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**FRANCHISE AGREEMENT  
BETWEEN  
THE CITY OF ALAMEDA  
AND  
ALAMEDA COUNTY INDUSTRIES AR, INC.  
For Solid Waste, Recyclable Materials and Organic Materials Services**

8 THIS FRANCHISE AGREEMENT is made and entered into as of the third day of July, 2002, by  
9 and between the City of Alameda (hereinafter "the City") and Alameda County Industries AR,  
10 Inc. (hereinafter referred to as the "Contractor").

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12

**RECITALS**

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

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

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

30  
31 **WHEREAS;** the City finds that the voters of Alameda County, through the Alameda County  
32 Source Reduction and Recycling Plan required by the Waste Reduction and Recycling Act of  
33 1990 (Measure D), have adopted a policy goal to reduce the total quantity of Solid Waste  
34 landfilled in Alameda County by diverting seventy five (75) percent of the materials generated in  
35 Alameda County from landfills by 2010; and,

36  
37 **WHEREAS;** under Chapter XXI of the City's Municipal Code, the City has the authority to  
38 provide for the Collection, Transport, Processing, marketing, and Disposal of Solid Waste,  
39 Recyclable Materials and Organic Materials through a franchise agreement; and

40  
41 **WHEREAS;** pursuant to California Public Resources Code Section 40059(a)(2), the City has  
42 determined that the public health, safety, and well-being require that an exclusive right be  
43 awarded to a qualified contractor to provide for the Collection of Solid Waste, Recyclable  
44 Materials, and Organic Materials, except for Collection of Materials excluded in the City's  
45 Municipal Code, and other services related to meeting the Act's fifty percent (50%) diversion  
46 goal and other requirements of the Act; and,

1 **WHEREAS;** the City further declares its intent to regulate Contractor's setting and collection of  
2 reasonable rates that Contractor will charge Customers for the Collection, Transportation,  
3 Processing, Recycling, composting, and/or Disposal of Solid Waste, Recyclable Materials, and  
4 Organic Materials; and  
5

6 **WHEREAS;** the City Council desires, having determined through a competitive procurement  
7 for services that Contractor, by demonstrated experience, reputation and capacity is qualified to  
8 provide for the Collection of Solid Waste, Recyclables Materials and Organic Materials within  
9 the corporate limits of the City and the Transportation of such material to appropriate places of  
10 Processing, Recycling, composting, and/or Disposal, that Contractor be engaged to perform such  
11 services on the basis set forth in this Agreement; and  
12

13 **WHEREAS,** this Agreement has been developed by and is satisfactory to the Parties,  
14

15 **Now, THEREFORE,** in consideration of the mutual promises, covenants, and conditions  
16 contained in this Agreement and for other good and valuable consideration, the Parties agree as  
17 follows:  
18  
19

20 **ARTICLE 1.**  
21 **DEFINITIONS**  
22

23 For purposes of this Agreement, unless a different meaning is clearly required, the following  
24 terms shall have the following meanings and be capitalized throughout this Agreement:  
25

26 **"Act"** means the California Integrated Waste Management Act of 1989 (Division 30 of the  
27 California Public Resources Code), as amended, supplemented, superseded and replaced from  
28 time to time.  
29

30 **"Affiliate"** means all businesses (including corporations, limited and general partnerships and  
31 sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or  
32 indirect Ownership interest or common management shall be deemed to be "Affiliated with"  
33 Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a  
34 business in which Contractor has a direct or indirect Ownership interest, a business, which has a  
35 direct or indirect Ownership interest in Contractor and/or a business, which is also Owned,  
36 controlled or managed by any business or individual which has a direct or indirect Ownership  
37 interest in Contractor. For the purposes of this definition, "Ownership" means ownership as  
38 defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code  
39 of 1986, as in effect on the date here, provided that ten (10) percent shall be substituted for fifty  
40 (50) percent in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and Section  
41 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph  
42 and constructive or indirect ownership under Section 318(a), ownership interest of less than ten  
43 (10) percent shall be disregarded and percentage interests shall be determined on the basis of the  
44 percentage of voting interest of value which the ownership interest represents, whichever is  
45 greater.  
46

47 **"Agreement"** means this Agreement between the City and Alameda County Industries AR, Inc.  
48 for Collection of Solid Waste and Transportation of Solid Waste to the Designated Disposal

1 Location and Collection and Processing of Recyclable Materials and Organic Materials,  
2 including all exhibits, and any future amendments hereto.

