

ORIGINAL

AGREEMENT

between the

CITY OF ALAMEDA

and

**WASTE MANAGEMENT
OF ALAMEDA COUNTY, INC.**

for

SOLID WASTE DISPOSAL SERVICES

July 3, 2002

**AGREEMENT BETWEEN
CITY OF ALAMEDA
and**

**WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
for
DISPOSAL OF SOLID WASTE**

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**Agreement between
City of Alameda
and**

**Waste Management of Alameda County, Inc.
for
Disposal of Solid Waste**

THIS AGREEMENT is made as of this third day of July, 2002 by and between the CITY OF ALAMEDA (City) and Waste Management of Alameda County, Inc. (Contractor). City and Contractor shall be referred to collectively as "Parties."

RECITALS

15 This Agreement is entered into with reference to the following facts and circumstances:

16 **WHEREAS;** the City enters this Agreement with Contractor, under which Contractor receives
17 Solid Waste generated within the City of Alameda at the Davis Street Recycling and Transfer
18 Station ("Transfer Station") for Transfer and Disposal of such Solid Waste at the Altamont
19 Landfill and Resource Recovery Facility ("Landfill").

20
21 **WHEREAS;** the City Council determines, pursuant to its police powers, that obtaining a long-
22 term commitment for Disposal of Solid Waste generated in the City is in the best interests of the
23 health, safety and well being of the citizens of the City.

24
25 **WHEREAS;** the State of California, through enactment of the California Integrated Waste
26 Management Act of 1989 (California Public Resources Code Section 40000, et. seq.) also
27 recognizes the important health and safety consideration to long-term planning for local
28 government's adequate Disposal needs. The California Integrated Waste Management Act of
29 1989 declares that the responsibility for management of Solid Waste is a shared responsibility
30 between the State and local governments. The State requires local governments to make
31 adequate provision for at least fifteen (15) years of Solid Waste Disposal capacity to preserve the
32 health, safety and well-being of the public. The California Integrated Waste Management Act of
33 1989 also authorizes local governments to enter into exclusive franchise contracts to provide
34 Solid Waste handling services for the health, safety and well being of its citizens (California
35 Public Resources Code Section 40059).

36
37 **WHEREAS;** this Agreement also advances the objectives of the federal government to
38 encourage environmentally sound solid waste management (Resource Conservation and
39 Recovery Act of 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.).

40
41 **WHEREAS;** the Landfill is intended to be the principal Disposal facility for Solid Waste
42 generated in the City.

43
44 **WHEREAS;** the Contractor guarantees permitted capacity at the Landfill for up to fifteen (15)
45 years for Disposal of Solid Waste generated in the City.

1 **WHEREAS;** the City Council determines that in order to provide adequate Disposal capacity, it
2 is in the best interests of the City to secure a commitment from Contractor for the right to a
3 portion of the Landfill's current Disposal capacity on the terms and subject to the conditions set
4 out in this Agreement. The intent of this provision is, in part, for the City to contribute to
5 preventing the substantial environmental, aesthetic, health, and safety problems that may be
6 created from increasing volumes of Solid Waste in this country.
7

8 **WHEREAS;** the City Council determines that in order to provide adequate Disposal capacity at
9 the Landfill, it is in the best interest of the City to secure a commitment from Contractor for the
10 right to Transfer Solid Waste generated in the City at the Transfer Station on the terms and
11 subject to the conditions set out in this Agreement.
12

13 **NOW, THEREFORE,** in consideration of the mutual promises, covenants, and conditions
14 contained in this Agreement and for other good and valuable consideration, the Parties agree as
15 follows.
16
17

18 **ARTICLE 1.**

19 **DEFINITIONS**

20
21 Defined terms in this Agreement and the exhibits of this Agreement, which are identified by the
22 capitalization of the first letter of each principal word thereof, shall have the following
23 meanings:
24

25 **"Agreement"** means this Agreement between the City and Contractor for Disposal of Solid
26 Waste, including all exhibits and attachments, and any amendments hereto.
27

28 **"Alternative Daily Cover (ADC)"** means Landfill cover material, other than Organic Materials
29 and at least six (6) inches of earthen material, placed on the surface of the active face of the
30 refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter, and
31 scavenging as defined in Section 20164 of the California Code of Regulations.
32

33 **"Applicable Law"** means all laws, regulations, rules, orders, judgments, degrees, permits,
34 approvals, or other requirement of any governmental agency having jurisdiction over the
35 disposition of Solid Waste, Recyclable Materials and Organic Materials that are in force on the
36 Effective Date and Environmental Laws as they may be enacted, issued or amended during the
37 Term of this Agreement.
38

39 **"Base Component"** means that portion of the Disposal Fee which represents Contractor's charge
40 for Transfer and Disposal services and includes all Contractor's expenses (except the
41 Government Fee Component) and profit.
42

43 **"Calendar Year"** means a successive period of twelve (12) months commencing on January 1
44 and ending on December 31.
45

46 **"City"** means the City of Alameda, California, a municipal corporation, and all the territory
47 lying within the municipal boundaries of the City as presently existing or as such boundaries may

1 be modified during the Term. Unless otherwise specified in this Agreement any action
2 authorized or required by the City may be taken by the City Council or by an agent designated by
3 the City Council.
4

5 **“City-Hauled Solid Waste”** means Solid Waste hauled to the Transfer Station in City owned
6 and operated vehicles.
7

8 **“City-Hauled Solid Waste Gate Rate”** means the amount, established under Article 5 of this
9 Agreement, to be charged the City by Contractor for Disposal of City-Hauled Solid Waste at the
10 Transfer Station.
11

12 **“Closure”** means all activities and related costs involved in closure of the Landfill or portions of
13 the Landfill in accordance with Applicable Law and permits.
14

15 **“Collection Company”** means the company or companies, which collects Solid Waste in the
16 City in accordance with an agreement between it and the City. The Collection Company shall
17 not be deemed an agent of the City for purposes of Section 6.01.
18

19 **“Commencement Date”** means October 6, 2002, the date on which the Contractor begins
20 provision of Transfer Station and Disposal services required under this Agreement.
21

22 **“Construction and Demolition Debris (C&D)”** means used or discarded materials removed
23 from residential, commercial, or industrial premises during the construction or renovation of a
24 structure resulting from construction, remodeling, repair or demolition operations on any
25 pavement, house, commercial building, or other structure.
26

27 **“Contractor”** means Waste Management of Alameda County, Inc., a corporation organized and
28 operating under the laws of the State of California and its officers, directors, employees, agents,
29 companies and subcontractors.
30

31 **“Contractor Default”** has the meaning provided in Section 7.01.
32

33 **“Contractor Party(ies)”** shall mean Contractor or its Parent Company, officers, directors, or
34 management or fiscal employees (where “management employee” means any employee with
35 direct or indirect responsibility for direction and control over the Contractor’s activities under
36 this Agreement and “fiscal” employee means an employee with direct or indirect responsibility
37 and control duties relating to financial matters under this Agreement).
38

39 **“Criminal Activity”** means those activities described in Section 8.18.A.
40

41 **“Debris Box”** means an open-top container with a capacity of six (6) to fifty (50) cubic yards
42 used to Transport Solid Waste that is serviced by a roll-off truck.
43

44 **“Designated Waste”** means non-Hazardous Material which may pose special Disposal problems
45 because of its potential to contaminate the environment and which may be Disposed of only in
46 Class II Disposal sites, or Class III Disposal sites pursuant to a variance issued by the California
47 Department of Health Services or pursuant to applicable permits. Designated Waste consists of

1 those substances classified as Designated Waste by the State of California, in California Code of
2 Regulations Title 23, Section 2522.

3
4 **“Disposal”** means the final disposition of Solid Waste as provided hereunder at the Landfill.
5 Disposal does not include the use of Organic Materials as alternative daily cover (ADC) so long
6 as City and State regulations consider ADC use of Organic Materials as Diversion under the Act.
7

8 **“Disposal Fee”** means the amount, established under Article 5 of this Agreement, to be charged
9 the Collection Company by Contractor for Transfer and Disposal of Solid Waste at the Transfer
10 Station
11

12 **“Divert (or Diversion)”** means to prevent Recyclable Materials and other materials from
13 Disposal at Landfill or transformation facilities (including facilities using incineration, pyrolysis,
14 distillation, gasification or biological conversion methods) through source reduction, reuse,
15 Recycling and composting, as provided in Section 41780 of the California Integrated Waste
16 Management Act of 1989, as such California Integrated Waste Management Act may be
17 hereafter amended or superseded. Diversion is a broad concept that is to be inclusive of material
18 handling and processing changes that may occur over the Term including, but not limited to,
19 implementation of innovative (but not necessarily fully proven) techniques or technology that
20 reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.
21

22 **“Effective Date”** means the date of execution of this Agreement by the latter of the two Parties.
23

24 **“Environmental Laws”** means all federal and State statutes, City, and City ordinances
25 concerning public health, safety and environmental issues including, by way of example and not
26 limitation, the Comprehensive Environmental Response, Compensation and Liability Act of
27 1980, 42 U.S. C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S. C.
28 Section 6901 et seq.; the Federal Clean Air Act, 42 U.S. C. Section 1351 et seq.; the Emergency
29 Planning and Community Right to Know Act, 42 U.S. C. Section 1101 et seq.; the Occupational
30 Safety and Health Act, 29 U.S. C. Section 651 et seq.; the California Hazardous Waste Control
31 Act California Health & Safety Code Section 25100 et seq.; the Carpenter-Presley-Tanner
32 Hazardous Substance Account Act, California Health & Safety Code Section 25300 et seq.; the
33 Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.; the
34 Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section
35 25249.5 et seq.; and the California Clean Air Act, Health and Safety Code Sections 39000 et
36 seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated
37 thereunder.
38

39 **“Fees”** means the amount Contractor charges the customers for acceptance of Solid Waste at the
40 Transfer Station under this Agreement including the Disposal Fee and City-Hauled Solid Waste
41 Gate Rate.
42

43 **“Full Regulatory Compliance”** means compliance with all applicable permits and all
44 Applicable Law for a Landfill or Transfer Station.
45

1 **“Generator”** means any Person whose act or process initially produces Solid Waste, Designated
2 Waste, Hazardous Materials, Infectious Waste or any other product which becomes part of the
3 overall waste stream.
4

5 **“Government Fee Component”** means that portion of a Fee which represents all federal, State
6 and local fees applied to Solid Waste Disposal at the Transfer Station and Landfill.
7

8 **“Guarantor”** means USA Waste of California, Inc., a California corporation.
9

10 **“Guaranty Agreement”** is the agreement attached as Exhibit C that is executed by the
11 Guarantor guaranteeing the timely and full performance of Contractor’s obligations.
12

13 **“Hazardous Materials”** means:
14

- 15 1. All substances defined or characterized as “hazardous waste” by the Federal Solid Waste
16 Disposal Act (42 U.S.C. Section 3251 et seq.), as amended, including the Resource
17 Conservation and Recovery Act (42 U.S. C. Section 6901 et seq.) and all future amendments
18 thereto regulations promulgated thereunder;
19
- 20 2. All “Hazardous Substances” as defined by the Comprehensive Environmental Response,
21 Compensation and Liability Act of 1980, 42 9601 et seq. (CERCLA) as amended from time
22 to time;
23
- 24 3. All substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous
25 waste by Health and Safety Code Sections 25110.02, 25115, and 25117, and future
26 amendments thereunder, including 23 California Code of Regulations Sections 2521 and
27 2522;
28
- 29 4. Radioactive wastes;
30
- 31 5. Polychlorinated byphenyls;
32
- 33 6. Chemicals known to cause cancer or reproductive toxicity;
34
- 35 7. Spilled or leaked petroleum products, distillates, or fractions;
36
- 37 8. Any substance the presence of which on the Landfill or Transfer Station is prohibited by any
38 governmental requirements; and,
39
- 40 9. Any substances for which any governmental requirements require a permit or special
41 handling in its use, collection, storage, treatment or Disposal.
42

43 If two or more governmental agencies having concurrent or overlapping jurisdiction over
44 Hazardous Materials adopt conflicting definitions of “Hazardous Materials,” for purposes of
45 processing and Disposal to land, the broader definition shall be employed for purposes of this
46 Agreement.
47

1 **“Holidays”** are defined as New Year’s Day, Labor Day, Thanksgiving Day, and Christmas Day.

2
3 **“Household Hazardous Waste”** means Hazardous Materials generated at residential premises.

4
5 **“Infectious Waste”** means biomedical waste generated at hospitals, public or private medical
6 clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,
7 veterinary facilities and other similar establishments that are identified in Health and Safety Code
8 Section 25117.5.

9
10 **“Landfill”** means the permitted facility for ultimate disposition of Solid Waste which is
11 commonly known as the Altamont Landfill and Resource Recovery Facility, which is owned and
12 operated by Contractor and located in the unincorporated area of Alameda County,
13 approximately 3.5 miles east of the City of Livermore’s eastern boundary, California.

14
15 **“Maximum Vehicle Turnaround Time”** shall be fifteen (15) minutes measured from the time a
16 vehicle delivering Solid Waste leaves the scale house, unloads Solid Waste in the designated
17 unloading area at the Transfer Station, and exits the Transfer Station.

18
19 **“Means and Methods (or Means or Methods)”** refers to the technologies and/or techniques
20 used in all aspects of Solid Waste management. This term is used with relation to Section 4.21,
21 in recognition that technologies and techniques may change over the Term of Agreement and any
22 extensions. This change in the Means and Methods may be the result of the availability of new
23 technologies and/or techniques, or the availability to the Parties of new technologies and/or
24 techniques that are not available as of the Effective Date. “Means and Methods” encompasses
25 the full possible or potential range of changes in standard industry practice for Transport,
26 Disposal, Resource Recovery, and Diversion, including the use of innovative but not necessarily
27 fully proven technology and/or techniques. Changes in Means and Methods may include, but are
28 not limited to, technologies and/or techniques that reduce Disposal volume, risk, or costs and/or
29 are for other reasons deemed desirable by the City.

30
31 **“Operating Period”** shall mean any twelve (12) month period commencing October 1, and
32 ending September 30, during the Term of this Agreement including any extension periods with
33 the exception that the first Operating Period shall commence October 6, 2002 and end September
34 30, 2003.

35
36 **“Organic Materials”** means those discarded materials that will decompose and/or putrefy and
37 that the City’s Municipal Code permits, directs, and/or requires Generators to separate from
38 Solid Waste and Recyclable Materials for collection in specially-designated containers for
39 Organic Materials collection. Organic Materials include yard waste and food waste such as, but
40 are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush,
41 tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable
42 waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, non-recyclable paper waste,
43 pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No
44 discarded material shall be considered to be Organic Materials, however, unless such material is
45 separated from Solid Waste and Recyclable Material.

1 **“Parent Company”** refers to a company owning more than fifty percent (50%) of the shares of
2 another company (subsidiary) or a company that has management control over such subsidiary.
3

4 **“Party”** or **“Parties”** refers to the City and Contractor, individually or together.
5

6 **“Person(s)”** includes an individual, firm, association, organization, partnership, corporation,
7 business trust, joint venture, the United States, the State, the County of Alameda, and special
8 purpose districts.
9

10 **“Post-Closure”** pertains to all activities and related costs during the Post-Closure period of the
11 Landfill or portions of the Landfill in accordance with Applicable Law and permits.
12

13 **“Reasonable Business Efforts”** means those efforts a reasonably prudent business Person would
14 expend under the same or similar circumstances in the exercise of such Person’s business
15 judgment, intending in good faith to take steps calculated to satisfy the obligation that such
16 Person has undertaken to satisfy.
17

18 **“Recovered Material”** means Recyclable Materials Recovered at the Transfer Station or
19 Landfill from Solid Waste.
20

21 **“Recovery (or Recover, Recovered or other variations thereof)”** means the picking, pulling,
22 sorting, separating, classifying and recovery of Recyclable Materials from Solid Waste whether
23 by manual or mechanical means, at the Transfer Station or Landfill, after acceptance of such
24 materials and before marketing of Recovered Materials.
25

26 **“Recyclable Material”** means domestic, commercial or industrial by-products of some potential
27 economic value.
28

29 **“Resource Recovery”** means recycling, material reuse and Recovery, mulching, composting,
30 land application or transformation.
31

32 **“Self Haul”** means the collection and transportation of Solid Waste by the owner or occupants
33 of a residential or commercial premises located in the City.
34

35 **“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30,
36 Part 1, Chapter 2, §40191 and regulations promulgated thereunder that the City Code requires
37 waste Generators within the City to set out for Collection. Excluded from the definition of Solid
38 Waste are Construction and Demolition Debris, Hazardous Materials, Infectious Waste,
39 Designated Waste, source separated Recyclable Materials, source separated Organic Materials,
40 radioactive waste or other material deemed unacceptable by Applicable Law and/or permit
41 conditions. Solid Waste also means the residue resulting from the processing of Recyclable
42 Materials and Organic Materials generated in the City and collected by the Collection Company.
43 Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes
44 or concentrations of waste of a type and amount normally found in residential Solid Waste after
45 implementation of programs for the safe collection, recycling, treatment and disposal of
46 Household Hazardous Waste in compliance with Section 41500 and 41802 of the California
47 Public Resources Code.

