



1 owned and operated by Contractor or such claim is a direct result of Contractor's actions or  
2 negligence. This indemnity afforded indemnitees, shall only be limited to exclude coverage for  
3 intentional wrongful acts and negligence of indemnitees, and as provided below. In the event  
4 Disposal occurs at a Disposal Site owned by the Contractor, Contractor shall be required to  
5 indemnify the City and Alameda Reuse and Redevelopment Authority for the costs for any  
6 claims arising from the Disposal of Solid Waste at the Disposal Site, including, but not limited  
7 to, claims arising under the Comprehensive Environmental Response, Comprehensive and  
8 Liability Act (CERCLA). The foregoing indemnity is intended to operate as an Agreement  
9 pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability  
10 Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend,  
11 protect, hold harmless, and indemnify City and Alameda Reuse and Redevelopment Authority  
12 from liability.

13  
14 This provision is in addition to all other provisions in this Agreement and is intended to survive  
15 the expiration or earlier termination of this Agreement. Nothing in this paragraph shall prevent  
16 City or the Alameda Reuse and Redevelopment Authority from seeking indemnification or  
17 contribution from Persons or entities other than indemnitees, for any liabilities incurred by City  
18 Alameda Reuse and Redevelopment Authority, or the indemnitees.

## 19 20 **9.2 AB 939 INDEMNIFICATION**

21 In addition to all other relief provided Contractor and City under this Agreement, Contractor  
22 agrees to defend, indemnify, and hold harmless, the City, its officers, employees, volunteers, and  
23 agents from and against all fines and/or penalties imposed by the California Integrated Waste  
24 Management Board for operations during the Term of this Agreement in the event the source  
25 reduction and Recycling goals or any other requirement of the Act are not met by the Contractor  
26 with respect to the waste stream Collected under this Agreement and such failure is due to the  
27 failure of Contractor to meet its obligations under this Agreement or due to Contractor delays in  
28 providing information that prevents Contractor or City from submitting reports required by the  
29 Act in a timely manner.

## 30 31 **9.3 PROPOSITION 13 AND 218 INDEMNIFICATION**

32 The Parties agree that the rates to be charged by Contractor to Customers are to be set by  
33 Contractor as a private actor in the market place. The City's role with respect to rate setting is to  
34 establish rate ceilings for the protection of Customers given the quasi-monopoly status afforded  
35 Contractor by this Agreement and given the public-utility nature of the services it is to provide.  
36 Accordingly, the Parties agree that this Agreement shall be construed to maintain the status of  
37 the rates Contractor chooses to charge its Customers as privately-established rates and not as  
38 property-related fees within the scope of Article XIII D of the California Constitution or taxes  
39 within the scope of Articles XIII A and XIII C of the California Constitution.

40  
41 Contractor shall indemnify, defend and hold harmless City and the Alameda Reuse and  
42 Redevelopment Authority, the City's and Alameda Reuse and Redevelopment Authority's  
43 officers, employees, agents and volunteers, (collectively, indemnitees) from and against all  
44 claims, damages, injuries, costs, including demands, debts, liens, liabilities, causes of action,  
45 suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses  
46 (including reasonable attorneys' and expert witnesses' fees, expenditures for investigation and  
47 administration) and costs of any kind whatsoever paid, imposed upon, endured or suffered by or  
48 assessed against the indemnitees or any of them resulting in any form from the City's regulation

1 of rates for service under this Agreement or otherwise in connection with the application of  
2 California Constitution, Articles XIII A, XIII C and XIII D to the imposition, payment or  
3 collection of rates and fees for services provided by Contractor under this Agreement.  
4 Contractor's duties under this paragraph, however, shall not extend to a challenge to any fee  
5 imposed pursuant to Section 7.4 of this Agreement or any increase by the City of any of the fees  
6 authorized by Article 7 of this Agreement over the initial amounts established hereby ("an  
7 excluded claim"). If an excluded claim is brought jointly with a claim within Contractor's duties  
8 to indemnify, defend, and hold harmless under this Section 9.3, upon resolution of the claims  
9 City shall reimburse Contractor for the portion of the cost of defense of the claims attributable to  
10 the excluded claim. Any defense of one or more indemnitees by Contractor pursuant to this  
11 Section 9.3 shall be by counsel reasonably acceptable to the City and chosen by Contractor.  
12