3  
4 **“Alternative Daily Cover (ADC)”** means cover material used at a Disposal Site, other than  
5 Organic Materials and at least six (6) inches of earthen material, placed on the surface of the  
6 active face of the refuse fill area at the end of each operating day to control blowing litter, fires  
7 odor, scavenging and vectors, as defined in Section 20164 of the California Code of Regulations.  
8

9 **“Appliances”** means discarded household Appliances such as refrigerators, stoves, clothing  
10 washers and dryers, water heaters, dishwashers, etc., and similar items discarded by Residential  
11 Generators.  
12

13 **“Applicable Law”** means all laws, regulations, rules, orders, judgments, degrees, permits,  
14 approvals, or other requirement of any governmental agency having jurisdiction over the  
15 Collection and disposition of Solid Waste, Recyclable Materials and Organic Materials that are  
16 in force on the Effective Date and as they may be enacted, issued or amended during the Term of  
17 this Agreement.  
18

19 **“Billings”** means any and all statements of charges for services rendered, howsoever made,  
20 described or designated by Contractor, or made by other for City or Contractor, to Owners or  
21 Occupants of property, including Residential property and commercial, industrial, and  
22 institutional property, serviced by Contractor for the Collection of Solid Waste, Recyclable  
23 Materials, and Organic Materials under this Agreement.  
24

25 **“Bin”** means a Container with capacity of one to eight (1 to 8) cubic yards, with hinged lid and  
26 wheels serviced by a front end-loading truck.  
27

28 **“Bulky Items”** means discarded Appliances, furniture, tires, carpets, mattresses, and similar  
29 large items which require special Collection due to their size, but can be collected without the  
30 assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle  
31 load limits. It does not include abandoned automobiles.  
32

33 **“Business Days”** mean days during which City offices are open to do business with the public.  
34

35 **“Can”** means a ten (10) gallon plastic Container with a lid.  
36

37 **“Cart”** means a recycled-plastic Container with a hinged lid and wheels serviced by an  
38 automated or semi-automated loading truck with varying capacities of twenty (20), thirty-two  
39 (32), sixty-four (64) or ninety-six (96) gallons.  
40

41 **“Change in Law”** means any of the following events or conditions which has a material and  
42 adverse effect on the performance by the Parties of their respective obligations under this  
43 Agreement (except for payment obligations):  
44

- 45 i. the enactment, adoption, promulgation, issuance, modification, or written change in  
46 administrative or judicial interpretation on or after the Effective Date of any  
47 Applicable Law; or  
48

- 1           ii. the order or judgment of any governmental body, on or after the Effective Date, to  
2           the extent such order or judgment is not the result of willful or negligent action, error  
3           or omission or lack of reasonable diligence of the City or of the Contractor,  
4           whichever is asserting the occurrence of a Change in Law; provided, however, that  
5           the contesting in good faith or the failure in good faith to contest any such order or  
6           judgment shall not constitute or be construed as such a willful or negligent action,  
7           error or omission or lack of reasonable diligence.  
8

9           **"City"** means the City of Alameda, a municipal corporation, and all the territory lying within the  
10          municipal boundaries of the City as presently existing or as such boundaries may be modified  
11          during the Term. Unless otherwise specified in this Agreement any action authorized or required  
12          by the City may be taken by the City Council or by an agent designated by the City Council.  
13

14          **"City's Municipal Code"** means the City of Alameda Municipal Code.  
15

16          **"Clean Alternative Fuel Vehicle"** means a vehicle that runs on any fuel used as the certification  
17          fuel in a low-emission vehicle, other than the primary gasoline or diesel fuel used in exhaust  
18          emission certification testing pursuant to the California Air Resources Board's "California  
19          Exhaust Emission Standards and Test Procedures for 1988 through 2000 Model Passenger Cars,  
20          Light-Duty Trucks and Medium-Duty Vehicles" as incorporated by reference in Title 13,  
21          California Code of Regulations, section 1960.1, or "California Exhaust Emission Standards and  
22          Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks and  
23          Medium-Duty Vehicles" as incorporated by reference in Title 13, California Code of  
24          Regulations, section 1961; where low-emission vehicle means any vehicle certified to the  
25          transitional low-emission vehicle, low-emission vehicle, ultra-low emission vehicle, super ultra-  
26          low emission vehicle, or zero-emission vehicle standards established by the California Air  
27          Resources Board as described in Title 13, California Code of Regulations.  
28

29          **"Collection"** means the removal and Transportation of Solid Waste from the place where it was  
30          generated to a Disposal Site and/or the removal and Transportation of Recyclable Materials,  
31          Organic Materials and Salvageable Materials from the place where such material was generated  
32          to a Processing Site.  
33