1
2 **“Standard Industry Practice”** means reasonable diligence and prudence on part of Contractor
3 in employing, at a minimum, the then-current development and operations practices, and
4 standards of the California solid waste management industry in meeting Contractor’s obligations
5 hereunder for Recovery, Diversion, Transfer Station and Transport services, and means
6 reasonable diligence and prudence on part of Contractor in employing, at a minimum, the then-
7 current development, operations, closure, and post-closure practices and Solid Waste
8 Association of North America Manager of Landfill Operations standards, or standards of any
9 successor organization, in meeting Contractor’s obligations hereunder for Recovery, Diversion,
10 and Disposal services.

11
12 **“State”** means the State of California.

13
14 **“Term”** means the Term of this Agreement, including extension periods if granted, as described
15 in Sections 2.03 and 2.04.

16
17 **“Ton (or Tonnage)”** means a unit of measure for weight equivalent to two thousand (2,000)
18 standard pounds where each pound contains sixteen (16) ounces.

19
20 **“Transfer (or Transferring or other variations thereof)”** means transferring Solid Waste at the
21 Transfer Station from Collection Company or City vehicles into Transport containers or vehicles
22 for the purposes of Transporting the material to the Landfill.

23
24 **“Transfer Station”** means a permitted facility utilized to receive Solid Waste, to temporarily
25 store, separate, Recover, convert or otherwise process the materials comprising the Solid Waste,
26 and to load Solid Waste into Transfer Vehicles for Transport to the Landfill. For the purpose of
27 this Agreement, Transfer Station shall be the facility commonly known as the Davis Street
28 Recycling and Transfer Station, which is owned and operated by Contractor and located in San
29 Leandro, California, and shall be the facility where the Collection Company and City vehicles
30 shall deliver and unload Solid Waste.

31
32 **“Transfer Vehicle”** means a tractor and trailer designed to haul Solid Waste from a Transfer
33 Station to the Landfill.

34
35 **“Transformation Facility”** means a permitted facility used for the incineration, pyrolysis,
36 distillation, gasification, or biological conversion other than composting of Solid Waste.

37
38 **“Transport (or Transportation)”** means the transportation of Solid Waste from the Transfer
39 Station to the Landfill.

40
41 **“Unpermitted Materials”** means wastes or other materials that the Transfer Station or Landfill
42 may not receive under their permits, including:

- 43
44 (1) Unpermitted Transfer Station and Landfill wastes, including all materials that the
45 Landfill or Transfer Station are not permitted to accept excluding white goods with
46 chlorinated fluorocarbons and capacitors removed, and other materials that
47 Contractor accepts and safely handles, Recycles, or Disposes;

- 1
2 (2) Asbestos, including friable materials that can be crumbled with pressure and are
3 therefore likely to emit fibers, being a naturally occurring family of carcinogenic
4 fibrous mineral substances, which may be a Hazardous Materials if it contains more
5 than one percent (1%) asbestos;
6
7 (3) Ash residue from the incineration of solid wastes, including Solid Waste; infectious
8 waste described in Item 8 below, wood waste, sludge, and agricultural wastes;
9
10 (4) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-
11 metallic substances, which remain after the shredding of automobiles;
12
13 (5) Dead animals larger than one hundred (100) pounds;
14
15 (6) Hazardous Materials;
16
17 (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the
18 Transfer Station and Landfill, including cement kiln dust, or process residues;
19
20 (8) Infectious Wastes that have disease transmission potential and are classified as
21 Hazardous Wastes by the State Department of Health Services, including
22 pathological and surgical wastes, medical clinic wastes, wastes from biological
23 laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such
24 as linen or personal or food service items from contaminated areas, chemicals,
25 personal hygiene wastes, and carcasses used for medical purposes or with known
26 infectious diseases;
27
28 (9) Liquid wastes that are not spadeable, usually containing less than fifty percent
29 (50%) solids, including cannery and food processing wastes, landfill leachate and
30 gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal
31 field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and
32 those liquid wastes that may be Hazardous Wastes;
33
34 (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of
35 Division 20 of the State Health and Safety Code, and any waste that contains a
36 radioactive material, the storage or disposal of which is subject to any other state or
37 federal regulation and/or;
38
39 (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or
40 screenings, removed from a wastewater treatment facility or septic tank, whether in
41 a dry or semi-dry form.
42

43 The Parties shall during the Term promptly amend this definition of "Unpermitted Material" to
44 reflect any applicable changes in permits or Applicable Law.
45

46 **"Working Days (or Work Day or other variations thereof)"** means days during which City
47 offices are open to do business with the public.

1
2
3 **ARTICLE 2.**
4 **TERMS OF AGREEMENT; CONDITION TO EFFECTIVENESS**

5 **2.01 EFFECTIVE DATE**

6 The Effective Date of this Agreement shall be the date of execution of this Agreement by the
7 latter of the Parties.

8
9 **2.02 COMMENCEMENT DATE**

10 The Commencement Date of Transfer Station, Transport, and Disposal services required under
11 this Agreement shall be October 6, 2002.

12
13 **2.03 TERM**

14 The Term of this Agreement shall continue in full force for a period of nine (9) years and three
15 hundred and sixty one (361) days from 12:01 a.m. on the Commencement Date, and expire at
16 midnight September 30, 2012, unless extended by City pursuant to Section 2.04 or terminated in
17 accordance with Section 7.02.

18
19 **2.04 OPTIONS TO EXTEND TERM**

20 The City shall have the option to extend this Agreement, for up to one (1) five (5) year period
21 after September 30, 2012, i.e., until September 30, 2017.

22
23 The City, at its sole discretion, may exercise this option by delivering to the Contractor a written
24 notice stating that it desires to extend the Term. Such notice shall be delivered no later than one
25 hundred-eighty (180) calendar days before the initial termination date or any termination date of
26 any extension period, if the option is exercised. If notice of election to exercise the option is not
27 delivered at such time, the option will lapse.

28
29 **2.05 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

30 The obligation of the City to permit this Agreement to become effective and for the Parties to
31 perform their undertakings provided for in this Agreement is subject to the satisfaction, on or
32 before the Effective Date, of all conditions set forth below, each of which may be waived in
33 whole or in part in written form by the City:

- 34
35 **A. Ownership.** Contractor owns the Landfill and Transfer Station and is not otherwise
36 contractually restricted from performing its obligations hereunder.
37
38 **B. Accuracy of Representations.** The representations and warranties made in Article 9 of
39 this Agreement are true and correct on and as of the Effective Date.
40
41 **C. Absence of Litigation.** There is no litigation pending on the Effective Date in any court
42 challenging the award or execution of this Amendment or seeking to restrain or enjoin its
43 performance.
44
45 **D. Furnishing of Insurance, Performance Bond, and Guaranty.** Contractor has
46 furnished evidence of the insurance and irrevocable stand-by performance bond, required

1 by Article 6 satisfactory to the City. Contractor shall have delivered to City a guaranty of
2 Contractor's performance under the Agreement in substantially the form attached as
3 Exhibit A.

4
5 **E. Effectiveness of City Council Action.** The City Council action approving this
6 Agreement shall have become effective pursuant to Applicable Law prior to the Effective
7 Date.
8

9 If either Party wishes to assert that a condition for its benefit has not been satisfied and has not
10 been waived on the Effective Date, it must deliver written notice to that effect to the other Party.
11 If no such notice is received, the Agreement will become effective on the Effective Date and
12 neither Party may thereafter assert that a condition has not been satisfied or waived and that the
13 Agreement is not effective. This paragraph is not intended to prevent the City from seeking to
14 employ other remedies in the event a representation or warranty by Contractor is later discovered
15 not to be true and correct or to remedy a failure by Contractor to furnish insurance and
16 performance bond, if required. Similarly, this paragraph is not intended to prevent the
17 Contractor from seeking to employ other remedies in the event a representation or warranty by
18 City is later discovered not to be true and correct.
19

20
21 **ARTICLE 3.**
22 **OBLIGATIONS OF CITY**
23

24 **3.01 GENERAL**

25 The Parties acknowledge that the City will not physically deliver Solid Waste to the Transfer
26 Station or Landfill, except for that delivered by a City department to the Transfer Station.
27 Instead, the Collection Company will carry out such deliveries. The Parties further acknowledge
28 that the Collection Company, with the exception of City-Hauled Solid Waste Fees paid by the
29 City for Disposal of City-Hauled Solid Waste, will pay the Fees for Solid Waste it delivers to the
30 Transfer Station. The City contractually controls the delivery of Solid Waste by the Collection
31 Company to the Transfer Station and shall direct Collection Company to deliver all Solid Waste
32 collected in City to the Transfer Station. The Contractor acknowledges that the City has no
33 ability to direct Self Haulers to use the Transfer Station and does not contractually control the
34 Collection Company's delivery of residue from its processing activities to the Transfer Station.
35 In no case shall any Solid Waste be delivered by the City or the Collection Company directly to
36 the Landfill.
37

38 **3.02 HAZARDOUS MATERIAL PROGRAMS**

39 City shall contractually require its Collection Company to develop and implement a load
40 inspection program to detect and discover Hazardous Material and Household Hazardous Waste
41 and shall require Collection Company to not knowingly deliver such material to the Transfer
42 Station. City shall encourage its residents to participate in the Alameda County Household
43 Hazardous Waste Program that provides residents with a place for safe recycling, treatment
44 and/or disposition of Household Hazardous Waste. The Parties recognize, however, that City
45 cannot assure Contractor that such programs will prevent any amount of Hazardous Material or
46 Household Hazardous Waste from being delivered to the Transfer Station.
47

1 **3.03 NO LIMIT ON WASTE PREVENTION**

2 City, Collection Company, or other City agents will continue to develop and participate in waste
3 prevention activities including, source reduction and Resource Recovery activities, which may
4 over time reduce the amount of Solid Waste delivered to the Transfer Station. Nothing in this
5 Agreement shall restrict City, Collection Company, or other City agents from any such activities.
6
7

8 **ARTICLE 4.**
9 **OBLIGATIONS OF CONTRACTOR**

10
11 **4.01 GENERAL**

12 Beginning on the Commencement Date and continuing through the Term of this Agreement,
13 Contractor shall receive, accept and safely and lawfully Dispose of or otherwise process at the
14 Transfer Station and Landfill all Solid Waste generated in City and delivered to the Transfer
15 Station by Collection Company or City department. At a minimum, Contractor shall guarantee
16 Transfer Station and Landfill capacity for fifteen (15) years for the Disposal capacity at the
17 Landfill of all Solid Waste generated in City and delivered to the Transfer Station by Collection
18 Company or City department beginning on the Commencement Date. Contractor shall perform
19 its obligations with respect to Transfer Station, Transport, and Disposal services hereunder in
20 accordance with sound management and operations practice, regulatory and Permit
21 requirements, Applicable Law, the provisions hereof, and covenants, conditions and restrictions
22 pertaining to the Transfer Station, Transportation, and Disposal.
23

24 **4.02 PERMITS FOR USE OF TRANSFER STATION AND LANDFILL**

25 **A. Existing Permits.** Throughout the Term, Contractor shall maintain the Transfer Station
26 and Landfill in full regulatory compliance with the terms of any and all existing permits
27 and other approvals from government authorities required for receipt of Solid Waste at
28 the Transfer Station, Transfer, Hauling, and Disposal of Solid Waste at the Landfill.
29

30 Contractor shall keep the City fully informed, in a timely manner, of its progress in
31 securing permits, or renewals of permits, which occur during the Term as they pertain to
32 the Disposal operations at the Landfill or Transfer Station operations in accordance with
33 this Agreement and the costs related thereto.
34

35 Contractor shall provide the City with copies of any applications that the Contractor
36 submits to any regulatory body in connection with the issuance of new permits, or the
37 extension, revision or modification of existing permits with respect to the Landfill or
38 Transfer Station. Contractor shall provide such copies to the City at the same time the
39 Contractor submits the applications to the regulatory body.
40

41 **B. Additional Landfill Permits.** To assist the City in complying with the California
42 Integrated Waste Management Board Act of 1989, Contractor shall make use Reasonable
43 Business Efforts to secure additional permits necessary to make available, at all times,
44 fifteen (15) years of Disposal capacity at the Landfill for Solid Waste generated in City in
45 accordance with sound landfill engineering and operating practices. Should Contractor
46 reasonably conclude that it is no longer feasible to make available fifteen (15) years of

1 Disposal capacity, beyond September 30, 2017, and maintain competitive Fees,
2 Contractor shall notify the City of its determination and provide all studies, information
3 and data which support Contractor's conclusion to the City. City shall review such
4 support and, Contractor shall promptly meet with the City to review the same and,
5 thereupon, Contractor shall be relieved of its obligation in this regard.
6

7 Nothing in this Agreement requires the City to issue a permit for, or take any other action
8 to facilitate, Contractor's expansion of Landfill. The City retains its right and duty to act
9 on any permit applications or environmental review documents submitted to it in
10 connection with such expansion as it considers appropriate under Applicable Laws and
11 policies, independent of this Agreement.
12

- 13 **C. Contractor Compliance with Permits.** Contractor shall comply with all Transfer
14 Station and Landfill permits and terms and conditions of such permits as they may be
15 amended or superseded (including any mitigation measures related to the operation and
16 maintenance of the Transfer Station or Landfill). Contractor shall be solely responsible
17 for paying any fines or penalties imposed by governmental agencies for Contractor's
18 noncompliance with permit terms for the Transfer Station or Landfill or Contractor's
19 failure to obtain necessary permits for the Transfer Station or Landfill.
20

21 **4.03 TRANSFER STATION SERVICES**

22 Contractor shall be responsible for all operations, maintenance, monitoring, and reporting
23 requirements associated with the Transfer Station operations, including, but not limited to, the
24 following:
25

- 26 **A.** Operating scale house and scale system.
27
28 **B.** Directing on-site traffic to appropriate unloading areas and providing a safe working
29 environment for Transfer Station users, visitors and employees.
30
31 **C.** Managing Solid Waste accepted at the Transfer Station.
32
33 **D.** Transferring Solid Waste into large-capacity Transport trailers or containers.
34
35 **E.** Providing, operating, and maintaining all equipment, rolling stock and supplies necessary
36 for managing and Transferring Solid Waste and for performing all other aspects of
37 Transfer Station operations.
38
39 **F.** Properly managing dust, odors, litter, vectors, and other potential nuisances.
40

41 **4.04 TRANSPORTATION OF SOLID WASTE**

- 42
43 **A. General.** The Contractor shall provide Transportation services from the Transfer Station
44 to Landfill for all Solid Waste delivered to the Transfer Station by Collection Company
45 or City vehicles that is not Recycled, reused, or otherwise Diverted. Transportation
46 services shall be provided in accordance with the requirements of this Section. No Solid
47 Waste delivered by the Collection Company or City vehicles to the Transfer Station may

1 be Disposed of at any location other than the Landfill. Delivery of Solid Waste to the
2 Landfill shall occur during the receiving hours of the Landfill. The date, time, vehicle
3 identification number, tare weight, and gross weight of all vehicles Transporting Solid
4 Waste delivered by Collection Company or City vehicles shall be recorded when the
5 vehicle leaves the Transfer Station.
6

7 Contractor agrees to move all Solid Waste off the Transfer Station tipping floor at the
8 close of each day's operations and to conduct Transfer and Transport services in
9 accordance with Transfer Station permits and Applicable Law. Contractor shall Transport
10 Solid Waste with sufficient regularity and frequency to minimize storage of Solid Waste
11 at the Transfer Station, avoid creation of nuisance, and to minimize the amount of Solid
12 Waste stored in the Transfer Station to create a safe, efficient operating environment in
13 the Transfer Station.
14

- 15 **B. Transport Equipment.** Contractor shall be responsible for acquisition, supply,
16 operation, repair, and replacement of all vehicles, storage and/or Transport containers,
17 loading equipment, and other necessary equipment for Transportation of Solid Waste to
18 the Landfill. Tractors and transfer trailers shall be kept clean, shall be thoroughly washed
19 on the exterior at least once every week, and shall be thoroughly cleaned with pressurized
20 hot water at least once per year. The tractors and trailers shall be repainted and/or
21 refurbished so that they present a reasonably acceptable appearance to the City. The
22 Contractor's name and truck identification number shall be clearly marked on all vehicles
23 that travel off the Transfer Station property.
24

25 All Transport vehicles shall be inspected by the driver prior to leaving the Transfer
26 Station at the start of the day. The driver shall use a standard inspection checklist
27 designed by Contractor. Each driver is required to maintain a driver's daily log.
28

