b>				
	\$ 3.85	\$ 7.70	\$ 11.54				
<b>SPECIAL PICK UP (Other than regular route day)</b>							
<b>BINS</b>		<b>50% Of monthly rate</b>					
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 36.24	\$ 54.35	\$ 72.47	\$ 108.71	\$ 144.94	\$ 217.41	\$ 253.65
<b>COMPACTORS</b>							
<b>SIZE</b>	<b>1</b>	<b>1.5</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>6</b>	<b>7</b>
	\$ 72.47	\$ 108.71	\$ 144.94	\$ 217.41	\$ 289.88	\$ 434.82	\$ 507.29
<b>TOTERS</b>							
<b>SIZE</b>	<b>32</b>	<b>64</b>	<b>96</b>				
	\$ 7.70	\$ 15.39	\$ 23.09				

Exhibit 1 Rate Sheets (Cont.)			
ROLL OFF RATES Effective (11/1/2011)			
<b>Trash</b>			
<b>BOX</b>		<b>RATE PER YARD \$</b>	<b>30.49</b>
<b>SIZE</b>		<b>RATE</b>	
6	\$	426.86	14 Yard rate minimum
14	\$	426.86	14 Yard rate minimum
20	\$	609.80	
30	\$	914.70	
40	\$	1,219.60	
50	\$	1,524.50	
<b>TRASH</b>			
<b>COMPACTORS</b>		<b>RATE PER YARD \$</b>	<b>60.98</b>
<b>SIZE</b>		<b>RATE</b>	
6	\$	853.72	14 Yard rate minimum
14	\$	853.72	14 Yard rate minimum
20	\$	1,219.60	
30	\$	1,829.40	
40	\$	2,439.20	
50	\$	3,049.00	
<b>ORGANICS/GREEN WASTE</b>			
<b>BOX</b>		<b>RATE PER YARD \$</b>	<b>15.25</b>
<b>SIZE</b>		<b>RATE</b>	
6	\$	213.50	14 Yard rate minimum
14	\$	213.50	14 Yard rate minimum
20	\$	305.00	
30	\$	457.50	
40	\$	610.00	
50	\$	762.50	
<b>ORGANICS/GREEN WASTE</b>			
<b>COMPACTORS</b>		<b>RATE PER YARD \$</b>	<b>30.49</b>
<b>SIZE</b>		<b>RATE</b>	
6	\$	426.86	14 Yard rate minimum
14	\$	426.86	14 Yard rate minimum
20	\$	609.80	
30	\$	914.70	
40	\$	1,219.60	
50	\$	1,524.50	
Compactors are charged at 2 times the uncompacted rate			
Organics/Greenwaste are charged at 50% of the Trash rate			



Exhibit 1 Rate Sheets (Cont.)		
ANCILLARY RATES (Effective 11/1/2011)		
<b>These rates apply to all types, sizes and materials)</b>		
<b>The following rates shall be adjusted annually using the RRI as set forth in Exhibit 2</b>		
CART REPLACEMENT IN EXCESS OF ONCE PER CALENDAR YEAR	\$ 50.00	Each Additional Cart
ADDITIONAL ON-CALL BULKY GOODS COLLECTION CURBSIDE	\$ 195.00	Plus Disposal @ \$50 Per CY
OVERWEIGHT BULKY COLLECTION ITEMS	\$ 47.17	Per CY
PER HOUR CLEANING FEL	\$ 108.79	
LOCK SALE FEL	\$ 30.78	Per Lock
LOCK SERVICE PER LOCK	\$ -	
ENCLOSURE FEE	\$ -	
PUSH FEE	\$ -	
SNAPSHOT EXCESS YARDS FEL (MSW or Org-Green)	\$ 196.69	Per CY
CONTAMINATED LOAD S/L (MSW or Org-Green)	\$ 108.79	Per Load
DELIVERY	\$ 69.37	
SAFETY LIGHTS	\$ 34.80	
INACTIVITY PER WEEK (Permanent Service)	\$ 37.69	
INACTIVITY PER DAY (Temporary Service)	\$ 7.54	
RELOCATE	\$ 103.63	
TRIP CHARGE	\$ -	
STAND BY CHARGE	\$ -	
BAGSTER	\$ 185.14	Per Bag
CONTRACTORS JOB TRUCK	\$ 195.00	Per hour plus Disposal @ \$50 Per CY
<b>The following rates shall not be adjusted annually</b>		
RESIDENTIAL FINANCE CHARGE (on accounts over 45 days past due)	1.50%	Per Month
COMMERCIAL FINANCE CHARGE (on accounts over 30 days past due)	1.50%	Per Month
<b>Note: These Ancillary rates include Franchise Fees</b>		