34          **"Commencement Date"** means the date specified in Section 3.1 when Collection,  
35          Transportation, Processing, and Disposal services required by this Agreement shall be provided.  
36

37          **"Commercial Business"** means any business property upon which business activity is  
38          conducted, including, but not limited to, retail sales, services, wholesale operations,  
39          manufacturing and industrial operations, but excluding businesses conducted upon Residential  
40          property which are permitted under applicable zoning regulations and are not the primary use of  
41          the property.  
42

43          **"Compactor"** means a mechanical apparatus that compresses materials. Compactors include  
44          two (2) to four (4) cubic yard Bin compactors serviced by front-end loader Collection trucks and  
45          six (6) to fifty (50) cubic yard Debris Boxes serviced by roll-off Collection trucks.  
46

47          **"Complaint"** means written or orally communicated statements made by members of the public,  
48          Owners or Occupants of properties served by Contractor, or officers, employees or agents of City

1 alleging non-performance or deficiencies in performance of Contractor's duties and obligations  
2 under this Agreement, or otherwise alleging a violation by Contractor of the provisions of this  
3 Agreement.  
4

5 **"Construction and Demolition Debris (C&D)"** means used or Discarded Materials removed  
6 from Residential, commercial, or industrial Premises during the construction or renovation of a  
7 structure resulting from construction, remodeling, repair or demolition operations on any  
8 pavement, house, commercial building, or other structure.  
9

10 **"Containers"** mean Cans, Bins, Carts, Compactors, and Debris Boxes.  
11

12 **"Contractor"** means Alameda County Industries AR, Inc., a sub-chapter S corporation  
13 organized and operating under the laws of the State of California and its officers, directors,  
14 employees, agents, companies and subcontractors.  
15

16 **"Contractor's Compensation"** means the revenue received by Contractor in return for  
17 providing services in accordance with this Agreement as described in Article 8.  
18

19 **"Contractor Party(ies)"** shall mean Contractor, officers, directors, or management or fiscal  
20 employees (where "management employee" means any employee with direct or indirect  
21 responsibility for direction and control over the Contractor's activities under this Agreement and  
22 "fiscal" employee means an employee with direct or indirect responsibility and control duties  
23 relating to financial matters under this Agreement).  
24

25 **"Contractor's Proposal"** means the proposal submitted by Contractor and received on October  
26 12, 2001 by the City in response to the City's August, 2001 Request for Proposals for Solid  
27 Waste, Recyclable Materials, and Organic Materials Services and Solid Waste Disposal Services  
28 and certain supplemental written materials, which are included as Exhibit K to this Agreement  
29 and are incorporated by reference.  
30

31 **"Criminal Activity"** means those activities described in Section 12.17.A.  
32

33 **"Curb (or Curbside)"** means the location of a Solid Waste, Recyclable Materials or Organic  
34 Materials Collection Container for pick-up, where such Container is placed on the street or alley  
35 against the face of the curb. Where no Curb exists, the Container shall be placed not more than  
36 five (5) feet from the outside edge of the street or alley pavement nearest the property's entrance.  
37

38 **"Customer"** means the Person which Contactor shall submit billing invoice to and collect  
39 payment from for Collection services provided to a Premises. The Customer may be the  
40 Occupant or Owner of the Premises provided that the Owner of the Premises shall be responsible  
41 for payment of Collection services in the event an Occupant of a Premises, which is identified as  
42 the Customer of Owner's Premises, fails to make such payment.  
43

44 **"Debris Box"** means an open-top Container with a capacity of six (6) to fifty (50) cubic yards  
45 that is serviced by a roll-off truck.  
46

1 "Delivery" means placement of Solid Waste, Recyclable Materials, or Organic Materials by a  
2 Generator in a receptacle and/or at a location that is designated for Collection pursuant to the  
3 City's Municipal Code.  
4

5 "**Designated Disposal Location**" means Waste Management of Alameda County's Davis Street  
6 Transfer Station at 2615 Davis Street, San Leandro. The City may, at its sole discretion, specify  
7 a different Designated Disposal Location. All Solid Waste shall be Delivered to the Designated  
8 Disposal Location except for the Disposal of residue from Recyclable Materials and Organic  
9 Materials Processing which may be delivered to a Disposal Site selected by Contractor.  
10