- 29 **C. Highway Rolling Stock Loading Standard.** Contractor shall load Solid Waste, into the
30 highway trailers or containers in a manner, which minimizes vehicle waiting time and
31 maximizes the weight of materials in each vehicle, without exceeding legal limits set
32 forth by the State. Each vehicle shall be efficiently loaded by combining materials of
33 varying densities, distributing materials with respect to axle weights, tamping down or
34 compacting the materials in the vehicles, or by other suitable means.
35

- 36 **D. Litter Prevention.** Contractor shall clean up any Solid Waste spilled or scattered during
37 Transfer or Transportation thereof. Contractor shall enclose or cover all vehicles
38 Transporting Solid Waste from the Transfer Station in a manner approved by the City. If
39 any Solid Waste is spilled or scattered, whether on private or public property, Contractor
40 shall immediately clean them up.
41

- 42 **E. Transport Permit.** Contractor shall secure and maintain all permits required by
43 Applicable Law for Transporting Solid Waste. Contractor shall supply the City with
44 copies of any such permits (including current permits or renewals thereof) promptly upon
45 request.
46

1 **F. Driver Qualifications.** All transfer truck drivers shall be trained and qualified in the
2 operation of Transfer vehicles and must have in effect a valid license, of the appropriate
3 class, issued by the California Department of Motor Vehicles. Contractor shall use
4 California Department of Motor Vehicles employer pull notice program to monitor their
5 drivers for safety.
6

7 **4.05 LANDFILL OPERATIONS**

8 Contractor, at its cost and expense, shall at all times operate the Landfill. Contractor's
9 responsibilities for the Landfill shall include, but are not limited to:

- 10
11 **A.** Operation, management, and maintenance of the refuse fill areas including, but not
12 limited, to the placement, burying, and compaction of Solid Waste in the refuse fill areas;
13 stockpiling, placement and compaction (if necessary) of daily cover, intermediate cover,
14 and final cover; management of fill operations with regard to fill sequencing, side slopes
15 configuration, and working face location and configuration;
16
17 **B.** Provision, operation, and maintenance of all equipment, rolling stock, and supplies
18 necessary for operations, closure, post-closure, and environmental monitoring;
19
20 **C.** Operation, maintenance, and management of leachate and Landfill gas management
21 systems, groundwater monitoring and management systems, storm water drainage and
22 control systems, treatment facilities, buildings, on-site roadways, utilities, and any other
23 required facility elements.
24

25 **4.06 OWNERSHIP OF PERMITTED MATERIALS**

26 Once Solid Waste is delivered to the Transfer Station by Collection Company or City vehicles,
27 ownership and the right to possession of such material shall transfer directly from the Person
28 delivering such material to Contractor. Contractor is hereby granted the right to retain, Recycle,
29 process, Dispose of and otherwise use such materials, or any part thereof, in any lawful fashion
30 or for any lawful purpose desired by Contractor and such right shall include Contractor's right to
31 retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the
32 Solid Waste.
33

34 City may obtain ownership or possession of Solid Waste received at the Transfer Station upon
35 written notice of its intent to do so, however, nothing in this Agreement shall be construed as
36 giving rise to any inference that City has such ownership or possession of Solid Waste unless
37 such written notice has been given to Contractor.
38

39 **4.07 REJECTION OF UNPERMITTED MATERIAL**

- 40 **A. Inspection.** Contractor shall use Standard Industry Practices to detect and discover
41 Unpermitted Material and shall not knowingly accept Unpermitted Material at the
42 Transfer Station or Landfill. Contractor shall comply with the inspection procedures
43 contained in its permit requirements. Contractor shall promptly modify such procedure
44 to reflect any changes in permits or Applicable Law.
45
46 **B. Unpermitted Materials Handling and Costs.** Contractor shall arrange for or provide
47 transportation and delivery to an appropriately permitted recycling, incineration, or

1 Disposal facility of all Unpermitted Materials that are encountered at the Transfer Station
2 or Landfill and which cannot be accepted at the Transfer Station or Landfill. Contractor
3 is solely responsible for handling and arranging transport and disposition of any
4 Unpermitted Material that is contained in or with Solid Waste accepted by the
5 Contractor, and for all related costs.
6

7 **C. Remedies for Rejected Materials.** If Contractor rejects material delivered to the
8 Transfer Station, because it contains Unpermitted Material including Hazardous
9 Materials, Contractor shall direct the Person(s) who delivered the Unpermitted Material
10 to remove and dispose of it in a safe and lawful manner, at the sole expense of the
11 Person(s). In the event that Unpermitted Material is delivered to the Transfer Station or
12 Landfill, Contractor shall be entitled to pursue whatever remedies, if any, it may have
13 against Person(s) bringing such Unpermitted Material to the Transfer Station or Landfill,
14 provided that in no case shall the City be considered the Person bringing such
15 Unpermitted Material to the Transfer Station or Landfill. In the event the Collection
16 Company delivers Unpermitted Materials on a frequent or continuous basis and the
17 Collection Company refuses to provide for the proper handling and disposition of such
18 Unpermitted Material, the Contractor shall provide written Notice to the City of such
19 refusal by Collection Company. Nothing herein shall excuse the Contractor from the
20 responsibility of handling such Unpermitted Materials in a lawful manner and to arrange
21 for the proper disposition of such materials.
22

23 **D. Notification.** Should the Contractor not accept any delivered materials (due to the
24 presence or strong suspicion of Unpermitted Materials), Contractor shall immediately
25 notify the City verbally and then follow verbal notifications with written notice. The
26 written notice will identify: the date and time of occurrence; material type; material
27 weight or volume; characterization of material; the Contractor's reason for rejection of
28 the delivered material; and, identify the Party which delivered such material, if the Party
29 was identified.
30

31 **4.08 DAYS AND HOURS OF OPERATION**

32 Contractor shall operate the Transfer Station for the receipt of Solid Waste in accordance with
33 the days and hours of operation as set forth in all permits. The current permitted hours of the
34 Transfer Station allow for the Collection Company and City vehicles to deliver Solid Waste
35 seven (7) days per week from 5:00 a.m. to 5:00 p.m. At a minimum, Contractor shall accept and
36 Transfer or Dispose of Solid Waste generated in the City at the Disposal Location Monday
37 through Friday from 6 a.m. to 5 p.m. and Saturday from 6 a.m. to 4:30 p.m. Contractor may not
38 reduce the hours or total number of hours for acceptance of Solid Waste delivered by the
39 Collection Company required by the Agreement without the concurrence of the City and
40 Collection Company except such changes required by a change in a Transfer Station permit.
41

42 **4.09 EQUIPMENT AND SUPPLIES**

43 Contractor shall provide all rolling stock, stationary equipment, transfer truck tippers, material
44 storage containers, spare parts, maintenance supplies, and other consumables as appropriate and
45 necessary to operate the Transfer Station, provide Transportation services, and operate the
46 Landfill. The Contractor shall properly protect the equipment and place it in the charge of

1 competent operators. The Contractor shall repair and maintain all such equipment at its own cost
2 and expense.
3

4 Contractor shall use at least six (6) clean-fuel vehicles to Transport Solid Waste from the
5 Transfer Station to the Landfill; and, such vehicles may be phased into use as follows: (1) a
6 minimum of two (2) clean-fuel vehicles in use by December 31, 2003; (2) a minimum of four (4)
7 clean-fuel vehicles in use by December 31, 2005; and (3) a minimum of six (6) clean-fuel
8 vehicles in use by December 31, 2007. Nothing in this Agreement shall restrict Contractor from
9 phasing in the use of the vehicles at earlier dates or from using more clean-fuel vehicles. In the
10 event Contractor uses dual-fuel vehicles that use both diesel fuel and a clean fuel (such as
11 compressed natural gas (CNG) or liquid natural gas (LNG)) to power the vehicle, the Contractor
12 shall operate the vehicles in such a manner that clean fuel is used for at least eighty-five percent
13 (85%) of the fuel needs. On a monthly basis, Contractor shall report the number of clean-fuel
14 vehicles operating, number of miles traveled by each vehicle, the diesel fuel used by each
15 vehicle (if applicable), the clean fuel used by each vehicle, and the clean fuel usage rate for each
16 dual-fuel vehicle (i.e., percentage of clean fuel used compared to total fuel consumption of the
17 dual-fuel vehicle).
18

19 **4.10 TRAFFIC CONTROL AND DIRECTION**

20 Contractor shall be responsible for the construction and maintenance of all roads required at the
21 Transfer Station and Landfill for purposes of transporting Solid Waste to the actual point of
22 unloading by Collection Company or City vehicle, or transporting other materials at the facility
23 and such other roads as may be required for its convenience. At the Transfer Station, Contractor
24 shall direct on-site traffic to appropriate unloading areas and provide a safe working environment
25 for facility users, visitors and employees. Contractor shall provide necessary signs and
26 personnel to assist drivers to proper unloading areas. Contractor shall maintain all signs at the
27 Transfer Station in a clean and readable condition. The Contractor shall provide and maintain
28 signs for the convenience of vehicles using the Transfer Station and to facilitate safe and
29 efficient traffic flow at the Transfer Station.
30

31 Contractor shall operate the Transfer Station so that all City and Collection Company delivery
32 vehicles are processed, unloaded and exited from the facility no more than fifteen (15) minutes
33 after arriving at the scale house (Maximum Vehicle Turnaround Time). Should Contractor fail
34 to meet the Maximum Vehicle Turnaround Time, it shall pay liquidated damages equal to One
35 Hundred Dollars (\$100) for each Collection Company and City vehicle, which is unable to
36 depart from the Transfer Station within the fifteen (15) minute average Maximum Vehicle
37 Turnaround Time in accordance with Section 8.20.
38

39 **4.11 SCALE OPERATION**

40 **A. Maintenance and Operation.** Contractor shall maintain at least two (2) State certified
41 motor vehicle scales at the Transfer Station in accordance with Applicable Law. All
42 scales shall be linked to a centralized computer recording and billing system which shall
43 be compatible with Contractor's systems and account for tracking all incoming and
44 outgoing materials. Contractor shall operate such scales during facility receiving hours,
45 established in Section 4.08, provided that Contractor shall provide City with access to
46 weighing information at all times and copies thereof on the next Working Day on which
47 the scale house is open.

1
2 **B. Vehicle Tare Weights.** When new vehicles are placed into service by the City or its
3 Collection Company, the Contractor shall promptly weigh such additional and
4 replacement vehicles and determine the unloaded (“tare”) weight(s) of each vehicle. In
5 measuring the vehicle tare weight, Contractor shall record tare weight, hauler name, and
6 vehicle identification number. Within ten (10) Working Days of weighing, Contractor
7 shall provide the City and Collection Company with a report listing vehicle tare weight
8 information. Contractor shall have the right to request re-taring of vehicles two (2) times
9 per year, unless there is reasonable suspicion or evidence that tare weights are not
10 accurate, in which case, tare weights may be updated more frequently to ensure accuracy.
11 In no case shall tare weights be updated more than four (4) times per year.
12

13 **C. Substitute Scales.** To the extent practicable, if any scales are inoperable, being tested or
14 otherwise unavailable, all vehicles shall be weighed on the remaining operating scales.
15 To the extent that all the scales are inoperable, being tested, or otherwise unavailable,
16 Contractor shall substitute portable scales until the permanent scales are replaced or
17 repaired. Contractor shall arrange for any inoperable scale to be repaired as soon as
18 possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the
19 failure of the permanent scale. Contractor shall arrange to immediately obtain a
20 temporary substitute scales(s) should the repair of the permanent scale require more than
21 twelve (12) hours.
22

23 **D. Estimates.** Pending substitution of portable scales or during power outages, Contractor
24 shall estimate the Tonnage of Solid Waste delivered to the Transfer Station by: (i) in the
25 case of vehicles operated by the City, Collection Company, or Contractor Transfer
26 Vehicles, by utilizing the arithmetic average of that vehicle's recorded Tons of Solid
27 Waste delivered on its preceding three (3) deliveries, on the same day of the week, to the
28 Transfer Station; and, (ii) in the case of Debris Box containers or City vehicles, , by
29 multiplying the estimated number of cubic yards of Solid Waste delivered per Debris Box
30 container by 0.15 Tons per cubic yard for mixed Solid Waste and 1.0 Tons per cubic yard
31 for loads of rock material.
32

33 All information required by Section 4.11.F shall continue to be recorded for each
34 delivery of Solid Waste to the Transfer Station and each Transported load of Solid Waste
35 during any period the scales are out of service.
36

37 **E. Testing.** Contractor shall test and calibrate all scales in accordance with Applicable
38 Law, but at least every twelve (12) months. Upon City request, Contractor shall provide
39 the City with copies of test results. Contractor shall further test and calibrate any or all
40 scales upon written request therefore by the City, within three (3) Working Days of such
41 request. If such test results indicate that the scale or scales complied with Applicable
42 Law, the City will reimburse Contractor the direct costs of such tests. If such test results
43 indicate that the scale or scales did not comply with Applicable Law, Contractor will bear
44 the costs thereof and Contractor shall at its own cost adjust and correct, consistent with
45 the results of such test, all weight measurements recorded and disposal fees calculated,
46 charged and paid, as the case may be, from the date of such request.
47

1 **F. Weighing Standards and Procedures.** The Transfer Station scale house(s) at the
2 facility's entrance shall serve as the location for weighing vehicles and charging Fees.
3 Contractor scale house personnel shall be responsible for inspecting the Solid Waste
4 delivered to the Transfer Station. The Collection Company and City vehicles shall be
5 charged Fees based on the Tonnage of Solid Waste delivered to the Transfer Station.
6 Thus, Contractor shall weigh and record inbound weights of all Collection Company and
7 City vehicles when the vehicles arrive at the Transfer Station. In addition, Contractor
8 shall weigh and record outbound weights of such vehicles for which Contractor does not
9 maintain tare weight information. Contractor shall provide each driver a receipt showing
10 the date, time, and quantity of Solid Waste Delivered to the Transfer Station and the Fee
11 charged for such material. The scale house computer system shall compile information
12 into various reports in which a typical transaction includes documentation of the Fee
13 charged, weight of vehicle, vehicle identification number, customer account, material
14 type, route number, vehicle type and origin of Solid Waste. In addition, each transaction
15 shall include documentation noting if the vehicle was directed to the materials recovery
16 facility at the Transfer Station.

17
18 **G. Records.** Contractor shall maintain scale records that provide information such as, but
19 not limited to, date of receipt, inbound and outbound time, inbound and outbound
20 weights of vehicles, vehicle identification number, jurisdiction of origin of materials
21 received, type of material, hauler identification and/or classification, type, weight,
22 destination of material (i.e., to Transfer operations or material recovery facility
23 operations), and destination of outbound materials.

24 25 **4.12 PERSONNEL**

26 The Contractor shall engage and train qualified and competent employees, including managerial,
27 supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient
28 for operation of the Transfer Station and Landfill and to perform Contractor's obligations
29 hereunder.

30 31 **4.13 SAFETY**

32 The Contractor shall conduct operations of Transfer Station and Landfill in a safe manner, in
33 accordance with Applicable Law and insurance requirements pursuant to Article 6.

34 35 **4.14 RESERVATION OF DISPOSAL CAPACITY**

36 Contractor shall guarantee its ability to accept, Transfer, Haul, and Dispose of all Solid Waste
37 generated in the City for fifteen (15) years from the Commencement Date of this Agreement,
38 including all Solid Waste delivered to the Transfer Station by the Collection Company and City
39 departments. Contractor shall be responsible for reasonably estimating the quantity of capacity
40 that it shall be required to provide to Transfer, Transport, and Dispose of all Solid Waste
41 generated in the City over the Term of the Agreement. The City makes no representations, and
42 is under no obligation, regarding the quantity or composition of the Solid Waste delivered to the
43 Transfer Station by the Collection Company and City. In the event the City disagrees with the
44 Contractor's estimate of the quantity of capacity required to meet the City's needs or the
45 Contractor's estimate of available Landfill capacity, the dispute shall be resolved in accordance
46 with procedures described in Section 8.17.

1 **4.15 ALTERNATIVE DISPOSAL FACILITY**

2 **A.** If Contractor becomes unable to accept Solid Waste generated in City at the Transfer
3 Station or Landfill because it did not use its Reasonable Business Efforts in resisting
4 changes, alterations and amendments to permits, or due to reasons within its control and
5 which could have been avoided by the exercise of due care, then Contractor shall (i)
6 accept and Dispose of such Solid Waste at another transfer station or landfill owned by it
7 (or by another company which is owned and controlled, directly or indirectly, by
8 Contractor), at the Transfer Station's then-current Disposal Fee in effect under this
9 Agreement, including any additional transportation costs incurred by Collection
10 Company, City department or Contractor in delivering the Solid Waste to the other
11 transfer station or landfill, or (ii) shall arrange for all Solid Waste to be Disposed of at
12 another transfer station or landfill not owned by it or an affiliated company, in which case
13 Contractor shall pay any difference in the fees charged at such Transfer or Disposal
14 location plus any additional transportation costs incurred in delivering Solid Waste to the
15 other transfer station or landfill, and the Transfer Station's then-current Disposal Fee in
16 effect under this Agreement.