# Exhibit 2 Refuse Rate Index

## City of Albany

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 eight (8) cost categories: Labor (Teamsters); Labor (Other); Diesel Fuel; CNG Fuel, Vehicle Replacement; Vehicle Maintenance, Disposal 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 except Labor (Teamsters), CNG Fuel, and Disposal. The change in each index is calculated 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 (Teamsters)	Actual values Teamsters Local 70 Union Agreement
Labor (Other)	Series ID: ceu6056210008 Service Producing Industries
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel
CNG Fuel	Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication ( <a href="http://www.pge.com/tariffs">http://www.pge.com/tariffs</a> ) reflecting the sum of the customer, procurement, transportation and public purpose program charges.
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
Disposal	Actual tip fee change at the Transfer Station per the Processing, Transfer and Disposal Agreement
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, or labor Agreement 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 (Teamsters):** List all salary accounts for Teamster employees.

List payroll tax accounts, health and welfare, payroll insurance and pension accounts directly related to the above salary accounts.

**Labor (Other):** List all salary accounts for all non-teamster employees.

List payroll tax accounts, health and welfare, payroll insurance and pension accounts directly related to the above salary accounts.

**Diesel Fuel:** List all diesel fuel accounts.

**CNG Fuel:** List all CNG 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.

**Disposal:** List disposal operations costs.

**All Other:** List all other expense accounts related to the services provided under this Agreement. This category includes, 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	Labor (Teamsters)	Actual Values Teamsters Local 70 Union Agreement	10.19%	27.05%	2.75%
2	Labor (Other)	Series ID: ceu6056210008 Service Producing Industries	2.09%	11.00%	0.23%
3	Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel	4.74%	12.15%	0.58%
4	Vehicle Replacement	Series ID: pcu3362113362111 Truck, bus, car, and other vehicle bodies, for sale separately	6.79%	2.57%	0.17%
5	Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks	0.16%	11.46%	0.02%
6	CPI All Items	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items Bay Area	1.70%	15.77%	0.27%
7	Disposal	Tip Fee change from Processing, Transfer, and Disposal Agreement	2.50%	20.00%	0.50%
Total				100.00%	<b>4.52%</b>

In this example, the Refuse Rate Index is 4.52%.



## Exhibit 3 City Service Locations

### City of Albany

CONTRACTOR shall provide Solid Waste and Recyclable Materials Collection services to the CITY'S public facilities, parks, public litter cans, and public recycling cans as listed below. The CITY may, at any time, modify the service requirements to increase the volume Collected or the frequency of Collection. The CITY may also add locations for the fifteen (15) "Waste Management Solar Compactors Powered by Big Belly" litter cans described in Section 5.09.2 of the Agreement.

Category/Locations	Solid Waste Containers	Solid Waste Collection Frequency	Recycling Containers	Recycling Collection Frequency
<b>CITY FACILITIES</b>				
CITY Hall/Police Department	1 cubic yard bin	2x per week	Included with Fire Station	Included with Fire Station
Fire Station	1 cubic yard bin	2x per week	Continue existing level of service	Continue existing level of service
Library/Community Center	2-1 cubic yard bins; 1 litter can	2x per week; 3x per week	Continue existing level of service	Continue existing level of service
Senior Center	1 cubic yard bin; 4 litter cans	1x per week; 3 x per week	Continue existing level of service	Continue existing level of service
Teen Center	4 cubic yard bin	2x per week	New 96-gallon carts	1x per week
Corporation Yard on East Shore Highway	2 roll-offs	1x per week	Continue existing level of service	Continue existing level of service
Corporation Yard on Cleveland Avenue	1 roll-off	1x per week	Continue existing level of service	Continue existing level of service
<b>PARKS</b>				
Memorial Park including the Child Care Center	4 cubic yard bin	3x per week	Continue existing level of service at Child Care Center	Continue existing level of service at Child Care Center

Category/Locations	Solid Waste Containers	Solid Waste Collection Frequency	Recycling Containers	Recycling Collection Frequency
Terrace Park	4 cubic yard bin	1x per week	N.A.	N.A.
Waterfront Park	4 litter cans	3x per week	N.A.	N.A.
Middle School Park	8 litter cans	3x per week	N.A.	N.A.
<b>ADDITIONAL PUBLIC LITTER CANS</b>				
Solano Avenue	Litter cans on street currently serviced	4x per week	N.A.	N.A.
San Pablo Avenue	Litter cans on street currently serviced	4x per week	N.A.	N.A.
Ohlone Greenway (BART path)	11 litter cans	3x per week	N.A.	N.A.
Childcare Center @ Masonic	5 litter cans	3x per week	N.A.	N.A.