#### 13 **9.4 MEASURE D INDEMNIFICATION**

14 Contractor shall indemnify, defend and hold harmless City, its officers, employees, agents and  
15 volunteers, from and against any revenues withheld by the Alameda County Source Reduction  
16 and Recycling Board in the event the source reduction and Recycling goals or any other  
17 requirement of the Measure D are not met by the Contractor with respect to the Recycling and  
18 source reduction programs under this Agreement and such failure is due to the failure of  
19 Contractor to meet its obligations under this Agreement or due to Contractor delays in providing  
20 information that prevents Contractor or City from submitting reports required by Measure D in a  
21 timely manner.  
22

#### 23 **9.5 INSURANCE**

##### 24 **9.5.1 Minimum Scope of Insurance**

25 Coverage shall be at least as broad as:  
26

- 27 **A.** Insurance Services Office form number GL 0002 covering Comprehensive General  
28 Liability and Insurance Services Office form number GL 0404 covering Broad Form  
29 Comprehensive General Liability; or Insurance Services Office Commercial General  
30 Liability coverage ("occurrence" form CG 0001).  
31
- 32 **B.** Insurance Services Office form number CA 0001 covering Automobile Liability, code 1  
33 "any auto" and endorsement CA 0025.  
34
- 35 **C.** Workers' Compensation insurance as required by the Labor Code of the State of  
36 California and Employers Liability insurance.  
37
- 38 **D.** Employee Blanket Fidelity Bond.  
39

##### 40 **9.5.2 Minimum Limits of Insurance**

41 Contractor shall maintain limits no less than:  
42

- 43 **A.** Comprehensive General Liability: \$10,000,000 combined single limit per occurrence for  
44 bodily injury, personal injury and property damage.  
45
- 46 **B.** Automobile Liability: \$10,000,000 combined single limit per accident for bodily injury  
47 and property damage.  
48

- 1  
2 C. Workers' Compensation and Employers Liability: Workers' compensation limits as  
3 required by the Labor Code of the State of California and Employers Liability limits of  
4 \$1,000,000 per accident.  
5  
6 D. Employee Blanket Fidelity Bond in the amount of \$500,000 per employee, covering  
7 dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).  
8  
9 E. Pollution Legal Liability: \$5,000,000 for bodily injury, property damage, and  
10 remediation of contaminated site.  
11

### 12 **9.5.3 Deductibles and Self-Insured Retentions**

13 Any deductibles or self-insured retentions must be declared to and approved by the City. At the  
14 option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured  
15 retentions as respects the City, its officials and employees; or the Contractor shall procure a bond  
16 guaranteeing payment of losses and related investigations, claim administration and defense  
17 expenses.  
18

### 19 **9.5.4 Other Insurance Provisions**

20 The policies are to contain, or be endorsed to contain, the following provisions:  
21

#### 22 **A. General Liability and Automobile Liability Coverages**

- 23  
24 1. The City, its officials, employees and volunteers are to be covered as additional  
25 insureds as respects: liability arising out of activities performed by or on behalf of  
26 the Contractor; products and completed operations of the Contractor; premises  
27 owned, leased or used by the Contractor; or automobiles owned, leased, hired or  
28 borrowed by the Contractor. The coverage shall contain no special limitations on the  
29 scope of protection afforded to the City, its officials, employees or volunteers. The  
30 automobile liability is endorsed to contain MCA-90 coverage.  
31  
32 2. The Contractor's insurance coverage shall be primary insurance as respects the City,  
33 its officials, employees and volunteers. Any insurance or self-insurance maintained  
34 by the City, its officials, employees or volunteers shall be excess of the Contractor's  
35 insurance and shall not contribute with it.  
36  
37 3. Any failure to comply with reporting provisions of the policies shall not affect  
38 coverage provided to the City, its officials, employees or volunteers.  
39  
40 4. Coverage shall state that the Contractor's insurance shall apply separately to each  
41 insured against whom claim is made or suit is brought, except with respect to the  
42 limits of the insurer's liability.  
43

- 44 **B. Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to  
45 waive all rights of subrogation against the City, its officers, employees and volunteers for  
46 losses arising from work performed by the Contractor for the City.  
47

1 C. All Coverages. Each insurance policy required by this clause shall be endorsed to state  
2 that coverage shall not be suspended, voided, canceled by either party, reduced in  
3 coverage or in limits except after thirty (30) calendar days' prior written notice by  
4 certified mail, return receipt requested, has been given to the City.  
5