17
18 **B.** If Contractor, despite using its Reasonable Business Efforts to resist changes, alterations
19 and amendments to permits under Section 4.02, becomes unable to accept and Dispose of
20 Solid Waste generated in City at the Transfer Station or Landfill, or if Contractor
21 becomes unable to accept and Dispose of Solid Waste at Transfer Station or Landfill as
22 the result of causes which are beyond its control (i.e., force majeure events described in
23 Section 8.12) and which could not have been prevented by the exercise of due care, then
24 Contractor shall, to the extent it is legally able to do so, offer to accept and Dispose of
25 Solid Waste at another landfill or transfer station owned by it (or by another company
26 which is owned and controlled, directly or indirectly, by Contractor), at the Transfer
27 Station's then-current Disposal Fee in effect under this Agreement. Contractor has no
28 obligation, however, to reduce the Disposal fee for additional transportation costs. City
29 has no obligation to accept such offer and, if City rejects such an offer, City may
30 terminate this Agreement, as provided in Section 7.02.C.

31
32 **4.16 DIVERSION ACTIVITIES**

33 **A. General.** Contractor shall use Reasonable Business Efforts to operate the Transfer
34 Station and Landfill to segregate Recyclable Materials from the Solid Waste for Resource
35 Recovery. Contractor shall document the quantity of Recyclable Materials removed from
36 the Solid Waste delivered by the Collection Company or City vehicles for Resource
37 Recovery and the quantity of such material Diverted from Disposal. Contractor will
38 calculate the quantity of Recyclable Materials Diverted from Disposal on a monthly basis
39 using a methodology acceptable to the City and shall report thereon in accordance with
40 reporting requirements in Section 4.19.

41
42 The Transfer Station includes a materials recovery operation to recover Recyclable
43 Materials from Solid Waste delivered to the Transfer Station by the Collection Company
44 and City vehicles. The Contractor shall direct all Collection Company and City vehicles
45 with Solid Waste that contains only incidental amounts of putrescible waste, to the
46 materials recovery facility for processing. Contractor shall work cooperatively with the
47 Collection Company and City to maximize the Tonnage of Solid Waste directed to the

1 materials recovery facility operations by identifying vehicles delivering Solid Waste with
2 incidental amounts of putrescible waste. Vehicles directed by Contractor to the materials
3 recovery facility operation shall include front-end loader, side-loader, rear-loaders, and
4 Debris Box trucks. Solid Waste that contains significant amounts of moisture, food
5 waste, soiled paper, diapers, manure, etc. shall not be directed to the materials recovery
6 facility but shall be directed to the Transfer operation.
7

8 On a monthly basis, the Contractor shall provide a report to the City that includes the
9 ratio of Commercial and Debris Box Tonnage of Solid Waste directed to and processed
10 in the materials recovery facility for all Alameda County jurisdictions (listed separately
11 by jurisdiction), as determined using records of the Contractor and/or Alameda County
12 Waste Management Authority, where the ratio of Solid Waste directed to the materials
13 recovery facility equals the Commercial and Debris Box Solid Waste Tonnage that was
14 directed to and processed in the materials recovery facility divided by the Total
15 Commercial and Debris Box Solid Waste delivered to the Transfer Station. In the event
16 the ratio of the Commercial and Debris Box Solid Waste Tonnage generated in the City
17 and directed to the materials recovery facility is five (5) percent or more less than the
18 average for other Alameda County jurisdictions using the materials recovery facility
19 (excluding the City), then the Contractor shall meet and confer with the City and
20 Collection Contractor to develop a strategy for increasing the Tonnage of Commercial
21 and Debris Box Solid Waste directed to the materials recovery facility.
22

23 At a minimum, Contractor shall Recover from Solid Waste processed at the material
24 recovery facility the following materials: corrugated cardboard, mixed paper, wood,
25 scrap metal, concrete, asphalt, inerts, soil, dirt, and fines. The Recovery rate shall equal
26 at least fifty percent (50%) and shall be equal to the Tonnage of Recyclable Materials
27 Recovered in the materials recovery facility divided by the Tonnage of Solid Waste
28 directed to the materials recovery facility.
29

30 **B. City Requested Material Recovery Operations.** Contractor recognizes that the City is
31 committed to Recovering Recyclable Materials from Solid Waste that have in the past
32 been Disposed of in Landfills. For that reason, the Contractor, if directed by the City,
33 shall submit a proposal to provide Resource Recovery operations that may include
34 activities designed to Recover reuseable and Recyclable Materials from residential,
35 commercial, or Self Haul Solid Waste through a combination of mechanical and manual
36 techniques. Any change in the Contractor's scope of work and determination of Fees for
37 such services shall be determined through the process described in Section 4.26.
38

39 **C. Marketing of Recovered Materials.** Contractor shall use Standard Industry Practices to
40 market Recovered Materials. To the extent practicable, Contractor shall obtain a
41 certification of end use from the Person that purchased or took possession of the
42 Recovered Materials establishing that the Recovered Materials have been, in fact,
43 Recycled, re-used or otherwise Diverted from Disposal. Contractor shall not permit
44 Recovered Materials to be incinerated, pyrolyzed, distilled, gasified, biologically
45 converted other than being composted, or otherwise subjected to transformation as
46 defined in Section 0201 of the California Integrated Waste Management Act of 1989

1 except to the extent permitted by Applicable Law with respect to Waste Diversion unless
2 written approval has been provided by the City.
3

4 **D. Marketing Records.** Contractor shall maintain complete, accurate, and detailed
5 Marketing records, including Tonnage of material marketed, purchaser, and end use.
6 Contractor shall supply the City with additional information and documentation within
7 fifteen (15) calendar days of the City's request, describing the information requested with
8 reasonable specificity.
9

10 **E. Recovered Materials Revenues.** Contractor shall retain all Recovered Materials
11 revenues.
12

13 **F. Waste Requiring Disposal.** All Solid Waste remaining after the Resource Recovery
14 activities shall be Disposed of in the Landfill in accordance with provisions of this
15 Agreement.
16

17 **4.17 DISPOSITION OF UNAUTHORIZED WASTE**

18 Contractor shall implement procedures to identify and reject discarded materials delivered to the
19 Transfer Station and Landfill which may not be legally accepted at the Transfer Station and
20 Landfill under its permits and other Environmental Laws then in effect. Contractor shall
21 implement such procedures in a uniform and non-discriminatory manner.
22

23 Contractor shall, in the course of implementing such procedures, refuse to accept discarded
24 materials for Disposal, if they constitute Hazardous Materials, Designated Waste or otherwise
25 may not be legally accepted at the Transfer Station or Landfill and shall immediately inform by
26 telephone (followed by written notice) the City. In addition, Contractor may require the
27 Collection Company to dispose of such materials and/or remediate any contamination resulting
28 therefrom at their expense, if the discarded materials are identified prior to or while such
29 material is being deposited at the Transfer Station. If Contractor discovers such materials among
30 material which it has accepted, it shall arrange for proper disposition of such materials. The
31 Contractor is solely responsible for handling and arranging the transport and disposition of any
32 Hazard Materials that is contained in or with accepted Solid Waste by the Contractor, and for all
33 related costs; however, Contractor has the right to pursue all legal rights and remedies it may
34 have against the Generator(s) of such waste if the Generators can be identified.
35

36 **4.18 INVOICING**

37 Contractor shall invoice the City and Collection Company on a monthly basis requesting
38 payment of the Fee corresponding to the appropriate Fee multiplied by Tonnages of Solid Waste
39 delivered by such party to the Transfer Station during the previous month.
40

41 **4.19 MONTHLY REPORT**

42 The Contractor shall provide a Tonnage report that includes the total Tonnage of Solid Waste
43 generated in the City that was Diverted, Transferred, and Disposed and shall also list the
44 Tonnage information separately for each of the following categories: Collection Company
45 residential Solid Waste, Collection Company commercial Solid Waste, Collection Company
46 clean-up program Solid Waste, other hauling companies (listed separately) hauling materials
47 generated in the City delivered in Debris Boxes or small vehicles (as required by Section 4.27),

1 Self-Hauled Solid Waste, and City-Hauled Solid Waste. The report shall include monthly
2 Tonnage information for Solid Waste directed to the Transfer Station and materials recovery
3 operations and year-to-date totals. In addition, Contractor shall provide Tonnage information by
4 material type for material accepted at the Transfer Station and Landfill that was used for
5 purposes other than Disposal. The monthly report shall include the Transfer vehicle and fuel
6 usage information required by Section 4.09 and materials recovery facility information required
7 by Section 4.16.A. The City reserves the right to request modifications to the reports as deemed
8 necessary.
9

10 The Monthly report shall be submitted within thirty (30) calendar days after the end of the
11 reporting month. Should Contractor fail to submit the required monthly report, or any portion
12 thereof, within thirty (30) calendar days after the end of the reporting month, it shall pay
13 liquidated damages equal to One Hundred Dollars (\$100) for each calendar day thereafter in
14 accordance with Section 8.20.
15

16 **4.20 ANNUAL REPORT OF LANDFILL ACTIVITY**

17 Contractor shall submit an annual report of Landfill activity to the City. This report shall contain
18 all items required by this Section which, at a minimum, include the following: an analysis of the
19 changes to the airspace of the Landfill since the previous report; an analysis of the remaining
20 capacity of the Landfill; a projection of the remaining life of the Landfill; and, a list of parties
21 that Contractor has guaranteed capacity to through written agreements, the annual estimated
22 Tonnage to be Disposed by each party, and the term of the Contractor's capacity commitment.
23 In the event Contractor has agreements with private companies, the name of the party may be
24 withheld from the list; however, the annual tonnage estimate and term of the commitment must
25 be provided. Each analysis shall be based on data generated by an aerial topographic survey of
26 the Landfill, which shall be performed annually in the same calendar month. At a minimum, the
27 airspace and remaining capacity of the Landfill shall be expressed in the following or similar
28 Terms: gross remaining airspace (cubic yards and estimated Tons of remaining airspace that
29 includes final cover, refuse, daily cover and liner); effective remaining airspace (cubic yards and
30 estimated Tons of remaining airspace available for refuse and daily cover); and net remaining
31 airspace (cubic yards and estimated Tons of remaining airspace available for refuse only). The
32 annual report of Landfill activity submitted to the City shall contain the date of the aerial survey
33 flight; the methodology employed in the analyses; and the calculations performed to determine
34 the gross remaining airspace, the effective remaining airspace, and net remaining airspace.
35

36 In addition, Contractor shall also describe any advances in environmental mitigation measures,
37 any advanced technologies utilized in the course of business, and any pilot programs which test
38 advanced technologies; list any violations received during the previous year; and provide proof
39 Contractor paid all governmental fees and taxes in accordance with Section 5.04 and 5.05.
40

41 All annual report information shall be submitted to the City no later than November 15. Should
42 Contractor fail to submit the required annual report, or any portion thereof, by November 15, it
43 shall pay liquidated damages equal to Three Hundred Dollars (\$300) for each calendar day
44 thereafter in accordance with Section 8.20.
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46 **4.21 MEANS AND METHODS**

47 **A. Initial Means and Methods**

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1. **Delivery.** Initial Means and Methods will be one or more of the following: collection vehicles, large-volume highway Transfer Vehicles, and/or City vehicles.
 2. **Transfer and Disposal.** Initial Means and Methods are as specified throughout this Agreement.
 3. **Recovery and Diversion.** Initial Means and Methods include all activities related to Recovery and Diversion employed by the Contractor, the City, the Collection Company, or any other parties as of the Effective Date.

12 **B. Alternative Means and Methods.** The Parties recognize that the Means and Methods
13 of delivery, Transfer, Transportation, Disposal, Recovery and/or Diversion may change
14 over the Term of this Agreement and any extensions. Either Party may request that the
15 other Party consider use of an alternative Mean or Method. Should either Party do so, the
16 Agreement shall be amended to address changes to the terms and conditions governing
17 use of alternative Mean or Method. In such case, Contractor shall prepare a proposal
18 including a description of how the alternative means and methods will impact operations;
19 an estimate of the increased or decrease in operating costs; an estimate of the per-Ton
20 adjustment to Fees; and proposed amendments to the terms and conditions of the
21 Agreement. The proposal shall clearly document the reason for the proposed adjustment,
22 calculation of the proposed cost adjustments, and supporting documentation. The City
23 shall review the proposal.
24

25 **4.22 CLOSURE AND POST-CLOSURE OF LANDFILL**

26 Contractor shall safely manage the Landfill in Full Regulatory Compliance not only during
27 normal Landfill operating period but also during the Landfill Closure and Post-Closure period(s)
28 (including fulfillment of State funding requirements). Contractor acknowledges that it is solely
29 responsible for: (i) the appropriate Closure and Post-Closure activities of the Landfill; and, (ii)
30 the establishment and funding of any reserve funds required by Applicable Law for the purposes
31 of providing funds for the payment of costs of Closure of the Landfill (or any cell within the
32 Landfill) or Post-Closure activities relating to the Landfill. Without limitation, in no event shall
33 the City or Collection Company be responsible for paying any deficiencies in such required
34 reserves. In addition, the City or Collection Company shall have no responsibility to make any
35 payments in the event that actual Closure and Post-Closure costs relating to the Landfill exceed
36 the amounts reserved by the Contractor for such purposes.
37

38 **4.23 RIGHT TO ENTER FACILITY AND OBSERVE OPERATIONS**

39 The City and its designated representative(s) shall have the right to enter, observe and inspect the
40 Transfer Station and/or Landfill at any time during Transfer Station and/or Landfill operations;
41 conduct studies or surveys of the Transfer Station or Landfill; meet with the Transfer Station or
42 Landfill manager(s) or his or her representatives at any time; and meet with other employees
43 upon request, which request shall not be unreasonably denied by Contractor, provided that the
44 City and its representatives comply with Contractor's reasonable safety and security rules and
45 shall not interfere with the work of the Contractor or its subcontractors. However, in the event
46 the Transfer Station or Landfill manager is not on the premises at the time the City or its
47 designated representative(s) visit the Contractor's facility, the City or its designated

1 representative shall not be able to inspect some or all areas of the facility and Contractor shall
2 not be in be in breach of this Agreement. In such case, the City shall give notice requesting
3 access to the site and Contractor shall make arrangements for City or its designated
4 representative(s) to conduct the on-site inspection within twenty-four (24) hours of such notice.
5 Upon City request, Contractor shall make personnel available to accompany City employees on
6 inspections. Contractor shall ensure that its employees cooperate with the City and respond to
7 the City's reasonable inquiries.
8

9 **4.24 PROVISION OF EMERGENCY SERVICES.**

10 Contractor shall provide emergency services, at the City's request, in the event of major
11 accidents, disruptions, or natural calamities. Contractor shall be capable of providing emergency
12 services within twenty-four (24) hours of notification by the City or as soon thereafter as is
13 reasonably practical in light of the circumstances. Emergency services, which exceed the
14 Contractor's obligations under this Agreement including, but not limited to, obligations related
15 to facility receiving hours, the types and quantities of permitted materials accepted at the
16 Transfer Station or Landfill, the nature of material Recovery activities, and Transfer
17 requirements, shall be compensated through a modification to the scope of services using
18 procedures described in Section 4.26.
19

20 **4.25 STANDARD INDUSTRY PRACTICES**

21 The Contractor shall employ Standard Industry Practices in conducting all activities specified in
22 this Article.
23

24 **4.26 MODIFICATIONS TO SCOPE OF SERVICE**

25 **A. General.** City may direct Contractor to perform additional services (including, but not
26 limited to, performance of additional material Recovery activities) or modify the manner
27 in which Contractor performs existing services (including, but not limited to, the
28 modifications to or elimination of services). Contractor's Fees shall be increased or
29 decreased, as appropriate, to give effect to these adjustments.
30

31 **B. Proposal for Modification of Services.** Within sixty (60) days of City request for a
32 proposal, Contractor shall present its proposal to modify existing services. At a
33 minimum, the proposal shall contain a completed description of the following:
34

- 35 1. Methodology to be employed (changes to equipment, manpower, staffing, etc.).
- 36 2. Equipment to be utilized (equipment number, types, capacity, age, etc.)
- 37 3. Labor requirements (changes in number of employees by classification).
- 38 4. Provision for program publicity/education/marketing (if appropriate).
- 39 5. Estimate of the impact of the service modification (increased Diversion tonnage,
40 reduced costs, increased public service, etc.).
- 41 6. Five (5) year projection of the financial results of the program's operations in a
42 balance sheet and operating statement format including documentation of the key
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1 assumption underlying the projections and the support for those assumptions, giving
2 full effect to the savings or costs to existing services.
3

4 **C. City's Review.** Within ninety (90) calendar days of receiving the Contractor's proposal,
5 the City shall review and comment on, and approve or disapprove of the modification to
6 the scope of services. The City and Contractor may mutually agree to extend the time
7 period for review due to the complexity of the scope of service modification under
8 consideration, the time needed for the review or approval, or for other reasonable
9 reasons.