11 "**Designated Waste**" means non-Hazardous Waste which may pose special Disposal problems  
12 because of its potential to contaminate the environment and which may be Disposed of only in  
13 Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California  
14 Department of Health Services. Designated Waste consists of those substances classified as  
15 Designated Waste by the State of California, in California Code of Regulations Title 23, Section  
16 2522.  
17

18 "**Discarded Materials**" means Solid Waste, Recyclable Materials, or Organic Materials placed  
19 by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to  
20 the City's Municipal Code.  
21

22 "**Disposal**" means the final disposition of Solid Waste at a Disposal Site. Disposal does not  
23 include the use of Organic Materials as Alternative Daily Cover so long as City and State  
24 regulations consider Alternative Daily Cover (ADC) use of Organic Materials as diversion under  
25 the Act.  
26

27 "**Disposal Site**" means a facility for ultimate Disposal of Solid Waste.  
28

29 "**Effective Date**" means the date on which the latter of the two Parties signs the Agreement and  
30 the date on which Contractor may begin to take actions and incur costs in preparation to provide  
31 Collection, Transportation, Processing, and Disposal services required by this Agreement.  
32

33 "**E-Scrap Item**" means Discarded electronic equipment including, but not limited to, television  
34 sets, computer monitors, cathode ray tubes (CRTs), central processing units (CPUs), laptop  
35 computers, external computer hard drives, computer keyboards, computer mice, computer  
36 printers, and VCRs.  
37

38 "**Food Waste**" means food scraps such as those Discarded Organic Materials that will  
39 decompose and/or putrefy including (i) all kitchen and table food waste, and animal or vegetable  
40 waste that attends or results from the storage, preparation, cooking or handling of food stuffs,  
41 and (ii) paper waste contaminated with food waste or otherwise not accepted in the Recyclable  
42 Materials Collection program. Food Waste is a subset of Organic Materials.  
43

44 "**Franchise**" is the exclusive right and privilege of Contractor to Collect, Transport, and Process  
45 Solid Waste, Recyclable Materials, and Organic Materials in accordance with the terms and  
46 conditions of this Agreement.  
47

1 **"Franchise Fee"** means the fee paid by Contractor to City for the privilege to hold the exclusive  
2 rights granted by this Agreement.

3  
4 **"Generator"** means any Person as defined by the Public Resources Code, whose act or process  
5 produces Solid Waste, Recyclable Materials or Organic Materials as defined in the Public  
6 Resources Code, or whose act first causes Solid Waste to become subject to regulation.

7  
8 **"Hazardous Substance"** means any of the following: (a) any substances defined, regulated or  
9 listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous  
10 Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to  
11 human health or the environment, in or pursuant to (i) the Comprehensive Environmental  
12 Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et  
13 seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the  
14 Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33  
15 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and  
16 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050;  
17 (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or  
18 acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance,  
19 material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any  
20 other applicable federal, State or local environmental laws currently existing or hereinafter  
21 enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"),  
22 petroleum, natural gas and synthetic fuel products, and by-products.

23  
24 **"Hazardous Waste"** means all substances defined as Hazardous Waste, acutely Hazardous  
25 Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code  
26 §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such  
27 statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency  
28 (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et  
29 seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

30  
31 **"Holidays"** are defined as New Year's Day, Labor Day, Thanksgiving Day, and Christmas Day.

32  
33 **"Household Hazardous Waste"** means Hazardous Waste generated at Residential Premises  
34 within the City.

35  
36 **"Industrial"** means manufacturing, marine-related, or technical productive enterprises.

37  
38 **"Infectious Waste"** means biomedical waste generated at hospitals, public or private medical  
39 clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,  
40 veterinary facilities and other similar establishments that are identified in Health and Safety  
41 Code Section 25117.5.

42  
43 **"Legislation"** means any code, ordinance, resolution, or any other formal enactment of the  
44 governing body of the City which now exists or which may hereafter be adopted which  
45 constitutes law or regulation governing the operation of the Contractor.

46  
47 **"Liquidated Damages"** means the amounts due by Contractor for failure to meet specific  
48 quantifiable standards of performance as described in Sections 7.6 and 11.5.