N.A. – Not applicable



## Exhibit 4 Liquidated Damages

### City of Albany

CONTRACTOR may be assessed Liquidated Damages if CONTRACTOR fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

#### COLLECTION RELIABILITY

1.	<b>Maintain Collection Schedule.</b> For failure to Collect from all Customers on a route on the scheduled day (unless non-collection was warranted pursuant to this Agreement)	\$25/ container
2.	<b>Start New Customer.</b> For each failure over 5 during Rate Period to commence service to a new customer within 7 calendar days after order received and account number established	\$150/ event
3.	<b>Missed Pick-Ups.</b> For each failure over 15 during Rate Period to Collect Solid Waste, Recyclable Materials, or Organic Materials, which has been properly set out for Collection by a Customer or CITY on the scheduled collection day	\$150/ event
4.	<b>Collection of Missed Pick-Ups.</b> For each failure to Collect missed Containers after notice from Customer within 24 hours of receipt of the Complaint	\$300/ event
5.	<b>Consecutive Missed Pick-Ups.</b> For each failure to Collect Solid Waste, Recyclable Materials or Organic Materials which has been properly set out for Collection, from the same Customer or CITY location on 2 consecutive scheduled pick ups	\$150/ event
6.	<b>Missed Collection of Public Litter Cans.</b> For each failure to Collect Solid Waste from public litter cans on a scheduled Collection day	\$50/ event
7.	<b>Collection of Abandoned Waste.</b> For each failure to Collect abandoned waste within the time allotted in Section 5.9 of this Agreement unless special circumstances warrant a longer period	\$200/ event

#### COLLECTION QUALITY

8.	<b>Leaks, Litter or Spills.</b> For each occurrence over 5 during the Rate Period of unreasonable leaks, litter, or spills of Solid Waste, Recyclable Materials, or Organic Materials near Containers or on public streets and failure to pick up or clean up such material immediately	\$300/ event
9.	<b>Improper Container Placement.</b> For each occurrence over 12 during the Rate Period of failure to replace Containers in original position, upright, with lids attached to or on Carts or Bins	\$150/ event
10.	<b>Care of Private Property.</b> For each failure over 24 during the Rate Period of not closing a Customer's gate, crossing planted areas, or damaging private property (including private vehicles)	\$300/ event

11.	<b>Repair of Private Property.</b> For each occurrence over 5 during the Rate Period of failure to repair damage to property within 30 days of the date the damage was reported	\$250/ event
12.	<b>Unauthorized Collection Hours.</b> For each occurrence over 5 the during Rate Period of Collecting Solid Waste, Recyclable Materials, and Organic Materials during unauthorized hours	\$300/ event
13.	<b>Excessive Noise.</b> For each occurrence over 12 during the Rate Period of excessive noise	\$300/ event
14.	<b>Non-Collection Tags.</b> For each failure over 12 during the Rate Period of not tagging Containers which have not been Collected explaining the reason for non-Collection	\$150/ event
15.	<b>Cleaning Collection Vehicles.</b> For each occurrence over 5 during the Rate Period of failure to clean collection vehicles one time per week	\$150/ event
16.	<b>Cleaning Public Containers.</b> For each failure to power wash public litter and Recyclable Materials receptacles, containers, metal liners, and lids twice a year	\$150/ container/ event
17.	<b>Discourteous Behavior.</b> For each occurrence of discourteous behavior by collection vehicle personnel, customer service personnel, or other employees of CONTRACTOR	\$500/ event
18.	<b>Injuries to Others.</b> For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the CONTRACTOR or its personnel was a contributing factor to the injury	\$5,000/ incident

### CUSTOMER SERVICE RESPONSIVENESS

19.	<b>Call Responsiveness.</b> For each failure to answer the telephone during business hours specified in the Agreement or failure for answering machine to record call during non-business hours specified in the Agreement	\$300/ event
20.	<b>30-Second Average Speed of Answer.</b> Failure to answer 90 percent of calls received during office hours within 30 seconds	\$22/ call
21.	<b>3-Minute Average Speed of Answer.</b> Failure to answer 99.5 percent of calls received during office hours within 3 minutes	\$22/ call
22.	<b>After-Hours Call Returns.</b> Failure to return 99.5 percent of calls received on CONTRACTOR'S answering machine before noon of the following Business Day	\$22/ call
23.	<b>Complaint Level.</b> Failure to maintain Complaint level below 0.25% where the percent is calculated equal to the number of complaints divided by the total service opportunities (the total residential stops and commercial lifts performed in the reporting period)	\$10,000/ quarter
24.	<b>Respond to Complaint or Service Request.</b> For each failure to inform Customer, within one Business Day of receipt of the Complaint or service request, of the action CONTRACTOR will take to remedy a Complaint or to respond to a service request	\$300/ event
25.	<b>Resolve Complaint or Service Request.</b> For each failure to resolve or remedy a Complaint or service request (i.e., bin delivery, extra pick-up, etc.) within five Business Days of receipt of Complaint or service request with the exception of missed pick-ups which are addressed below	\$300/ event