6 **9.5.5 Acceptability of Insurers**

7 The insurance policies required by this Section shall be issued by an insurance company or  
8 companies authorized to do business in the State of California and with a rating in the most  
9 recent edition of Best's Insurance Reports of size category VII or larger and a rating  
10 classification of A or better.  
11

12 **9.5.6 Verification of Coverage**

13 Contractor shall furnish Contractor's insurance agent a copy of these specifications, and direct  
14 the agent to provide the City with certificates of insurance and with original endorsements  
15 affecting coverage required by this clause. Issuance of documentation indicates the Contractor's  
16 insurance complies with these provisions. The certificates and endorsements for each insurance  
17 policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The  
18 certificates and endorsements are to be received and approved by the City before work  
19 commences. The City reserves the right to require complete, certified copies of all required  
20 insurance policies, at any time.  
21

22 **9.5.7 Required Endorsements**

23  
24 A. The Workers' Compensation policy shall contain an endorsement in substantially the  
25 following form:  
26

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

31 City Manager  
32 City of Alameda  
33 City Hall  
34 2263 Santa Clara Avenue  
35 Alameda, CA 94501"  
36

37 B. The Commercial General Liability Business and Automobile Liability policies shall  
38 contain endorsements in substantially the following form:  
39

40 1. "Thirty (30) calendar days' prior written notice shall be given to the City of Alameda  
41 in the event of cancellation, reduction in coverage, or non-renewal of this policy.  
42 Such notice shall be sent to:  
43

44 City Manager  
45 City of Alameda  
46 City Hall  
47 2263 Santa Clara Avenue  
48 Alameda, CA 94501"

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2. "The City of Alameda, its officers, employees, and agents are additional insureds on this policy." The City requires form CG2010 1185.
  3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Alameda, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
  4. "Inclusion of the City of Alameda as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

18 **9.5.8 Delivery of Proof of Coverage**

19 Simultaneously with the execution of this Agreement, Contractor shall furnish the City  
20 certificates of each policy of insurance required hereunder, in form and substance satisfactory to  
21 City. Such certificates shall show the type and amount of coverage, effective dates and dates of  
22 expiration of policies and shall have all required endorsements. If the City requests, copies of  
23 each policy, together with all endorsements, shall also be promptly delivered to City.  
24

25 Renewal certificates will be furnished periodically to City to demonstrate maintenance of the  
26 required coverages throughout the Term.  
27

28 **9.5.9 Other Insurance Requirements**

29  
30 **A.** In the event any services are delegated to a subcontractor, the Contractor shall require  
31 such subcontractor to provide statutory workers' compensation insurance and employer's  
32 liability insurance for all of the subcontractor's employees engaged in the work in  
33 accordance with Section 9.5.2.B and Section 9.5.4.B. The liability insurance required by  
34 Section 9.5.2.B shall cover all subcontractors or the subcontractor must furnish evidence  
35 of insurance provided by it meeting all of the requirements of this Section 9.5.  
36

37 **B.** The Contractor shall comply with all requirements of the insurers issuing policies. The  
38 carrying of insurance shall not relieve Contractor from any obligation under this  
39 Agreement. If any claim exceeding the amount of any deductibles or self-insured  
40 reserves is made by any third person against the Contractor or any subcontractor on  
41 account of any occurrence related to this Agreement, the Contractor shall promptly report  
42 the facts in writing to the insurance carrier and to the City.  
43

44 If Contractor fails to procure and maintain any insurance required by this Agreement, the City  
45 may take out and maintain, at the Contractor's expense, such insurance as it may deem proper  
46 and deduct the cost thereof from any monies due the Contractor.  
47

1 The Commercial General and Automobile Liability insurance required by Sections 9.5.2 and  
2 9.5.4.A shall be written on an "occurrence," rather than a "claims made" basis, if such coverage  
3 is obtainable. If it is not obtainable, Contractor must arrange for a thirty-six (36) month "tail  
4 coverage" to protect the City from claims filed after the expiration or termination of this  
5 Agreement relating to incidents which occurred prior to such expiration or termination.  
6

## 7 **9.6 PERFORMANCE BOND**

8 On or before the Effective Date of this Agreement, Contractor shall file with the City a bond,  
9 payable to the City, securing the Contractor's faithful performance of its obligations under this  
10 Agreement and such bond shall be renewed annually if necessary so that the performance bond is  
11 maintained at all times during the Term. The principal sum of the bond shall be Four Million  
12 Dollars (\$4,000,000). The bond shall be executed by a corporation authorized to issue surety  
13 bonds in the State of California, with a financial condition and record of service satisfactory to  
14 the City. The performance bond is included in Exhibit E.  
15  
16