1  
2 **"Low Income Resident"** means a Residential Customer who can demonstrate that his/her  
3 household qualifies as a very-low-income household under the Section 8 eligibility guidelines as  
4 determined by the federal Housing and Urban Development (HUD) formula.  
5

6 **"Marina"** means a Commercial Business which owns and operates, or intends to develop and  
7 operate, a small boat recreational facility providing boat berthing on a wet or dry storage basis  
8 and other improvements commonly found in a facility of that type on privately or publicly  
9 owned waters within the City.  
10

11 **"Multi-Family"** means any Residential complex, other than a Single-Family or Multi-Plex  
12 Premises, with five (5) or more units used for Residential purposes irrespective of whether  
13 residence therein is transient, temporary or permanent. Multi-Family Premises includes yacht  
14 harbors and Marinas where residents live aboard boats. Multi-Family Premises include  
15 condominiums and cooperative apartments with five (5) or more units. Such Premises have  
16 centralized Solid Waste, Recyclable Materials, and Organic Materials Collection service for all  
17 units on the Premises which are billed to one (1) Customer at one (1) address.  
18

19 **"Multi-Plex"** means any Residential complex, other than a Single-Family and Multi-Family  
20 Premises, with two (2) to four (4) units used for Residential purposes irrespective of whether  
21 residence therein is transient, temporary or permanent. Multi-Plex Premises include  
22 condominiums and cooperative apartments with two (2) to four (4) units. Such Premises have  
23 individual Solid Waste, Recyclable Materials, and Organic Materials Collection service for each  
24 unit on the Premises and may be billed to one (1) Customer at one (1) address or to each  
25 individual unit.  
26

27 **"Occupant"** means the Person who occupies a Premises.  
28

29 **"Organic Materials"** means those Discarded Materials that will decompose and/or putrefy and  
30 that the City's Municipal Code permits, directs, and/or requires Generators to separate from  
31 Solid Waste and Recyclable Materials for Collection in specially-designated Containers for  
32 Organic Materials Collection. Organic Materials include Yard Waste and Food Waste such as,  
33 but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants,  
34 brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste,  
35 vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper  
36 contaminated with Food Waste or otherwise not accepted in the Recyclable Materials Collection  
37 program, pieces of unpainted and untreated wood, and pieces of unpainted and untreated  
38 wallboard. No Discarded Material shall be considered to be Organic Materials, however, unless  
39 such material is separated from Solid Waste and Recyclable Material. Organic Materials such  
40 as, but limited to, grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree  
41 trimmings, dead trees may not exceed six (6) inches in diameter and four (4) feet in length.  
42

43 **"Owner"** means the Person holding legal title to the land or building.  
44

45 **"Parent Company"** refers to a company owning more than fifty percent (50%) of the shares of  
46 another company (subsidiary) or a company that has management control over such subsidiary.  
47

48 **"Party or Parties"** refers to the City and Contractor, individually or together.

1  
2 **"Pass-Through Cost(s)"** means Disposal costs, interest expense, and regulatory fees which are  
3 included as part of Contractor's Compensation but for which Contractor does not receive profit.  
4 Pass-Through Costs shall include regulatory fees, which are directly assessed against the  
5 Contractor by governmental entities, that Contractor remits to such entities provided that the City  
6 approves such costs incurred by the Contractor as a direct result of mandatory federal, State,  
7 regional and local governmental and/or regulatory fees, surcharges, assessments or other  
8 governmental payments related to provision of its obligations under this Agreement except costs  
9 related to judgments, settlements, fines, or liquidated damages.

10  
11 **"Person(s)"** means any individual, firm, association, organization, partnership, corporation,  
12 business trust, joint venture, the United States, the State of California, the County of Alameda,  
13 and special purpose districts.

14  
15 **"Premises"** means any land or building in the City where Solid Waste, Recyclable Materials, or  
16 Organic Materials are generated or accumulated.

17  
18 **"Prime Rate"** means that rate of interest published from time to time in *The Wall Street Journal*,  
19 on the date hereof being the base rate on corporate loans posted by at least seventy-five percent  
20 (75%) of the nation's largest banks. With respect to interest payable hereunder at the Prime  
21 Rate, any change in the Prime Rate during the period in which such interest is accruing shall be  
22 effective as of the date of such change.

23  
24 **"Processing"** means to prepare, treat, or convert through some special method.

25  
26 **"Processing Site"** means any plant or site used for the purpose of sorting, cleansing, treating or  
27 reconstituting Salvageable Material for the purpose of making such material available for reuse.  
28 Activities that may be undertaken at a Processing Site include, but are not limited to, Processing  
29 Organic Materials and Recyclable Materials.

30  
31 **"Rate Period"** means a twelve (12) month period, commencing July 1 and concluding June 30  
32 for which Contractor's Compensation is calculated with the exception that Rate Period One shall  
33 be approximately a nine (9) month period commencing on October 6 and concluding on June 30  
34 and the final Rate Period of the Agreement will be a fifteen (15) month period commencing July  
35 1 and concluding September 31.