**REPORTING AND NOTICING**

26.	<b>Monthly Reports.</b> Failure to submit monthly reports in the timeframe specified in this Agreement	\$100/ day report is overdue
27.	<b>Quarterly Reports.</b> Failure to submit quarterly reports in the timeframe specified in this Agreement	\$200/ day report is overdue
28.	<b>Annual Reports.</b> Failure to submit annual reports in the timeframe specified in this Agreement.	\$300/ day report is overdue
29.	<b>Report Hazardous Waste.</b> For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste	\$500/ event
30.	<b>Application for CONTRACTOR'S Compensation.</b> Failure to submit application for CONTRACTOR'S Compensation in accordance with the timeframe established in the Agreement	\$300/ day report is overdue

**PUBLIC EDUCATION**

31.	<b>School Presentations.</b> Failure to make school presentations in each Rate Period in accordance with this Agreement	\$300/ event
32.	<b>Initial Mailing to Residents.</b> Failure to send mailing to residents on or before the date specified in the annual public education plan.	\$300/ day for each day until mailer is sent
33.	<b>How to Brochure.</b> Failure to prepare and distribute documents to residents described in the annual public education plan on or before the date specified in the annual public education plan.	\$150/ day for each day until mailer is sent
34.	<b>Mailers to Residents.</b> Failure to prepare and distribute to residents door hanger, flyer or mailer to customers regarding specific collection day, holiday, holiday tree, and cleanup events	\$150/ day for each day until mailer is sent
35.	<b>Newsletter.</b> Failure to prepare and mail semi-annual newsletter to all Residents and Commercial Customers by the end of the year or middle of the year	\$150/ day for each day until mailer is sent
36.	<b>Initial Mailing to Businesses.</b> Failure to send mailings to businesses on or before the date specified in the annual public education plan.	\$300/ day for each day until mailer is sent
37.	<b>Mailers to Businesses.</b> Failure to prepare and distribute "how-to" brochures for each of the four business types	\$150/ day
38.	<b>Holiday Trees.</b> Failure to distribute periodic update for Holiday tree recycling on or before December 25 <sup>th</sup> of each year	\$150/ day for each day until mailer is sent (not to exceed \$1,000)
39.	<b>Large Multi-Family Complexes.</b> Failure to develop outreach program for large condominiums	\$150/ day

**OTHER**

40.	<b>Failure of Other Obligations.</b> Failure to perform any of the obligations set forth in this Agreement not specifically stated	\$150/ for each obligation per day
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	above and not corrected or proceeding in good faith to correct within 24 hours upon 24 hour notification by CITY:	until obligation is performed
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In placing Designee's initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

CONTRACTOR

CITY

Initial Here: \_\_\_\_\_

Initial Here: \_\_\_\_\_



## Exhibit 5 Guaranty Agreement

### City of Albany

THIS GUARANTY (the "Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_, 2011.

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., a Delaware Corporation (Guarantor).
- B. Contractor and the City of Albany ("CITY") have negotiated an Agreement for Collection Services dated as of \_\_\_\_\_, (hereinafter "Agreement").
- C. It is a requirement of the Agreement, and a condition to the CITY entering into the Agreement, that Guarantor guaranty CONTRACTOR'S performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the CITY 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 CITY the complete and timely performance, satisfaction and observation by CONTRACTOR of each and every term and condition of the Agreement, which CONTRACTOR is required to perform, satisfy or observe. If CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of CONTRACTOR or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the CITY of any damages, costs or expenses which might become recoverable by the CITY 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 CITY'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 CITY to (a) proceed against CONTRACTOR, (b) proceed against or exhaust any security or collateral the CITY may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that CITY 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 CITY may hold now or hereafter hold. The CITY 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 CITY'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 CITY 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 CITY'S approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. 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 if all or any part of such payment or performance is avoided or recovered directly or indirectly from the CITY 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 CITY 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 CITY 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 CITY 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 CITY 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 CITY 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 CITY 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.
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 CITY or other party to enforce this Guaranty may be brought and concluded in the courts of the State of California, in Alameda County or Federal District court for northern California, which shall have exclusive jurisdiction over such suit, action, or proceeding. Guarantor appoints the following person as its agents for service of process in California:

\_\_\_\_\_  
With a copy by certified mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no 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 CITY 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 CITY:           City Manager  
                              CITY of Albany  
                              1000 San Pablo Avenue  
                              Albany, CA 94702

with a copy to the CITY Attorney at the same address.