# 17 **ARTICLE 10.**

## 18 **CITY'S RIGHT TO PERFORM**

### 19 **SERVICE**

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## 20 **10.1 GENERAL**

21  
22 In the event that the Contractor, for any reason whatsoever, fails, refuses or is unable to Collect,  
23 Transport or Dispose of any or all Solid Waste and/or Collect, Transport and Process Recyclable  
24 Materials or Organic Materials which it is required by this Agreement to Collect and Transport,  
25 at the time and in the manner provided in this Agreement, for a period of more than forty-eight  
26 (48) hours, and if, as a result thereof, Solid Waste, Recyclable Materials and/or Organic  
27 Materials should accumulate in the City to such an extent, in such a manner, or for such a time  
28 that City should find that such accumulation endangers or menaces the public health, safety or  
29 welfare, then the City shall have the right, but not the obligation, upon twenty-four (24) hour  
30 prior written notice to Contractor during the period of such emergency as determined by City, (1)  
31 to perform, or cause to be performed, such services itself with its own or other personnel without  
32 liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment  
33 and other property used or useful in the Collection, Transporting, Processing and Disposing of  
34 Solid Waste, Recyclable Materials or Organic Materials, and to use such property to Collect,  
35 Transport, Process, and Dispose of any Solid Waste, Recyclable Materials or Organic Materials  
36 generated within the City which Contractor would otherwise be obligated to Collect, Transport,  
37 Process, and Dispose of pursuant to this Agreement.  
38

39 Notice of the Contractor's failure, refusal or neglect to Collect, Transport, Process, and Disposal  
40 of Solid Waste, Recyclable Materials or Organic Materials may be given orally by telephone to  
41 the Contractor at its principal office and shall be effective immediately. Written confirmation of  
42 such oral notification shall be sent by the City to Contractor within twenty-four (24) hours of the  
43 oral notification.  
44

45 Contractor further agrees that in such event:  
46

- 1 A. It will fully cooperate with City to affect the transfer of possession of property to the City  
2 for City's use.  
3
- 4 B. It will, if City so requests, keep in good repair and condition all of such property, provide  
5 all motor vehicles with fuel, oil and other service, and provide such other service as may  
6 be necessary to maintain said property in operational condition.  
7
- 8 C. Subject to provisions of any labor agreements then in effect, City may immediately  
9 engage all or any personnel necessary or useful for the Collection, Transporting,  
10 Processing, and Disposing of Solid Waste, Recyclable Materials or Organic Materials  
11 including, if City so desires, employees previously or then employed by Contractor,  
12 Contractor further agrees, if City so requests, to furnish City the services of any or all  
13 management or office personnel employed by Contractor whose services are necessary or  
14 useful for Solid Waste, Recyclable Materials or Organic Materials Collection,  
15 Transportation, Processing, and Disposal operations and for the Billing and collection of  
16 fees for these services.  
17

18 The City agrees that it assumes complete responsibility for the proper and normal use of such  
19 equipment and facilities while in its possession.  
20

21 If the interruption or discontinuance in service is caused by any of the reasons listed in Section  
22 11.6, the City shall pay to Contractor the reasonable rental value of the equipment and facilities,  
23 possession of which is taken by the City, for the period of the City's possession, if any, which  
24 extends beyond the period of time for which Contractor has rendered bills in advance of service,  
25 for the class of service involved.  
26

27 Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights  
28 under this Article: (1) does not constitute a taking of private property for which compensation  
29 must be paid; (2) will not create any liability on the part of City to Contractor; and (3) does not  
30 exempt Contractor from the indemnity provisions of Article 9, which are meant to extend to  
31 circumstances arising under this Section, provided that Contractor is not required to indemnify  
32 City against claims and damages arising from the sole negligence of City officers, employees  
33 and agents in the operation of Collection vehicles during the time the City has taken possession  
34 of such vehicles.  
35

## 36 **10.2 DURATION OF CITY'S POSSESSION**

37 City has no obligation to maintain possession of Contractor's property and/or continue its use in  
38 Collecting, Transporting, Processing, and Disposing Solid Waste, Recyclable Materials, or  
39 Organic Materials for any period of time and may, at any time, in its sole discretion, relinquish  
40 possession to the Contractor.  
41