36  
37 **"Recyclable Materials"** means those Discarded Materials that the City Code permits, directs  
38 and/or requires Generators to set out in Recyclables Container for Collection for the purpose of  
39 Recycling. No Discarded Materials shall be considered Recyclable Materials unless such  
40 material it is separated from Solid Waste and Organic Materials. Recyclable Materials that  
41 Contractor is required to Collect are specified in Section 4.5.1.A.

42  
43 **"Recycle or Recycling"** means the process of sorting, cleansing, treating and reconstituting at a  
44 Recyclable Materials Processing Site that would otherwise be Disposed of at a landfill for the  
45 purpose of returning such materials to the economy in the form of raw materials for new, reused  
46 or reconstituted products.

1 **“Related-Party Entity”** means any Affiliate which has financial transactions with Contractor  
2 pertaining to this Agreement that has been approved by the City. For the purposes of this  
3 Agreement, Related-Party Entities shall include, but is not limited to: Alameda County  
4 Industries, Inc., Mission Trail Waste Systems, Inc., and Alameda County Industries, LLC.  
5

6 **“Residential”** shall mean of, from, or pertaining to a Single-Family Premises, Multi-Plex, or  
7 Multi-Family Premises.  
8

9 **“Re-use Vendor”** means a vendor (e.g. St. Vincent DePaul, Goodwill Industries, or other non-  
10 profit or for-profit organizations) that will collect used furniture and other re-usable items for  
11 purposes of reuse rather than Disposal.  
12

13 **“Salvageable Material”** means those Discarded Materials that may be reused in their existing  
14 form or may be reused after some form of Processing including, but not limited to, Organic  
15 Materials and Recyclable Materials.  
16

17 **“Service Type”** refers separately to the following types of Solid Waste, Recyclable Materials  
18 and Organic Materials Collection services for each of the following types of services: Single-  
19 Family Premises Cart service, Multi-Plex Premises Cart service, Multi-Family Premises Cart  
20 service, Multi-Family Premises Bin service, commercial Cart service, commercial Bin service,  
21 Debris Box service, Residential clean-up service, and City facilities service.  
22

23 **“Senior Resident”** refers to a head of a Residential household who is 65 years of age or older.  
24

25 **“Single-Family”** means, notwithstanding any contrary definition in the City’s Municipal Code,  
26 any detached or attached house or residence designed or used for occupancy by one (1) family,  
27 provided that Collection service feasibly can be and is provided to such Premises as an  
28 independent unit.  
29

30 **“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30,  
31 Part 1, Chapter 2, §40191 and regulations promulgated thereunder that the City Code requires  
32 Generators within the City to set out for Collection. Excluded from the definition of Solid Waste  
33 are Construction and Demolition Debris, Hazardous Waste, Infectious Waste, Designated Waste,  
34 Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive  
35 waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis  
36 volumes or concentrations of waste of a type and amount normally found in Residential Solid  
37 Waste after implementation of programs for the safe collection, recycling, treatment and disposal  
38 of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California  
39 Public Resources Code.  
40

41 Solid Waste includes Salvageable Materials only when such materials are included for Collection  
42 in a Solid Waste Container.  
43

44 **“Source Separated Organic Materials”** are Organic Materials that are segregated prior to  
45 Collection from other Discarded Materials Collected as Solid Waste or Recyclable Materials and  
46 are designated by the Generator for the purposes of diversion from a Disposal Site. The Tonnage  
47 of non-Organic Materials commingled with Source Separated Organic Materials shall be less

1 than five (5) percent of the total Tonnage of materials placed in the Organic Materials Container  
2 for Collection.

3  
4 **“Source Separated Recyclable Materials”** are Recyclable Materials that are commingled  
5 and/or presorted and segregated prior to Collection from other Discarded Materials Collected as  
6 Solid Waste or Organic Materials and are designated by the Generator for the purposes of  
7 diversion from a Disposal Site.

8  
9 **“Specialty Recyclable Material”** means material not specified in this Agreement that can be or  
10 will be Collected for purposes of Recycling by any Person operating under a valid permit issued  
11 by the City. Such Specialty Recyclable Material includes, but is not limited, to scrap metal,  
12 Construction and Demolition Debris, high-grade paper (including office mixed paper), pallets,  
13 and plastic film.

14  
15 **“State”** means the State of California.

16  
17 **“Term”** means the Term of this Agreement, including extension periods if granted, as provided  
18 for in Article 3.