10
11 The City may request the assistance of an independent third party to review the proposal.
12 The reasonable costs of such review shall be paid by the Contractor if the modification to
13 the scope of services is initiated by the Contractor or by the City if the modification to
14 the scope of services is initiated by the City. The cost of such review shall be estimated
15 in advance of the work, and provided to the Contractor for comment and agreement to
16 pay. Contractor's refusal to pay the reasonable cost of review of a Contractor-initiated
17 proposal shall be grounds for City rejection of such proposal.
18

19 The City may request from the Contractor operating and business records reasonably
20 required to verify the reasonableness and accuracy of the impacts associated with a
21 modification to the scope of services. Contractor shall fully cooperate with the City's
22 request and provide City and its agent(s) copies of or access to Contractor's records.
23

24 **D. Approval of Modification to Scope of Services.** Upon City approval or determination,
25 City will issue a notice approving the modification to the scope of service and
26 documenting any change to the Contractor's Fees, and approved change to Contractor's
27 obligations hereunder. The Parties shall prepare a written amendment to the Agreement
28 documenting any and all changes resulting from the modification to the scope of services.
29 No adjustment in Contractor's Fees, change in Contractor's obligations, or change in
30 scope of services shall become effective absent such City approval or determination.
31

32 **E. City's Right to Permit Others to Provide Services.** Contractor acknowledges and
33 agrees that City may permit Persons other than Contractor to provide such services not
34 otherwise contemplated under this Agreement. If Contractor and City cannot agree on
35 terms and conditions of such services in thirty (30) calendar days from the end of the
36 City's review period described in Section C above, Contractor acknowledges and agrees
37 that the City may permit Persons other than Contractor to provide such services at a
38 location other than the Contractor's Landfill or Transfer Station.
39

40 **4.27 NON-PERMITTED COMPANIES**

41 Contractor recognizes that Construction and Demolition Debris generated in the City may only
42 be collected by the Collection Company and other companies that have obtained a permit from
43 the City for Construction and Demolition Debris collection. Contractor shall record Debris Box
44 loads containing materials generated in the City and shall identify if the Debris Box is delivered
45 by a company other than the Collection Company. Contractor shall provide a monthly statement
46 to City, within thirty (30) calendar days after the end of the reporting month, listing all
47 Debris Box loads, weights of each load, and name of company delivering each load. Contractor

1 shall also post, on a sign in clear view of all customers, the City's requirement that a permit is
2 required for companies delivering Construction and Demolition Debris generated in the City in
3 Debris Boxes to the Transfer Station. For cash customers hauling Construction and Demolition
4 Debris, Contractor shall provide a monthly report identifying the tonnage of each load and the
5 delivery date of each load.
6
7

8 **ARTICLE 5.**
9 **COMPENSATION TO CONTRACTOR**

10
11 **5.01 GENERAL**

12 Contractor shall perform all of its obligations, responsibilities and duties under this Agreement,
13 including, but not limited to, paying costs associated with obtaining and complying with all
14 permits and approvals; operating the Transfer Station and Landfill; conducting construction,
15 closure, post-closure maintenance, remediation activities, and environmental monitoring, as well
16 as operating any Diversion programs or Resource Recovery programs in consideration of the
17 right to charge and collect Fees from Collection Company or City as determined in accordance
18 with this Agreement. Contractor does not look to the City (except for payments to be made by
19 the City for City-Hauled Solid Waste), but only to the Collection Company for payment of any
20 and all sums due under this Agreement.
21

22 **5.02 FEES**

23 **A. Disposal Fee.** The Disposal Fee shall be the fee Contractor charges the Collection
24 Company for Disposal of Solid Waste generated in the City. The Disposal Fee shall be
25 comprised of two components: a Base Component and a Government Fee Component.
26 The Disposal Fee applicable for the Term of this Agreement shall be as calculated in the
27 following table.
28

29 **B. City-Hauled Solid Waste Gate Rate.** During the Term of this Agreement, the Fee
30 charged to the City for City-Hauled Solid Waste shall be the City-Hauled Solid Waste
31 Gate Rate. The City-Hauled Solid Waste Gate Rate shall be equal to the Government
32 Fee Component of the Disposal Fee in Section 5.02.A for the first five hundred (500)
33 Tons of City-Hauled Solid Waste Disposed in the first year of the Agreement; and, for
34 each year thereafter the City-Hauled Solid Waste Gate Rate shall be equal to the
35 Government Fee Component of the Disposal Fee in Section 5.02.A for the first five
36 hundred (500) Tons of Solid Waste plus additional Tonnage equal to five percent (5%) of
37 five hundred (500) for each contract year not to exceed seven hundred fifty (750) Tons
38 per year. For Tonnage Disposed in excess of the Tonnage threshold, the City-Hauled
39 Solid Waste Gate Rate shall be equal to the Disposal Fee in accordance with Section
40 5.02.A.
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43 **{Remainder of this page intentionally left blank}**
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Disposal Fee (per Ton)*

<u>Beginning Date of Operating Period</u>	<u>Base Component</u>	<u>Government Fee Component</u>	<u>Total Disposal Fee**</u>
October 6, 2002	\$43.27	\$13.78	\$57.05
October 1, 2003	\$44.79	\$13.78	\$58.56
October 1, 2004	\$46.36	\$13.78	\$60.13
October 1, 2005	\$47.98	\$13.78	\$61.75
October 1, 2006	\$49.66	\$13.78	\$63.43
October 1, 2007	\$51.40	\$13.78	\$65.17
October 1, 2008	\$53.19	\$13.78	\$66.97
October 1, 2009	\$55.06	\$13.78	\$68.83
October 1, 2010	\$56.98	\$13.78	\$70.76
October 1, 2011	\$58.98	\$13.78	\$72.75
October 1, 2012	\$61.04	\$13.78	\$74.82
October 1, 2013	\$63.18	\$13.78	\$76.95
October 1, 2014	\$65.39	\$13.78	\$79.16
October 1, 2015	\$67.68	\$13.78	\$81.45
October 1, 2016	\$70.05	\$13.78	\$83.82

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* The Government Fee Component shall be adjusted during the Term as described in Section 5.03 to reflect changes to regulatory costs and government fees.
 ** Total Disposal Fee may be \$0.01 different than the sum of the Base Component and Government Fee Component due to rounding.

10

5.03 ADJUSTMENTS TO THE FEES

12 Except as provided in this Section, the Fees shall not be adjusted over the Term. In the event of
 13 an adjustment to Fees in accordance with this Section, Contractor shall provide City or its agent
 14 access to the Transfer Station and Landfill and its financial and operations records in accordance
 15 with Sections 4.23 and 8.14. The City will adjust the Fees based on the results of the review
 16 conducted by the City or its agent. The adjustment (whether an increase or decrease in the
 17 otherwise applicable Fees) will be entirely prospective in effect and operation. It is not the intent
 18 of the Parties to, nor will an adjustment to the Fees be made to compensate for “inadequate” or
 19 “excessive” revenues actually received during any prior period.

20

21 **A. Change in Government Fees.** The Fees established under Section 5.02 include costs
 22 associated with all Government Fees applicable to the Transfer Station and Landfill as of
 23 the Effective Date of this Agreement. The purpose of this Section is (1) to specify those
 24 Government Fees included on the Effective Date, and (2) to describe how changes to
 25 Government Fees will be accommodated.

26

1 1. **Government Fees as of the Effective Date.** The Government Fee Component of
2 the Disposal Fee includes the fees listed below, which are levied on Tonnage
3 Disposed of at the Landfill, as of the Effective Date.

- 4
- | | | | |
|----|-----|---|-----------------|
| 5 | (a) | California Integrated Waste Management Board Fee imposed under
6 Assembly Bill 1220 | \$ 1.40 per Ton |
| 7 | (b) | Local Enforcement Agency (Alameda County Environmental Health
8 Department) Fee in accordance with the Alameda County General
9 Ordinance Code Section 6.76.040 | \$ 0.20 per Ton |
| 10 | (c) | Alameda County Business License Fee | \$ 0.95 per Ton |
| 11 | (d) | Alameda County "Measure D" Fee | \$ 6.25 per Ton |
| 12 | (e) | Alameda County Waste Management Authority Fee | \$ 1.50 per Ton |
| 13 | (f) | Alameda County Waste Management Authority Household Hazardous
14 Waste Fee | \$ 2.15 per Ton |
| 15 | (g) | Conditional Use Permit Fee | \$ 1.25 per Ton |
| 16 | (h) | County Planning | \$ 0.08 per Ton |

17

18	Total Government Fee Component	\$ 13.78 per Ton
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21 2. **Process for adjusting Government Fees.** When Government Fees are adjusted or
22 new Government Fees are imposed, then either City or Contractor must follow the
23 procedures in this subsection before the Fees will be adjusted.

- 24
- 25 (a) City or Contractor shall give the other Party prompt notice (in no case less
26 than ninety (90) calendar days before the effective date of new
27 government fees) of the adjustment to existing or implementation of new
28 Government Fees.
- 29
- 30 (b) City or Contractor shall thereafter submit to the other Party, the associated
31 adjustment in the Government Fee Component and the Fees.
- 32
- 33 (c) The Parties shall meet and agree upon the calculated adjustment to the
34 Fees and the date on which adjusted Fees shall become effective.
- 35

36 **B. Change in Regulations.** The Fees established under Section 5.02 include all costs
37 associated with complying with the Full Regulatory Compliance of the Transfer Station
38 and Landfill as of the Effective Date of this Agreement as that compliance is currently
39 interpreted. The purpose of this Section is to: (1) specify those laws and regulations for
40 which the cost of compliance has already been included, and, (2) describe how changes
41 to existing laws and governmental regulations will be accommodated.

42

43 1. **Regulatory costs included in the Fees.** The Base Component includes the current
44 costs to achieve Fully Regulatory Compliance as of the Effective Date, including but
45 not limited to the following: the "Calderon Legislation" (former California
46 Government Code, Sections 66796.53 and 66796.54, now California Public
47 Resources Code Sections 45300-04, 45700, California Health & Safety Code

1 Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273);
2 "Proposition 65" (California Health & Safety Code, Section 25249.5 et seq., and
3 Health & Safety Code Section 25192); the Federal Clean Air Act (42 U.S.C. Section
4 7401-7642) and the California Clean Air Act (Health & Safety Code Sections 1251
5 et seq.); the Porter-Cologne Water Quality Act (California Water Code, Division 7,
6 Section 13000 et seq.); the California Integrated Waste Management Act of 1989
7 (California Public Resources Code, Divisions 30 and 31, Section 40000 et seq.); the
8 Federal Resource Conservation and Recovery Act (42 U.S.C., Section 6901 et seq.);
9 the California Hazardous Waste Control Act (California Health & Safety code,
10 Division 20, Chapter 6.5, Section 25100 et seq.); the Federal Emergency Planning
11 and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050); the
12 California Hazardous Materials Release Response Plan and Inventory Act
13 (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.);
14 the California Underground Storage Tank Act (California Health & Safety Code,
15 Division 20, Chapter 6.7, Section 25280 et seq.); the California Occupational Safety
16 and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 et
17 seq.); the Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et
18 seq.), and the regulations adopted thereunder, including but not limited to the Solid
19 Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991
20 (40 C.F.R., Parts 257 and 258); Bay Area Air Quality Management District
21 Regulation 8, Rule 34; Title 14 California Code of Regulations; Title 22 California
22 Code of Regulations; Title 27 California Code of Regulation; and "Subchapter 15"
23 (Title 23 California Code of Regulations, Sections 2510-2610), as they are
24 interpreted and enforced on the date of this Agreement, including the then-current
25 provisions, if any, which become effective on or which require compliance by a date
26 after the Effective Date of this Agreement.
27

28 **2. Process for adjusting Fee due to changes in regulations.** If Contractor believes
29 that complying with laws or governmental regulations enacted after the Effective
30 Date will increase or decrease the costs of operating the Transfer Station or Landfill,
31 then Contractor may request an adjustment to Fees in accordance with procedures in
32 this subsection.
33

34 (a) Contractor shall give the City prompt notice, in no case less than ninety
35 (90) calendar days, before the effective date of the new or modified
36 regulations, specifically identifying them and describing what changes in
37 operations at the Transfer Station or Landfill are required, when
38 compliance is required, and whether Contractor is eligible for any
39 exemptions or variances.
40

41 (b) Within thirty (30) calendar days of notice to City, Contractor shall
42 thereafter submit to the City its proposed method for complying with the
43 new or modified regulations, the estimated cost of compliance, and the
44 associated per-Ton adjustment necessary to the Fees. Contractor shall
45 provide City or its agents with access to its operational and financial
46 records in accordance with Sections 4.23 and 8.14 to allow the City or its
47 agents to evaluate the Contractor's proposal. If the City proposes an

1 alternative method of compliance, disagrees with Contractor's estimate of
2 the per-Ton adjustment to Fees, or believes per-Ton adjustment to Fees
3 includes costs in addition to the costs necessary to comply with the change
4 in regulations which the City is not obligated to pay, City and Contractor
5 shall meet and confer in good faith to reach agreement on the cost of
6 compliance and the corresponding per-Ton adjustment to the Fees.
7

8 (c) Contractor shall submit the proposed method of compliance (as may be
9 amended by Section 5.03.B.2.b above) to the appropriate regulatory
10 agency(ies). If the agency(ies) approves that method without conditions,
11 the agreed upon per-Ton adjustment amount proposed shall be the amount
12 by which the Fees may be adjusted.
13

14 (d) If Contractor's proposed method is not approved by the regulatory
15 agency(ies), Contractor will implement the method of compliance which
16 is approved by the regulatory agency(ies) and resubmit its estimate of cost
17 impacts to Transfer Station or Landfill operations and proposed per-Ton
18 Fee adjustment for City's review and approval.
19

20 **C. Most Favored Customer.** At any time during the Term of this Agreement, the Disposal
21 Fee shall not exceed the lowest fee then being charged at the Transfer Station to any
22 other comparable city, service district, or private company in Alameda County or Contra
23 Costa County, that is delivering quantities of Solid Waste to the Transfer Station for
24 Disposal that has been collected under a franchise agreement with a city, county or
25 service district. For the purpose of this Section 5.03.C, a comparable city, service
26 district, or private company shall meet the following criteria:
27

- 28 1. The city, service district, or private company hauls Solid Waste to the Transfer
29 Station in vehicles used to collect the material from the Solid Waste Generator;
- 30
- 31 2. The annual Tonnage that has been collected under a franchise agreement with a city,
32 county or service district and delivered by the city, service district, or private
33 company to the Transfer Station is less than the sum of 17,500 Tons and the annual
34 Tonnage that has been collected under the City's franchise agreement and delivered
35 to the Transfer Station; and
36
- 37 2. The initial duration (term) of the agreement between the comparable city, service
38 district, or private company and the Contractor is ten (10) years or less (not
39 including possible extensions to the term).
40

41 In the event the fee being charged by Contractor at the Transfer Station to a city, service
42 district or private company, which meets criteria 1 above, is less than the Disposal Fee
43 under this Agreement, and the initial duration of the agreement between such city,
44 service district, or private company and the Contractor is greater than ten (10) years (not
45 including possible extensions), the Contractor shall provide the City the fee charged to
46 such city, service district or private company, if the City extends the total Term of this
47 Agreement to match the initial duration (term) of the agreement under which the lower

1 fee is being offered. Contractor shall have the right to approve the said extension if the
2 initial duration (term) of the agreement under which the lower fee is being offered is
3 greater than fifteen (15) years.
4

5 **D. Changes in Alameda County Waste Management Authority programs or economic**
6 **incentives.** The Fees established under Section 5.02 reflect Alameda County Waste
7 Management Authority programs and/or economic incentives, which impact the Transfer
8 Station and Landfill costs as of the Effective Date of this Agreement, including the
9 Alameda County subsidy for processing Debris Boxes at the Transfer Station's materials
10 recovery facility. In the event the Alameda County Waste Management Authority
11 implements new programs or provides new subsidies during the Term of this Agreement,
12 the changes shall be handled in the manner described for change in regulations in Section
13 5.03.B.2.
14

15 **E. Disallowed Costs.** At no time during the Term may Contractor request an adjustment to
16 Fees (except for these conditions described in Section 5.03) for reasons including, but not
17 limited to, the following:
18