To the Guarantor:    Waste Management of Alameda County, Inc.  
                              Area Vice President  
                              172 98th Avenue  
                              Oakland, CA 94603

with a copy to  
                              USA Waste of California, Inc.  
                              Group General Council  
                              7025 N. Scottsdale Rd. #200  
                              Scottsdale, AZ 85253

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

Remainder of page intentionally left blank.



GUARANTOR:

CITY OF ALBANY, a municipal corporation of  
the State of California

\_\_\_\_\_  
(name of Guarantor)

By: \_\_\_\_\_  
(sign here)

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
(print name/title)

By: \_\_\_\_\_  
(sign here)

ATTEST:

\_\_\_\_\_  
(print name/title)

\_\_\_\_\_  
City Clerk

Proper notarial acknowledgment of execution by Guarantor must be attached.

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

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney

# Exhibit 6 Approved Subcontractors

City of Albany



## Exhibit 7 Special Assessment Process

### City of Albany

#### **Pre-Special Assessment Process Activities**

- A. **Prior to the January 15** start of the Special Assessment process Waste Management of Alameda County (WMAC) billing department will obtain the most current Parcel Data information for the City.
- B. Using the current parcel data, WMAC billing department will reconcile parcel data with WMAC's MAS customer service database to update and match parcel owner and address information. Once this reconciliation process is complete, WMAC will start the Special Assessment Process.

#### **Special Assessment Letter to Owners**

1. **On or before January 15** WMAC will send a letter to all property owners advising owners of their obligation to pay for Solid Waste and Recycling services for properties they own. The letter will clearly state that the owner is ultimately responsible for payment regardless if the tenant has agreed to make the payment for solid waste and recycling services as part of the rental agreement for the property. Applicable Sections of the Municipal Code will be included in this letter.
2. **Prior to March 1**, WMAC's billing department will identify all customers that are delinquent **over 90-days** and subject to the Special Assessment.
3. **On or before March 1**, WMAC will send out the first "Delinquency Subject to Special Assessment" letters to all owners and tenants.
4. **On or before April 1**, WMAC will send out the second "Delinquency Subject to Special Assessment" letter to all owners and tenants.
5. **On or before May 1**, WMAC will send out the third "Delinquency Subject to Special Assessment" letter to all owners and tenants.
6. **On or before May 15**, WMAC will send out the fourth "Delinquency Subject to Special Assessment" letter to all owners and tenants.
7. **On or before June 1**, WMAC will apply all payments received to the respective delinquent accounts and will remove the accounts from the Special Assessment List.
8. After all delinquent accounts are credited and removed from the Special Assessment list, WMAC sends the updated list to the Jurisdiction. **(June 1)**

9. **On or before June 5**, the jurisdiction sends out a Final Request for Payment to owners of all remaining delinquent accounts **as of June 1**, advising the owner that payment is **due by June 30**, or a special assessment will be placed on the property.
10. WMAC and/or the Jurisdiction will apply all payments received **on or before June 30** to the respective delinquent accounts. Remaining delinquent accounts are placed on the final Special Assessment list, which is given to WMAC and the City Council. The City Council reviews each account on the final list and either approves or denies placement of the Special Assessment on the property.
11. After the City Council completes their review and renders their decisions on placement of the Special Assessments on the properties listed, the Special Assessment list will be updated and provided to WMAC. **(July)**
12. On all accounts that the Jurisdiction approves the Special Assessment, WMAC will apply credit to the specific accounts and create One (1) general Special Assessment Account for each Jurisdiction. On all accounts that the Jurisdiction denies the Special Assessment, WMAC will review and determine if the account will be pursued for Special Assessment in the following year, or will take other necessary actions to resolve the status of the account. **(July)**
13. City receives payment from the County on all Special Assessments collected, which is then paid to WMAC, in turn WMAC pays the corresponding franchise fees back to the City. **(August)**
14. Monies received by WMAC from the City are applied to the General Special Assessment account previously created for the City, and WMAC performs a final reconciliation of all accounts involved. **(August)**