19  
20 **“Ton (or Tonnage)”** means a unit of measure for weight equivalent to two thousand (2,000)  
21 standard pounds where each pound contains sixteen (16) ounces.

22  
23 **“Transportation”** means the act of transporting or state of being transported.

24  
25 **“Unacceptable Spillage”** means any Solid Waste, Recyclable Materials or Organic Materials  
26 spilled or left at established Collection sites by Contractor after Collection, except that small  
27 particles of grass clippings and leaves of the size and volume that may be collected by regular  
28 street sweeping operations may be left behind.

29  
30 **“Yard Waste”** means those Discarded Materials that will decompose and/or putrefy, including  
31 but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush,  
32 tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of  
33 organic waste. Yard Waste is a subset of Organic Materials.

34  
35  
36 **ARTICLE 2.**  
37 **REPRESENTATIONS AND**  
38 **WARRANTIES OF THE**  
39 **CONTRACTOR**

---

40  
41 The Contractor, by acceptance of this Agreement, represents and warrants the conditions  
42 presented in this Article.

43  
44 **2.1 CORPORATE STATUS**

45 Contractor is a sub-chapter S corporation duly organized, validly existing and in good standing  
46 under the laws of the State. It is qualified to transact businesses in the State and has the power to

1 own its properties and to carry on its business as now owned and operated and as required by this  
2 Agreement.

3  
4 **2.2 CORPORATE AUTHORIZATION**

5 Contractor has the authority to enter into and perform its obligations under this Agreement. The  
6 Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required  
7 by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this  
8 Agreement. The Persons signing this Agreement on behalf of Contractor represent and warrant  
9 that they have authority to do so. This Agreement constitutes the legal, valid and binding  
10 obligation of the Contractor.

11  
12 **2.3 AGREEMENT WILL NOT CAUSE BREACH**

13 To the best of Contractor's knowledge, after reasonable investigation, neither the execution or  
14 delivery of this Agreement nor the performance by Contractor of its obligations hereunder: (i)  
15 conflicts with, violates, or results in a breach of any law or governmental regulation applicable to  
16 Contractor; or (ii) conflicts with, violates or results in a breach of any term or condition of any  
17 judgment, order, or decree of any court, administrative agency or other governmental authority,  
18 or any Agreement or instrument to which Contractor is a party or by which Contractor or any of  
19 its properties or assets are bound, or constitutes a default thereunder.

20  
21 **2.4 NO LITIGATION**

22 To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit,  
23 proceeding or investigation, at law or in equity, before or by any court or governmental  
24 authority, commission, board, agency or instrumentality decided, pending or threatened against  
25 Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the  
26 aggregate, would materially adversely affect the performance by Contractor of its obligations  
27 hereunder or which, in any way, would adversely affect the validity or enforceability of this  
28 Agreement or which would have a material adverse effect on the financial condition of  
29 Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

30  
31 **2.5 NO ADVERSE JUDICIAL DECISIONS**

32 To the best of Contractor's knowledge, after reasonable investigation, there is no judicial  
33 decision that affects the validity of this Agreement and may subject this Agreement to legal  
34 challenge.

35  
36 **2.6 NO LEGAL PROHIBITION**

37 To the best of Contractor's knowledge, after reasonable investigation, there is no Applicable  
38 Law in effect on the date Contractor signed this Agreement that would prohibit the performance  
39 by the Contractor of its obligations under this Agreement and the transactions contemplated  
40 hereby.

41  
42 **2.7 CONTRACTOR'S INVESTIGATION**

43 Contractor has made an independent investigation (satisfactory to it) of the conditions and  
44 circumstances surrounding the Agreement and the work to be performed hereunder and has taken  
45 these matters into consideration in its agreement to provided these services in exchange for the  
46 compensation provided for under the terms of this Agreement.

1 **2.8 ABILITY TO PERFORM**

2 Contractor possesses the business, professional, and technical expertise to Collect, Transport,  
3 and Process the Solid Waste, Recyclable Materials, and Organic Materials generated in the City;  
4 and Contractor possesses the equipment, facility, and employee resources required to perform  
5 this Agreement.  
6

7 **2.9 VOLUNTARY USE OF DESIGNATED DISPOSAL LOCATION**

8 The Contractor, without constraint and as a free market business decision in accepting this  
9 Agreement, agrees to use the Designated Disposal Location identified by the City for the  
10 purposes of Disposing of all Solid Waste Collected under this Agreement, and such decision in  
11 no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control  
12 limitations or any definition thereof.  
13  
14