- 19 1. Costs incurred due to Contractor's negligence, or intentional misconduct.
- 20
- 21 2. Costs incurred due to regulatory changes that were not noticed by Contractor to City
22 in accordance with Section 5.03.B.2 of this Agreement.
- 23
- 24 3. Any fines or penalties imposed on Contractor including, but not limited to,
25 liquidated damages under this Agreement.
- 26
- 27 4. Cost of remediation, resulting from cost-recovery actions pursuant to 42 U.S.C.
28 Section 9600 et. seq. (CERCLA), 42 U.S.C. Section 6900 et. seq. (RCRA) or other
29 Environmental Laws.
- 30
- 31 5. Costs attributable to changing the classification of the Landfill, unless specifically
32 requested by the City.
- 33
- 34 6. Expenses related to the Disposal of Hazardous Materials, Designated Waste and
35 otherwise unacceptable waste.
36

37 **F. Dispute Resolution.** All disputes arising under this Section 5.03 shall be resolved in
38 accordance with Section 8.17. If a dispute exists, the Fees shall not be adjusted until the
39 dispute has been resolved.
40

41 **5.04 PAYMENT OF GOVERNMENTAL FEES**

42 Contractor shall pay, when and as due, any and all governmental fees to the appropriate federal,
43 State, regional, or local governmental entities which levied the fees and shall provide City with
44 proof of such payments promptly upon request.
45

1 **5.05 PAYMENT OF TAXES**

2 Contractor shall pay, when and as due, any and all governmental fees, assessments, or taxes
3 incurred as a result of Contractor's provision of services under this Agreement, including
4 estimated taxes, and shall provide City with proof of such payments promptly upon request.
5
6
7

8 **ARTICLE 6.**
9 **INDEMNITY, INSURANCE, PERFORMANCE BOND**

10
11 **6.01 INDEMNIFICATION**

12 **A. General Indemnification.** Contractor shall indemnify, defend with counsel acceptable
13 to the City, and hold harmless, at Contractor's sole cost and expense, the City, its
14 officers, employees and agents, and Collection Company from and against any and all
15 loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and
16 every kind and description, whether judicial, quasi-judicial or administrative in nature
17 including, but not limited to, injury to and death of any Person and/or damage to property
18 or for contribution or indemnity claimed by third parties (collectively, the "claims"),
19 arising out of or occasioned in any way, directly or indirectly, by Contractor's
20 performance of, or its failure to perform, its obligations under this Agreement or
21 Contractor's other operations at the Transfer Station or Landfill, including, but not
22 limited to, Contractor's failure to comply with Applicable Laws or the Contractor's
23 breach of its representations and warranties in this Agreement. The foregoing indemnity
24 shall also apply if the claim is caused by the joint negligence of Contractor, but only to
25 the extent of Contractor's negligence. This indemnification will not extend to claims to
26 the extent they are caused by the sole or joint or contributory negligence or intentional
27 misconduct or omission of the City, its officers, employees or agents, or Collection
28 Company. Contractor's Guaranty Agreement shall extend to the indemnification
29 obligation hereunder.
30

31 **B. Hazardous Material Indemnification.** Contractor shall indemnify, defend with counsel
32 acceptable to the City, and hold harmless the City, its officers, employees and agents, and
33 Collection Company (collectively, "indemnitees") from and against all claims, damages,
34 injuries, costs (including and without limit any and all response, remediation and removal
35 costs), losses, demands, debts, liens, liabilities, causes of action suits, legal or
36 administrative proceedings, interest, fines, charges, penalties, and expenses (including
37 reasonable attorneys' and expert witness fees, expenditures for investigation and
38 remediation) and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered
39 by or asserted against any of the indemnitees by reason of the presence, Disposal, escape,
40 migration, leakage spillage, discharge, emission, release, handling or transportation of
41 Hazardous Materials to, in, on, at, or under the Transfer Station or Landfill (collectively,
42 "environmental events"), any personal injury, death, or property damage, arising out of or
43 related to any of the environmental events; any lawsuit brought or threatened, settlement
44 reached, or government hearing, investigation, inquiry, proceeding, or order relating to
45 any Hazardous Materials or any of the environmental events.
46

1 Such indemnification shall apply to all events arising from or attributable to the acts or
2 omissions of Contractor, its officers, directors, employees, or arising from or attributable
3 to the acts or omissions of Contractor, its officers, directors, employees or agents,
4 whether or not negligent or otherwise culpable, in connection with or related to
5 Contractor's performance of this Agreement, including without limit damages arising
6 from or attributable to any operations, repair, clean-up or detoxification, or preparation
7 and implementation of any removal, remedial, response, closure, post-closure or other
8 plan (regardless of whether undertaken due to governmental action) concerning any
9 Hazardous Materials at the Landfill. For the avoidance of doubt, the foregoing indemnity
10 is intended to operate as an agreement pursuant to §107(e) of the Comprehensive
11 environmental Response, Compensation and Liability Act, CERCLA, 42 U.S.C. §9607(e)
12 and California Health and Safety Code §25364, to defend, protect, hold harmless, and
13 indemnify City from liability thereunder.

14
15 This provision is in addition to all other provisions in this Agreement and is intended to
16 survive the end of the Term of this Agreement. Contractor's Guaranty Agreement
17 shall extend to the indemnification obligation hereunder.

- 18
19 **C. Environmental Indemnification.** Contractor shall indemnify, defend with counsel
20 acceptable to City, and hold harmless, at Contractor's sole cost and expense, the City, its
21 officers, employees and agents, and the Collection Company from and against any and all
22 loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and
23 every kind and description, whether judicial, quasi-judicial or administrative in nature
24 (including reasonable attorneys' and expert witness fees and costs incurred in connection
25 therewith) (collectively, the "environmental claims"), any lawsuit brought or threatened,
26 settlement reached, or government hearing, investigation, inquiry, proceeding, or order
27 relating to any Hazardous Materials, arising out of or occasioned in any way by, directly
28 or indirectly, Contractor's alleged failure or actual failure to comply with the
29 Environmental Laws and regulations. This indemnification will not extend to
30 environmental claims to the extent they are caused by the sole or joint or contributory
31 negligence or intentional misconduct or omission of the City, its officers, employees or
32 agents, or the Collection Company.

33
34 This provision is in addition to all other provisions in this Agreement and is intended to
35 survive the end of the Term of this Agreement. Contractor's Guaranty Agreement shall
36 extend to the indemnification obligation hereunder.

37
38 **D. Indemnification Procedure.**

- 39
40 1. **Notice and Cooperation.** With respect to any claim for indemnification, City shall:
41
42 (a) Give a minimum of thirty (30) calendar days written notice to Contractor
43 following knowledge of the claim or proceeding as to which the right of
44 indemnification may be asserted by City;
45
46 (b) Allow Contractor (including its employees, agents and counsel)
47 reasonable access to City's employees, property and records for purpose

1 of conducting an investigation and defending such claims and taking such
2 other steps as may be necessary to preserve evidence of the occurrence of
3 which the claim is based; and
4

5 (c) Reasonably cooperate with Contractor in the defense of City.
6

- 7 2. **Contractor's Option to Assume Defense.** In any instance which City claims
8 indemnification hereunder, Contractor may elect to defend with counsel selected by
9 Contractor and reasonably acceptable to City and control the defense and settlement
10 of any litigation arising out of the occurrence from which City claims that
11 Contractor's indemnity obligation exists.
12

13 **6.02 INSURANCE**

14 **A. Minimum Scope of Insurance.** Coverage shall be at least as broad as:
15

- 16 1. Insurance Services Office form number GL 0002 covering Comprehensive General
17 Liability and Insurance Services Office form number GL 0404 covering Broad Form
18 Comprehensive General Liability; or Insurance Services Office Commercial General
19 Liability coverage ("occurrence" form CG 0001).
20
21 2. Insurance Services Office form number CA 0001 covering Automobile Liability,
22 code 1 "any auto" and endorsement CA 0025.
23
24 3. Workers' Compensation insurance as required by the Labor Code of the State of
25 California and Employers Liability insurance.
26
27 4. Employee Blanket Fidelity Bond.
28
29 5. Environmental Impairment Liability.
30

31 **B. Minimum Limits of Insurance.** Contractor shall maintain limits no less than:
32

- 33 1. Comprehensive General Liability: \$10,000,000 combined single limit per occurrence
34 for bodily injury, personal injury and property damage.
35
36 2. Automobile Liability: \$10,000,000 combined single limit per accident for bodily
37 injury and property damage.
38
39 3. Workers' Compensation and Employers Liability: Workers' compensation limits as
40 required by the Labor Code of the State of California and Employers Liability limits
41 of \$1,000,000 per accident.
42
43 4. Employee Blanket Fidelity Bond: \$500,000 per employee, covering dishonesty,
44 forgery, alteration, theft, disappearance, destruction (inside or outside).
45
46 5. Environmental Impairment Liability: \$10,000,000 covering liability arising from the
47 release of pollution at the Landfill.

1
2 **C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions
3 must be declared to and approved by the City. At the option of the City, either: the
4 insurer shall reduce or eliminate such deductibles or self-insured retentions as respects
5 the City, its officials and employees; or the Contractor shall procure a bond guaranteeing
6 payment of losses and related investigations, claim administration and defense expenses.
7

8 **D. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the
9 following provisions:
10

11 1. **General Liability and Automobile Liability Coverage.**
12

13 (a) The City, its officials, employees and volunteers are to be covered as
14 additional insureds as respects: liability arising out of activities performed
15 by or on behalf of the Contractor; products and completed operations of
16 the Contractor; premises owned, leased or used by the Contractor; or
17 automobiles owned, leased, hired or borrowed by the Contractor. The
18 coverage shall contain no special limitations on the scope of protection
19 afforded to the City, its officials, employees or volunteers. The
20 automobile liability is endorsed to contain MCA-90 coverage.
21

22 (b) The Contractor's insurance coverage shall be primary insurance as
23 respects the City, its officials, employees and volunteers. Any insurance
24 or self-insurance maintained by the City, its officials, employees or
25 volunteers shall be excess of the Contractor's insurance and shall not
26 contribute with it.
27

28 (c) Any failure to comply with reporting provisions of the policies shall not
29 affect coverage provided to the City, its officials, employees or volunteers.
30

31 (d) Coverage shall state that the Contractor's insurance shall apply separately
32 to each insured against whom claim is made or suit is brought, except with
33 respect to the limits of the insurer's liability.
34

35 2. **Workers' Compensation and Employers Liability Coverage.** The insurer shall
36 agree to waive all rights of subrogation against the City, its officers, employees and
37 volunteers for losses arising from work performed by the Contractor for the City.
38

39 3. **All Coverage.** Each insurance policy required by this clause shall be endorsed to
40 state that coverage shall not be suspended, voided, canceled by either party, reduced
41 in coverage or in limits except after thirty (30) calendar days' prior written notice by
42 certified mail, return receipt requested, has been given to the City.
43

44 **E. Acceptability of Insurers.** The insurance policies required by this Section shall be
45 issued by an insurance company or companies authorized to do business in the State of
46 California and with a rating in the most recent edition of Best's Insurance Reports of size
47 category VII or larger and a rating classification of A or better.

1
2 **F. Verification of Coverage.** Contractor shall furnish Contractor's insurance agent a copy
3 of these specifications, and direct the agent to provide the City with certificates of
4 insurance and with original endorsements affecting coverage required by this clause.
5 Issuance of documentation indicates the Contractor's insurance complies with these
6 provisions. The certificates and endorsements for each insurance policy are to be signed
7 by a Person authorized by that insurer to bind coverage on its behalf. The certificates and
8 endorsements are to be received and approved by the City before work commences. The
9 City reserves the right to require complete, certified copies of all required insurance
10 policies, at any time.

11
12 **G. Required Endorsements.**

13
14 1. **Workers' Compensation.** The Workers' Compensation policy shall contain an
15 endorsement in substantially the following form:

16
17 "Thirty (30) calendar days' prior written notice shall be given to the City
18 of Alameda in the event of cancellation, reduction in coverage, or non-
19 renewal of this policy. Such notice shall be sent to:

20
21 City Manager
22 City of Alameda
23 City Hall
24 2263 Santa Clara Avenue
25 Alameda, CA 94501"

26
27 2. **Commercial General Liability and Automobile Liability.** The Commercial
28 General Liability and Automobile Liability policies shall contain endorsements in
29 substantially the following form:

30
31 (a) "Thirty (30) calendar days' prior written notice shall be given to the City
32 of Alameda in the event of cancellation, reduction in coverage, or non-
33 renewal of this policy. Such notice shall be sent to:

34
35 City Manager
36 City of Alameda
37 City Hall
38 2263 Santa Clara Avenue
39 Alameda, CA 94501"

40
41 (b) "The City of Alameda, its officers, employees, and agents are additional
42 insureds on this policy." The City requires form CG2010 1185.

43
44 (c) "This policy shall be considered primary insurance as respects any other
45 valid and collectible insurance maintained by the City of Alameda,
46 including any self-insured retention or program of self-insurance, and any
47 other such insurance shall be considered excess insurance only."

1
2 (d) "Inclusion of the City of Alameda as an insured shall not affect the City's
3 rights as respects any claim, demand, suit or judgment brought or
4 recovered against the Contractor. This policy shall protect Contractor and
5 the City in the same manner as though a separate policy had been issued to
6 each, but this shall not operate to increase the Contractor's liability as set
7 forth in the policy beyond the amount shown or to which the Contractor
8 would have been liable if only one party had been named as an insured."
9

10 3. **Environmental Impairment Liability.** The Environmental Impairment Liability
11 policy shall include the endorsement in Section 6.02.G.1.
12

13 **H. Delivery of Proof of Coverage.** On or before the Effective Date of this Agreement,
14 Contractor shall furnish the City certificates of each policy of insurance required
15 hereunder, in form and substance satisfactory to City. Such certificates shall show the
16 type and amount of coverage, effective dates and dates of expiration of policies and shall
17 have all required endorsements. If the City requests, copies of each policy, together with
18 all endorsements, shall also be promptly delivered to City.
19

20 Renewal certificates will be furnished periodically to City to demonstrate maintenance of
21 the required coverages throughout the Term.
22

23 **I. Other Insurance Requirements**
24

25 1. In the event any services are delegated to a subcontractor, the Contractor shall
26 require such subcontractor to provide statutory workers' compensation insurance and
27 employer's liability insurance for all of the subcontractor's employees engaged in the
28 work in accordance with Section 6.02.2.B and Section 6.02.4.B. The liability
29 insurance required by Section 6.02.2.B shall cover all subcontractors or the
30 subcontractor must furnish evidence of insurance provided by it meeting all of the
31 requirements of this Section 6.02.
32

33 2. The Contractor shall comply with all requirements of the insurers issuing policies.
34 The carrying of insurance shall not relieve Contractor from any obligation under this
35 Agreement. If any claim exceeding the amount of any deductibles or self-insured
36 reserves is made by any third person against the Contractor or any subcontractor on
37 account of any occurrence related to this Agreement, the Contractor shall promptly
38 report the facts in writing to the insurance carrier and to the City.
39

40 3. If Contractor fails to procure and maintain any insurance required by this
41 Agreement, the City may take out and maintain, at Contractor's expense, such
42 insurance as City may reasonably deem proper in accordance with the limits set forth
43 herein, and Contractor shall reimburse the City for the cost of such insurance within
44 thirty (30) calendar days of being invoiced by City for such costs.
45

46 4. The Comprehensive General Liability insurance required by Section 6.02.B.1 shall
47 be written on an "occurrence" (not an "accident"), rather than a "claims made" basis,

1 if such coverage is obtainable. If it is not obtainable, Contractor shall notify City
2 and arrange for "tail coverage" to protect the City from claims filed during the ten
3 (10) years immediately following the expiration or termination of this Agreement
4 relating to incidents which occurred prior to such expiration or termination.
5

6 **6.03 PERFORMANCE BOND**

7 On or before the Effective Date of this Agreement, Contractor shall file with the City a
8 bond, payable to the City, securing the Contractor's faithful performance of its
9 obligations under this Agreement and such bond shall be renewed annually if necessary
10 so that the performance bond is maintained at all times during the Term. The principal
11 sum of the bond shall be Three Million Dollars (\$3,000,000). The bond shall be executed
12 by a corporation authorized to issue surety bonds in the State of California, with a
13 financial condition and record of service satisfactory to the City. The performance bond
14 is included in Exhibit A.
15

16 **ARTICLE 7.**
17 **DEFAULT BY CONTRACTOR AND TERMINATION**
18

19 **7.01 CONTRACTOR DEFAULT**

20 Each of the following shall constitute an event of default by Contractor ("Contractor Default"),
21 hereunder:
22

23 **A.** Contractor fails to perform its obligations under this Agreement, and: (i) if the failure or
24 refusal of Contractor to perform disposal services required by this Agreement has created
25 an imminent threat to public health and is not cured within two (2) business days after
26 receiving notice from the City specifying the breach; or (ii) in the case of any other
27 breach of the Agreement, the breach continues for more than thirty (30) calendar days
28 after written notice from the City for the correction thereof, provided that where such
29 breach cannot be cured within such thirty (30) day period, Contractor shall not be in
30 default of this Agreement if Contractor shall have commenced such action required to
31 cure the particular breach within ten (10) calendar days after such notice, and it continues
32 such performance diligently until completed.
33