15 **ARTICLE 3.**  
16 **TERM OF AGREEMENT**  
17

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18  
19 **3.1 EFFECTIVE DATE AND COMMENCEMENT DATE**

20 The Effective Date of this Agreement shall be the date the latter of the two Parties signs the  
21 Agreement. The Commencement Date shall be October 6, 2002 and shall be the date on which  
22 Contractor initiates provision of Collection, Transportation, and Processing services required by  
23 this Agreement. During the period of time between the Effective Date and Commencement  
24 Date, Contractor shall perform all activities necessary in order to start Collection, Transportation,  
25 and Processing services required by this Agreement on the Commencement Date including  
26 activities required to transition Customers and services from the collection contractor(s)  
27 providing services prior to the Commencement Date to Contractor.  
28

29 **3.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

30 The obligation of City to permit this Agreement to become effective and to perform its  
31 undertakings provided for in this Agreement is subject to the satisfaction of each and all of the  
32 conditions set out below, each of which may be waived, in written form, in whole or in part by  
33 City.  
34

35 **A. Accuracy of Representations.** The representations and warranties made in Article 2 of  
36 this Agreement are true and correct on and as of the Effective Date.  
37

38 **B. Absence of Litigation.** There is no litigation pending on the Effective Date in any court  
39 challenging the award or execution of this Amendment or seeking to restrain or enjoin its  
40 performance.  
41

42 **C. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence  
43 of all insurance and performance bond required by Article 9 satisfactory to the City.  
44

45 **D. Effectiveness of City Council Action.** The City Council shall have taken action  
46 approving this Agreement or action approving the City Manager to approve this

1 Agreement and all Parties shall have signed the Agreement pursuant to Applicable Law  
2 prior to the Effective Date, provided that no restraining order of any kind has been issued.  
3

### 4 **3.3 TERM**

5 The Term of this Agreement shall continue in full force for a period of nine (9) years and three  
6 hundred and sixty one (361) days from 12:01 am on October 6, 2002 (Commencement Date), to  
7 midnight September 30, 2012, unless extended by City pursuant to Section 3.4 or terminated in  
8 accordance with Section 11.2.  
9

### 10 **3.4 OPTION TO EXTEND TERM**

11 At the City's sole discretion, the City shall have the option to extend this Agreement, once, for  
12 up to a period not to exceed five (5) years from October 1, 2012 through September 30, 2017. If  
13 the City elects to exercise this option, it shall give written notice to Contractor one hundred  
14 eighty (180) calendar days prior to September 30, 2012.  
15  
16

## 17 **ARTICLE 4.** 18 **SCOPE OF AGREEMENT**

---

### 19 **4.1 SCOPE OF AGREEMENT**

20 Subject to Section 4.2, this Franchise granted to Contractor shall be exclusive with regards to  
21 Collection, Transporting, and Processing of Solid Waste, Recyclable Materials and Organic  
22 Materials generated in the City, except where otherwise precluded by federal, State and local  
23 laws and regulations.  
24  
25

### 26 **4.2 LIMITATIONS TO SCOPE**

27 This Franchise granted to Contractor for the Collection, Transportation, and Processing of Solid  
28 Waste, Recyclable Materials, and Organic Materials generated in the City shall be exclusive  
29 except as to the following materials listed in this Section. The award of this Agreement shall not  
30 preclude the categories of Solid Waste, Recyclable Materials and Organic Materials listed below  
31 from being delivered to and Collected and Transported by others provided that nothing in this  
32 Agreement is intended to or shall be construed to excuse any Person from doing so in accordance  
33 with the City's Municipal Code.  
34

- 35 **A.** Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials  
36 and Construction and Demolition Debris which are removed from any Premises by the  
37 Owner or Occupant and are Transported to a Disposal Site or Processing Site by the  
38 Owner or Occupant of such Premises, by agent of Owner or Occupant, or by a contractor  
39 whose removal of the Solid Waste, Recyclable Materials and/or Organic Materials are  
40 incidental to the service being performed by the contractor; provided, however, that  
41 Owner or Occupant of such Premises shall be required to subscribe to and pay for the  
42 basic level of Solid Waste, Recyclable Materials, and Organic Materials Collection  
43 services provided by Contractor (where agent, in this paragraph, is a full-time employee  
44 of Owner or Occupant that uses the Owner's or Occupant's equipment to transport  
45 materials and the basic level of service for Multi-Family Premises and Commercial  
46 Businesses are described in Sections 4.5.2.C and 4.5.2.D);  
47