34 If Contractor is unable to accept and Dispose of Solid Waste at the Landfill, but has
35 complied with its obligations under Section 4.15, it shall not be in default of this
36 Agreement.
37

38 **B.** There is a seizure or attachment of, or levy on, the operating equipment of Contractor
39 used at the Transfer Station or Landfill which prevents Contractor from performing the
40 work unless timely cured under as described in Section 7.01.A above;
41

42 **C.** A material representation or warranty contained in Article 9 proves to be false or
43 misleading in a material respect as of the date such representation or warranty is made
44 unless timely cured under Section 7.01.A above;
45

1 **D.** Contractor files a voluntary petition for debt relief under any applicable bankruptcy,
2 insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent
3 to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee,
4 custodian, sequestrator (or similar official) of Contractor for any substantial part of
5 Contractor's operating assets or any substantial part of Contractor's property, or shall
6 make any general assignment for the benefit of Contractor's debt as it becomes due;
7

8 **E.** A court having jurisdiction shall enter a decree or order for relief in any involuntary case
9 brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter
10 in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or
11 any such court shall enter a decree or order appointing a receiver, liquidator, assignee,
12 custodian, trustee, sequestrator (or similar official) of Contractor or for any substantial
13 part of Contractor's operating equipment or assets, or order the winding up or liquidation
14 of the affairs of Contractor.
15

16 **7.02 RIGHT TO SUSPEND OR TERMINATE PERFORMANCE**

17 **A. Upon Default.** Upon any Contractor Default, the City shall have the right to suspend or
18 terminate this Agreement unless cured within the prescribed period. Otherwise, such
19 suspension or termination shall be effective thirty (30) calendar days after the City has
20 given notice by certified mail of suspension or termination to Contractor, except that such
21 notice may be effective two (2) Working Days after receiving notice by certified mail if
22 the Contractor Default is one which results in the Contractor's failure to accept and
23 Dispose of Solid Waste. Notice shall be in writing and delivered to the representative of
24 Contractor designated in or under Section 8.09.
25

26 **B. Upon Change in Permits or Applicable Law.** The City shall have the right to suspend
27 or terminate this Agreement, upon the same notice provisions in 7.02.A, if Contractor's
28 ability to perform is prevented or materially interfered with by a change in permits or
29 Applicable Law which, under Sections 4.02 and 8.02, Contractor must comply. Such
30 suspension or termination may apply even if non-performance of the Contractor is neither
31 a breach nor a default by Contractor.
32

33 **C. Upon City's Rejection of Alternative Disposal Facility.** The City shall also have the
34 right to terminate this Agreement under the circumstances described in Section 4.15.B.
35

36 **D. Upon Force Majeure.** The City shall have the right to terminate this Agreement under
37 the circumstances described in Section 8.12.
38

39 **E. Upon Need for Solid Waste as a Power Plant or Conversion Facility Feedstock.** In
40 the event the City develops a power plant or conversion facility that requires Solid Waste
41 as a feedstock, the City shall have the right to terminate this Agreement provided that the
42 City gives the Contractor one (1) year notice of its plans to terminate the Agreement
43 under this provision. For the purposes of this Section 7.02.E, "conversion" means the
44 processing, through non-combustion thermal means, chemical means, or biological
45 means, other than composting, of Solid Waste from which Recyclable Materials have
46 been substantially diverted and/or removed to produce electricity, alternative fuels,
47 chemicals, or other products that meet quality standards for use in the marketplace.

1
2 The interruption or discontinuance of Contractor's ability to accept and Dispose of Solid Waste
3 caused by one or more of the events described in this Section shall not constitute a default by
4 Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is
5 excused from performing its obligations hereunder for any of the causes listed in this Section for
6 a period of thirty (30) calendar days or more, the City shall have the right, in their sole
7 discretion, to terminate this Agreement by giving ten (10) calendar days notice.
8

9 **7.03 RIGHT TO PERFORM**

10 If this Agreement is suspended and/or terminated due to Contractor Default, the City shall have
11 the right to perform and complete, by contract or otherwise, the work herein or such part thereof
12 as it may deem necessary and incur all expenses necessary for completion of the work, including,
13 but not limited to, Transfer and Disposal of Solid Waste at alternate Transfer and Disposal
14 facilities, but not including any right to operate the Landfill. If such expenses (including, but not
15 limited to, the costs of transportation to an alternative facility and the actual fees charged for
16 Disposal) exceed the amounts which would have been paid to Contractor under this Agreement,
17 if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess
18 costs to the City within thirty (30) calendar days of Contractor's receipt of a claim for
19 reimbursement, and evidence of costs incurred, from the City.
20

21 **7.04 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

22 The City's rights to suspend or terminate this Agreement under Section 7.02 or to perform under
23 Section 7.03 or to impose liquidated damages under Section 8.20 are not mutually exclusive, and
24 the City's exercise of one such right shall not constitute a selection of remedies. Instead, they
25 shall be in addition to any and all other legal and equitable rights and remedies which the City
26 may have.
27
28

29 **ARTICLE 8.**
30 **OTHER AGREEMENTS OF THE PARTIES**

31
32 **8.01 RELATIONSHIP OF PARTIES**

33 The Parties intend that Contractor shall perform the services required by this Agreement as an
34 independent contractor engaged by the City and not as an officer or employee of the City nor as
35 a partner of or joint venturer with the City. No employee or agent of Contractor shall be or shall
36 be deemed to be an employee or agent of the City. Except as expressly provided herein,
37 Contractor shall have the exclusive control over the manner and means of conducting the Solid
38 Waste, Diversion, Transfer, Transportation, and Disposal services performed under this
39 Agreement, and all Persons performing such services. Contractor shall be solely responsible for
40 the acts and omissions of its officers, employees, subcontractors, and agents. Neither Contractor
41 nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement
42 benefits, workers' compensation benefits, or any other benefits which accrue to the City
43 employees who are employed by the City.
44

1 **8.02 COMPLIANCE WITH LAW**

2 In providing the services required under this Agreement, Contractor shall at all times comply
3 with all Applicable Laws (including, but not limited to, the Environmental Laws) of the United
4 States, the State, and the City. In the event of any conflict between this Agreement and
5 Applicable Laws, the requirements of the Applicable Laws shall govern, and Contractor shall not
6 be in breach of this Agreement if Contractor complies with the Applicable Laws in contravention
7 of this Agreement, provided that nothing in this Section is intended to limit or enlarge
8 Contractor's obligation under Section 4.15 or diminish its right to satisfy its obligation to
9 Transfer, Transport and Dispose of Solid Waste by arranging for it to be accepted and Disposed
10 of at another Disposal facility under the circumstances described in, and in compliance with the
11 requirements of, Section 4.15.

12
13 **8.03 GOVERNING LAW**

14 This Agreement shall be governed by, and construed and enforced in accordance with, the laws
15 of the State.

16
17 **8.04 JURISDICTION**

18 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded
19 in the courts of the State, which shall have exclusive jurisdiction over such lawsuits. With
20 respect to venue, the Parties agree that this Agreement is made in and will be performed in the
21 County of Alameda.

22
23 **8.05 ASSIGNMENT BY CONTRACTOR**

24 **A. Permitted Assignments.** Contractor shall have the right to assign the entirety of this
25 Agreement to any other company which is owned and controlled by Contractor provided
26 that: (i) such company is qualified to do business and has a place of business in
27 California, has a net worth at least equal to that of Contractor at the time of the
28 assignment, and assumes in writing all of Contractor's obligations under this Agreement
29 prior to or concurrently with such assignment; and, (ii) the performance bond described
30 in Section 6.03 remains in full force and effect. Contractor shall not otherwise assign its
31 rights nor delegate or otherwise transfer its obligations under this Agreement to any other
32 Person without the prior written consent of the City. Any such assignment made without
33 the consent of the City shall be void and the attempted assignment shall constitute a
34 breach of this Agreement.

35
36 **B. Assignment Defined.** For the purpose of this Section, "assign" or "assignment" shall
37 include, but not be limited to: (i) a sale, exchange or other transfer to either a related or a
38 third party of substantially all of Contractor's (or its Parent Company's) assets dedicated
39 to service under this Agreement; (ii) the issuance of new stock to or the sale, exchange,
40 or other transfer of ten (10) percent or more of the then outstanding common stock of
41 Contractor (or its Parent Company) to a Person other than the shareholder or an affiliate
42 of shareholder owning said stock at the Effective Date.

43
44 **C. Consent Requirements.** Except as provided in Section 8.05.A, this Agreement and the
45 duties and obligations of Contractor hereunder may not be assigned. Provided, however,
46 nothing herein is intended to prevent Contractor from requesting that the City consider

1 waiving this restriction and consenting to an assignment. In connection with any such
2 request, Contractor anticipates that it will undertake or furnish the following:

- 3
- 4 1. Contractor shall undertake to pay the City the reasonable expenses for attorneys' and
5 consultants' fees and costs necessary to investigate the suitability of any proposed
6 assignee, and reasonable expenses incurred in reviewing and finalizing any
7 documentation required for approving any such assignment proffered;
8
 - 9 2. Contractor shall furnish the City with audited financial statements of the proposed
10 assignee's operations for the immediately preceding three (3) Operating Years;
11
 - 12 3. Contractor shall furnish the City with satisfactory proof that: (i) the proposed
13 assignee has directly related Solid Waste management landfill experience; (ii) in the
14 last five (5) years, the proposed assignee has not suffered any material citations or
15 other material censure from any federal, state, or local agency having jurisdiction
16 over its transfer station and landfill operations due to any significant failure to
17 comply with federal, state or local waste management laws and that the assignee has
18 provided the City with a complete list of any citations and censures (whether
19 material or not); (iii) the proposed assignee has at all times conducted its transfer
20 station and landfill operations in an environmentally safe and conscientious fashion;
21 (iv) the proposed assignee conducts its Solid Waste transfer station and landfill
22 management practices in material compliance with all federal, state, and local laws
23 regulating the collection, Transfer and Disposal of Solid Waste, including, to the
24 extent applicable, Hazardous Waste as identified in Title 22 of the California Code
25 of Regulations; (v) that the Guaranty Agreement provided by the proposed
26 assignee is satisfactory to the City and is binding and enforceable upon the
27 guarantor; and, (vi) any other information reasonably required by the City to ensure
28 the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and
29 effective manner.
30

31 **8.06 BINDING ON SUCCESSORS**

32 The provisions of this Agreement shall inure to the benefit of and be binding on the successors
33 and permitted assigns of the Parties.
34

35 **8.07 PARTIES IN INTEREST**

36 Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any
37 Persons other than the Parties to it and their representatives, successors and permitted assigns.
38

39 **8.08 WAIVER**

40 The waiver by either Party of any breach or violation of any provisions of this Agreement shall
41 not be deemed to be a waiver of any breach or violation of any other provision nor of any
42 subsequent breach or violation of the same or any other provision. The subsequent acceptance
43 by either Party of any monies which become due hereunder shall not be deemed to be a waiver
44 of any pre-existing, concurrent or subsequent breach or violation by the other Party of any
45 provision of this Agreement.
46

1 **8.09 NOTICES**

2 All notices, demands, requests, proposals, approvals, consents, and other communications which
3 this Agreement requires, authorizes or contemplates shall, except where specifically provided
4 otherwise, be in writing and shall either be personally delivered to a representative of the Parties
5 at the address below or be deposited in the United States mail, first class postage prepaid,
6 (certified or registered mail, return receipt requested) addressed as follows:
7

8 If to the City: City Manager or his/her designee
9 City of Alameda
10 2263 Santa Clara Avenue
11 Alameda, California 94501
12

13 If to the Contractor: District Manager
14 Waste Management of Alameda County, Inc.
15 172 98th Avenue
16 Oakland, CA 94603-8509
17

18 The address to which communications may be delivered may be changed from time to time by a
19 written notice given in accordance with this Section. Notices shall be deemed delivered only
20 upon receipt.
21

22 **8.10 REPRESENTATIVES OF THE PARTIES**

23 **A. Representative of the City.** The City's representative for the purposes of this
24 Agreement shall be the City Council or its designee. Within five (5) business days of the
25 Effective Date, City shall deliver to Contractor a list of the City Council's designated
26 representatives. Such list may be updated from time to time by the City and such updates
27 shall be delivered to Contractor. Contractor may rely upon actions taken by such
28 delegates with respect to City's respective rights and obligations under this Agreement.
29

30 **B. Representatives of Contractor.** Contractor shall, within five (5) business days of the
31 Effective Date, designate in writing a responsible officer who shall serve as the
32 representative of Contractor in all matters related to the Agreement and shall inform the
33 City in writing of such designation and of any limitations upon his or her authority to
34 bind Contractor. Contractor shall promptly notify City in writing of any changes in the
35 designee or his/her authority. The City may rely upon action taken by such designated
36 representative as actions of Contractor unless they are outside the scope of the authority
37 delegated to him/her by the Contractor as communicated to the City.
38

39 **8.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE**

40 Contractor shall not discriminate in the employment of Persons engaged in the performance of
41 this Agreement on account of race, color, national origin, ancestry, religion, sex, sexual
42 orientation, physical handicap, or medical condition, in violation of any applicable federal or
43 State law.
44

45 **8.12 FORCE MAJEURE**

46 Neither party shall be in default of its obligations under this Agreement in the event, and for so
47 long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act

1 of God” (including, but not limited to, flood, earthquake, or other catastrophic events), war,
2 insurrection, riot, or other similar causes which are not the fault of, and beyond the reasonable
3 control of, the party claiming excuse from performance. Labor unrest, including but not limited
4 to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action
5 conducted by Contractor's employees or directed at Contractor is not an excuse from
6 performance and Contractor shall be obligated to continue to accept and Dispose of Solid Waste,
7 notwithstanding the occurrence of any or all of such events; provided, however, that labor unrest
8 or job action directed at a third party over whom Contractor has no control, shall excuse
9 performance. A party claiming excuse under this Section must (i) have taken reasonable
10 precautions, if possible, to avoid being affected by the cause, including, in the case of
11 impossibility of performance based on inability to obtain a governmental permit, compliance
12 with the Reasonable Business Efforts requirement of Section 4.02, and (ii) notify the other party
13 in writing within five (5) days after the occurrence of the event specifying the nature of the
14 event, the expected length of time that the party expects to be prevented from performing, and
15 the steps which the party intends to take to restore its ability to perform. The party claiming
16 excuse under this Section shall use Reasonable Business Efforts to remedy its inability to perform
17 as quickly as possible.
18

19 The interruption or discontinuance of Contractor's ability to accept and Dispose of Solid Waste
20 caused by one or more of the events described in this Section shall not constitute a default by
21 Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is
22 excused from performing its obligations hereunder for any of the causes listed in this Section for
23 a period of thirty (30) days or more, the City shall have the right, in its sole discretion, to
24 terminate this Agreement by giving ten (10) days notice.
25

26 **8.13 MAINTENANCE OF FINANCIAL RECORDS**

27 **A. General.** In order to effectuate the adjustment to the Fees contemplated by Sections
28 5.03, and 5.04, it is necessary for Contractor to maintain accurate, detailed financial and
29 operational information in a consistent format and to make such information available to
30 the City in a timely fashion. It is also necessary, in order to assure the public of the
31 accuracy of the review process, for the Contractor's financial records to be confirmed by
32 an audit conducted by an independent certified public accountant whose report thereon is
33 forwarded to the City on a regular basis. This Section is intended to effectuate these
34 requirements.
35

36 **B. Contractor's Accounting Records.** Contractor shall maintain accurate and complete
37 accounting records containing the underlying financial and operating data relating to and
38 showing the basis for computation of all costs associated with providing services under
39 this Agreement. The accounting records shall be prepared in accordance with Generally
40 Accepted Accounting Principles (GAAP), which shall be consistently applied. The
41 Parties acknowledge that the Contractor's accounting procedures do not produce
42 accounting records that separate the financial and operational data related to specific
43 services provided to the City, but rather the accounting records are consolidated financial
44 and operational data for all services provided by Contractor or at Contractor's Transfer
45 Station and Landfill.
46

1 **C. Retention of Records.** Contractor shall retain all records and data required to be
2 maintained by this Agreement at least until the termination of this Agreement.
3

4 Records and data required to be maintained that are specifically directed to be retained
5 shall be retrieved by Contractor and made available to the City within five (5) business
6 days of City's request.
7

8 Records and data required to be maintained that are, material, in the sole opinion of the
9 City, and necessary to determining the cost of compliance with changes in governmental
10 fees or regulations; verifying payment of governmental fees or taxes; determining cost
11 impact related to modifications to scope of services or new Alameda County Waste
12 Management Authority programs or economic incentives; or determining an adjustment
13 to the Disposal Fee as provided for in this Agreement, shall be retrieved by Contractor
14 and made available to the City within five (5) business days of the City's request.
15

16 In the event records and data that are not required to be maintained by this Agreement
17 that are material to determining the cost of compliance with changes in governmental
18 fees or regulations; verifying payment of governmental fees or taxes; determining cost
19 impact related to modifications to scope of services or new Alameda County Waste
20 Management Authority programs or economic incentives; determining an adjustment to
21 the Fees as provided for in this Agreement; and/or determining the Contractor's
22 performance are not available, the City and Contractor shall meet and confer in good
23 faith to reach agreement on reasonable assumptions that are necessary to determine the
24 cost of compliance with changes in governmental fees or regulations; verify payment of
25 governmental fees or taxes; determine cost impact related to modifications to scope of
26 services or new Alameda County Waste Management Authority programs or economic
27 incentives; determine an adjustment to the Fees as provided for in this Agreement; and/or
28 to determinate Contractor's performance under this Agreement.
29

30 **D. Delivery of Financial Statements, Auditors' Reports.** In the event of a request for an
31 adjustment to the Fees, Contractor shall deliver to the City one (1) copy of the audited
32 financial statements of Waste Management of Alameda County, Inc. for Waste
33 Management of Alameda County, Inc.'s preceding fiscal year. These statements shall
34 have been examined by and shall be accompanied by the report of an independent
35 certified public accountant containing such accountant's representation that it has
36 examined the Contractor's financial statements in accordance with Generally Accepted
37 Auditing Standards (GAAS) and the accountant's unqualified opinion that such
38 statements have been prepared in accordance with Generally Accepted Accounting
39 Principles (GAAP) consistently applicable and fairly reflect the results of operations and
40 Contractor's financial condition.
41
42

43 **8.14 RIGHT TO INSPECT RECORDS**

44 Upon reasonable notice and without interference with Contractor's operations, the City, its
45 auditors and other agents selected by the City, shall have the right, at its sole cost and subject to
46 those records required to be maintained under Section 8.13, during regular business hours as
47 described in Section 4.08, to conduct on-site inspections of the records of Contractor and to

1 make and retain copies of any financial and operational records that are reasonably necessary to:
2 (1) determine the cost of compliance with changes in governmental fees or regulations (in
3 accordance with Section 5.03); (2) verify payment of governmental fees or taxes (in accordance
4 with Sections 5.04 and 5.05); (3) determine cost of modifications to scope of services (in
5 accordance with Section 4.26); (4) determine cost of new Alameda County Waste Authority
6 programs or economic incentives (in accordance with Section 5.03.D); or (5) determine
7 adjustment to the Fees relating to governmental regulations and/or Fees. Contractor shall
8 cooperate with the City, its auditors and other agents selected by the City, and shall make such
9 records available to the City, and Contractor shall provide the City copies of such records (which
10 the City may retain) at the City's request. If the City so requests, Contractor shall make
11 specified personnel available to assist the City representatives in accessing financial and
12 operational records.
13

14 **8.15 COMPILATION OF INFORMATION FOR STATE LAW PURPOSES**

15 Contractor shall compile information on amounts of Solid Waste delivered to the Transfer
16 Station and Landfill and Disposed and other information, which the City may reasonably request
17 in order to meet its obligations under the California Integrated Waste Management Act of 1989.
18

19 **8.16 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

20 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-
21 out, picketing or other concerted job action; (ii) appears in the reasonable judgment of the City to
22 be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal
23 proceeding brought by a federal, state, regional, or local agency for violation of an
24 Environmental Law at the Transfer Station or Landfill which the City reasonably believes has
25 placed Contractor's ability to perform under this Agreement in substantial jeopardy, the City
26 may, at its option and in addition to all other remedies it may have, demand from Contractor
27 written assurances of timely and proper performance of this Agreement within five (5) Working
28 Days after receiving demand by certified mail. "Assurances" for purposes of this Section may
29 include an increase in financial guarantees beyond the performance bond provided for under
30 Section 6.03.
31

32 **8.17 DISPUTE RESOLUTION**

33 Disputes arising under this Agreement may be resolved by means of mediation (with the
34 assistance of a mediator selected in the manner provided in Exhibit B) or by a decision of a
35 Court of competent jurisdiction.
36

37 **8.18 CRIMINAL ACTIVITY OF CONTRACTOR**

38 **A. Criminal Activity.** For purpose of this Section, Criminal Activity shall mean any
39 of the following events or circumstances:
40

- 41 1. **Convictions.** The entry against any Contractor Party of a criminal conviction or a
42 permanent mandatory or prohibitory injunction from a court, municipality or
43 regulatory agency of competent jurisdiction based on acts taken in his or her
44 official capacity on behalf of Contractor with respect to:
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- (a) Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to municipal Solid Waste, Recyclable Materials or Organic Materials services of any kind (including Collection, Transportation, transfer, Processing, composting or Disposal), including this Agreement or any amendment thereto;
- (b) Bribery or attempting to bribe a public officer or employee of a local, State, or federal agency;
- (c) Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
- (d) Unlawful disposal of Hazardous Waste or Designated Waste the occurrence of which any of Contractor Party knew or should have known;
- (e) Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practices laws, including with respect to inflation of fees for Solid Waste, Recyclable Materials or Organic Materials Collection, Transportation, Processing, or Disposal;
- (f) Violation of securities laws;
- (g) Felonies.

2. **Pleas.** Entry of a plea of “guilty,” “nolo contendere” or “no contest” by a Contracting Party based on acts taken in his, her or its official capacity on behalf of Contractor with respect to the conduct described in preceding subdivision (a) of this Section.

B. Notice. Contactor shall notify City in writing within five (5) calendar days of occurrence of any Criminal Activity.

C. Contractor’s Cure. Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done all of the following:

- 1. Terminate from employment or remove from office any offending individual Contractor Party, unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Contractor, and
- 2. Eliminate participation by any individual offending Contractor Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Contractor under this Agreement.

1 **D. Transfer and Hiring.** Contractor shall not allow or cause to be allowed the hire or
2 transfer of any individual Contractor Party from any Parent Company, subsidiary
3 company or business entity of Contractor who has committed Criminal Activity for a
4 position as a Contractor representative, field supervisor, officer or director who is
5 directly or indirectly responsible for performance of this Agreement without obtaining
6 prior written consent of City, following full disclosure to City of the facts and
7 circumstances surrounding such Criminal Activity.
8

9 **E. City's Remedy.** City, in its sole discretion, may terminate the Agreement upon thirty
10 (30) calendar days written notice to Contractor, or may impose other sanctions (which
11 may include financial sanctions, temporary suspensions or any other condition deemed
12 appropriate short of termination) as it will deem proper, in the following events:
13

- 14 1. Contractor fails to comply with the foregoing obligation of this Section, or
- 15 2. The Criminal Activity concerns or relates directly or indirectly to this Agreement.

16 Contractor shall be given the opportunity to present evidence in mitigation during the
17 thirty (30) calendar day notice period.
18
19
20

21 **8.19 COOPERATION AND DISPUTES**

22 Contractor shall fully comply with its obligations and cooperate to its fullest extent with the
23 Collection Company and City. In the event of disputes between Contractor and Collection
24 Company, Contractor shall attempt to resolve the dispute directly with the Collection Company.
25 As a last resort, Contractor may request assistance from the City in resolving the dispute. In the
26 event of a dispute, Contractor shall continue performance of Contractor's obligations under this
27 Agreement and shall attempt to continue to resolve such dispute in a cooperative manner,
28 including but not limited to negotiating in good faith.
29

30 **8.20 LIQUIDATED DAMAGES**

31 **A. General.** The Contractor finds, and Contractor agrees, that as of the time of the
32 execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain
33 the extent of damages which shall be incurred by City as a result of a breach by
34 Contractor of its obligations under this Agreement. The factors relating to the
35 impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
36 substantial damage results to the Collection Company or City who are denied services or
37 denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety,
38 frustration, and deprivation of the benefits of the Agreement to the Collection Company
39 or City for whose benefit this Agreement exists, in subjective ways and in varying
40 degrees of intensity which are incapable of measurement in precise monetary terms; (iii)
41 that exclusive services might be available at substantially lower costs than alternative
42 services and the monetary loss resulting from denial of services or denial of quality or
43 reliable services is impossible to calculate in precise monetary terms; and (iv) the
44 termination of this Agreement for such breaches, and other remedies are, at best, a means
45 of future correction and not remedies which make the Collection Company or City whole
46 for past breaches.
47

1 **B. Service Performance Standards; Liquidated Damages for Failure to Meet**
2 **Standards.** The Parties further acknowledge that consistent, reliable Disposal service is
3 of utmost importance to City and that City has considered and relied on Contractor's
4 representations as to its quality of service commitment in awarding the Agreement to it.
5 The Parties further recognize that some quantified standards of performance are
6 necessary and appropriate to ensure consistent and reliable service and performance. The
7 Parties further recognize that if Contractor fails to achieve the performance standards, or
8 fails to submit required documents in a timely manner, City, Collection Company and
9 City's residents and businesses will suffer damages and that it is and will be impractical
10 and extremely difficult to ascertain and determine the exact amount of damages.
11 Therefore, without prejudice to City's right to treat such non-performance as an event of
12 default under Section 7.01, the Parties agree that the liquidated damage amount defined
13 in Section 4.10, represent a reasonable estimate of the amount of such damages
14 considering all of the circumstances existing on the Effective Date of this Agreement,
15 including the relationship of the sums to the range of harm to City that reasonably could
16 be anticipated and the anticipation that proof of actual damages would be costly or
17 impractical.

18
19 Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set
20 forth in Section 4.10, 4.19, and 4.20.

21
22 City may determine the occurrence of events giving rise to liquidated damages through
23 the observation of its own employees or representative or investigation of Complaints by
24 Collection Company.

25
26 Liquidated damages will only be assessed after Contractor has been given the opportunity
27 but failed to rectify the damages as described in this Agreement. Prior to assessing
28 liquidated damages, City shall give Contractor notice of its intention to do so. The notice
29 will include a brief description of the incident(s) and non-performance. The City may
30 review (and make copies at its own expense) all information in the possession of
31 Contractor relating to incident(s) and non-performance. City may, within ten (10)
32 calendar days after issuing the notice, request a meeting with Contractor. City may
33 present evidence of non-performance in writing and through testimony of its employees
34 and others relevant to the incident(s) and non-performance. City will provide Contractor
35 with a written explanation of his or her determination on each incident(s) and non-
36 performance prior to authorizing the assessment of liquidated damages. The decision of
37 City shall be final and Contractor shall not be subject to, or required to exhaust, any
38 further administrative remedies.

39
40 **C. Initial Amount.** City may assess liquidated damages for each calendar day or event, as
41 appropriate, that Contractor is determined to be liable in accordance with this Agreement
42 in the amounts specified in Sections 4.10, 4.19, and 4.20.

43
44 **D. Annual Adjustment to Liquidated Damages.** The amount of liquidated damages
45 specified in Sections 4.10, 4.19, and 4.20 for specific events of Contractor
46 nonperformance shall be adjusted annually on the first day of the Operating Period. The
47 adjustment shall be rounded to the nearest cent. Liquidated damages amounts will be

1 adjusted, using the method below, to reflect changes in the All Urban Consumers Index
2 (CPI-U) compiled and published by the U. S. Department of Labor, Bureau of Labor
3 Statistics or its successor agency, using the following parameters:
4

- 5 ■ Area - San Francisco-Oakland-San Jose, CA
- 6 ■ Item - All Items
- 7 ■ Base Period - 1982-84=100
- 8 ■ Not seasonally adjusted

9

$$\text{Adjusted Liquidated Damage Amount} = \text{Then-current Liquidated Damage Amount} \times \frac{\text{most current CPI-U}}{\text{previous 12-month CPI-U}}$$

10
11 **E. Payment of Liquidated Damages.** Contractor shall pay any liquidated damages
12 assessed by City within ten (10) calendar days after they are assessed. If they are not
13 paid within the ten (10) day period, City may proceed against the performance bond
14 required by the Agreement.
15

16 **8.21 GUARANTY OF CONTRACTOR'S PERFORMANCE**

17 In addition to the performance bond required in Section 6.03, the Guarantor has agreed to
18 guaranty Contractor's performance of this Agreement including Contractor's indemnification
19 obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached as
20 Exhibit C. The Guaranty Agreement is being provided concurrently with Contractor's execution
21 of this Agreement.
22

23 **ARTICLE 9.**

24 **REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

25 **9.01 CORPORATE STATUS**

26 Contractor is a corporation duly organized, validly existing and in good standing under the laws
27 of the State of California. It is qualified to transact businesses in the State of California and has
28 the power to own its properties and to carry on its business as now owned and operated and as
29 required by this Agreement.
30

31 **9.02 CORPORATE AUTHORIZATION**

32 Contractor has the authority to enter into and perform its obligations under this Agreement. The
33 Contractor has taken all actions required by law, its articles of organization, its operating
34 agreement, or otherwise, to authorize the execution of this Agreement. The Person signing this
35 Agreement on behalf of Contractor has authority to do so.
36

37 **9.03 AGREEMENT WILL NOT CAUSE BREACH**

38 To the best of Contractor's knowledge, after reasonable investigation, neither the execution or
39 delivery of this Agreement nor the performance of this Agreement by Contractor: (i) conflicts
40 with, violates, or results in a breach of any Applicable Law; or (ii) conflicts with, violates or
41 results in a breach of any term or condition of any judgment, order or decree of any court,
42 administrative agency or other governmental authority, or any Agreement or instrument to which
43

1 Contractor is a party or by which Contractor or any of its properties or assets are bound, or
2 constitutes a default thereunder.

3
4 **9.04 NO LITIGATION**

5 To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit,
6 proceeding or investigation, at law or in equity, before or by any court or governmental
7 authority, commission, board, agency or instrumentality decided, pending or threatened against
8 Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the
9 aggregate, would materially adversely affect the performance by Contractor of its obligations
10 hereunder or which, in any way, would adversely affect the validity or enforceability of this
11 Agreement or which would have a material adverse effect on the financial condition of
12 Contractor, Guarantor, or any surety guaranteeing Contractor's performance under this
13 Agreement, which has not been waived by the City in writing.

14
15 **9.05 NO ADVERSE JUDICIAL DECISIONS**

16 To the best of Contractors knowledge, after reasonable investigation, there is no judicial decision
17 that affects the validity of this Agreement and may this Agreement to legal challenge.

18
19 **9.06 ABILITY TO PERFORM**

20 Contractor possesses the business, professional, and technical capabilities to accept and Transfer
21 Solid Waste at the Transfer Station, Transport and Dispose of Solid Waste at the Landfill;
22 Contractor possesses the permits to perform this Agreement; and Contractor possesses the
23 equipment, facility, and employee resources required to perform this Agreement.
24

25
26 **ARTICLE 10.**
27 **MISCELLANEOUS PROVISIONS**

28
29 **10.01 EXHIBITS**

30 Each of the exhibits, identified as Exhibits "A" and "B" is attached hereto and incorporated
31 herein and made a part hereof by this reference.
32

33 **10.02 ENTIRE AGREEMENT**

34 This Agreement, including the exhibits, represents the full and entire Agreement between the
35 Parties with respect to the matters covered herein and supersedes all prior negotiations and
36 agreements, either written or oral.
37

38 **10.03 SECTION HEADINGS**

39 The article headings and section headings in this Agreement are for convenience of reference
40 only and are not intended to be used in the construction of this Agreement nor to alter or affect
41 any of its provisions.
42

43 **10.04 INTERPRETATION**

44 This Agreement shall be interpreted and construed reasonably and neither for nor against either
45 Party, regardless of the degree to which either Party participated in its drafting.

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10.05 AMENDMENT

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

10.06 SEVERABILITY

If any non-material provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

10.07 ATTORNEYS' FEES

The prevailing Party in any action brought to enforce the Terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

10.08 REFERENCES TO LAWS

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

10.09 DEFINITIONS

Capitalized terms used in this Agreement without definition have the meanings specified in Article 1, unless the context clearly requires otherwise.

10.10 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

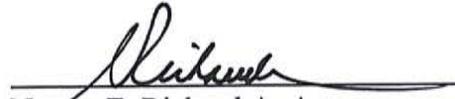
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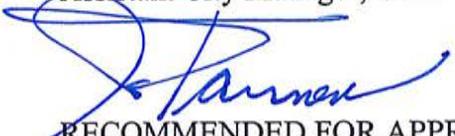
IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed on the day and year first above written.

COMPANY

CITY OF ALAMEDA
A Municipal Corporation


Name: E. Richard A. Acuna
Title: Vice President
Waste Management of Alameda County, Inc.

Joseph M. Tanner
Assistant City Manager, C&ED



RECOMMENDED FOR APPROVAL:



Matthew T. Naclerio
Public Works Director

APPROVED AS TO FORM:
City Attorney



Julie Harryman
Deputy City Attorney