42 The City's right to retain temporary possession of Contractor's property, and to provide Solid  
43 Waste, Recyclable Materials, or Organic Materials Collection services, shall continue until  
44 Contractor can demonstrate to the City's satisfaction that it is ready, willing and able to resume  
45 such services or for one hundred eighty (180) calendar days, whichever occurs first.  
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**ARTICLE 11.**  
**DEFAULT AND REMEDIES**

---

11.1 **EVENTS OF DEFAULT**

Each of the following shall constitute an event of default ("Event of Default") hereunder:

- A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, and: (1) if the failure or refusal of Contractor to perform services required by this Agreement has created an imminent threat to public health and is not cured within two (2) Business Days after receiving notice from the City specifying the breach; or (2) in the case of any other breach of the Agreement, the breach continues for more than thirty (30) calendar days after written notice from the City for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.
- B. Any representation, warranty, or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation, warranty, or disclosure appears as part of this Agreement;
- C. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;
- D. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;
- E. A court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the

1 Contractor or for any part of the Contractor's operating equipment or assets, or orders the  
2 winding up or liquidation of the affairs of Contractor;  
3

- 4 **F.** Contractor fails to provide reasonable assurances of performance as required under  
5 Section 11.7.  
6

## 7 **11.2 RIGHT TO TERMINATE UPON DEFAULT**

8 Upon a default by Contractor, the City shall have the right to terminate this Agreement upon ten  
9 (10) calendar days written notice without the need for any hearing, suit or legal action.  
10

## 11 **11.3 POSSESSION OF PROPERTY UPON TERMINATION**

12 In the event of termination for default, the City shall have the right to take possession of any and  
13 all of Contractor's land, equipment, and other property used or useful in the Collection,  
14 Transportation, Processing, and Disposal of Solid Waste, Recyclable Materials or Organic  
15 Materials and the Billing and collection of fees for these services and to use such property. The  
16 City shall have the right to retain the possession of such property until other suitable  
17 arrangements can be made for the provision of Solid Waste, Recyclable Materials or Organic  
18 Materials Collection services, which may include the award of an Agreement to another waste  
19 hauling company. If the City retains possession thereof after the period of time for which  
20 Contractor has already been paid by means of bills issued in advance of providing service for the  
21 class of service involved, the Contractor shall be entitled to the reasonable rental value of such  
22 property (which shall be offset against any damages due the City for the Contractor's default).  
23

24 Contractor shall furnish the City with immediate access to all of its business records related to its  
25 Customers and Billing of accounts for Collection services.  
26

## 27 **11.4 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

28 The City's right to terminate the Agreement under Section 11.2 and to take possession of the  
29 Contractor's properties under Section 11.3 are not exclusive, and the City's termination of the  
30 Agreement and/or the imposition of Liquidated Damages shall not constitute an election of  
31 remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights  
32 and remedies which the City may have.  
33

34 By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality  
35 service, the lead time required to effect alternative service, and the rights granted by City to the  
36 Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall  
37 be entitled to injunctive relief.  
38

## 39 **11.5 LIQUIDATED DAMAGES**

- 40  
41 **A. General.** The Contractor finds, and Contractor agrees, that as of the time of the  
42 execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain  
43 the extent of damages which shall be incurred by City as a result of a breach by  
44 Contractor of its obligations under this Agreement. The factors relating to the  
45 impracticability of ascertaining damages include, but are not limited to, the fact that: (i)  
46 substantial damage results to members of the public who are denied services or denied  
47 quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration,

1 and deprivation of the benefits of the Agreement to individual members of the general  
2 public for whose benefit this Agreement exists, in subjective ways and in varying degrees  
3 of intensity which are incapable of measurement in precise monetary terms; (iii) that  
4 exclusive services might be available at substantially lower costs than alternative services  
5 and the monetary loss resulting from denial of services or denial of quality or reliable  
6 services is impossible to calculate in precise monetary terms; and (iv) the termination of  
7 this Agreement for such breaches, and other remedies are, at best, a means of future  
8 correction and not remedies which make the public whole for past breaches.  
9

10 **B. Service Performance Standards; Liquidated Damages for Failure to Meet**

11 **Standards.** The Parties further acknowledge that consistent, reliable Solid Waste,  
12 Recyclable Materials, and Organic Materials Collection service is of utmost importance  
13 to City and that City has considered and relied on Contractor's representations as to its  
14 quality of service commitment in awarding the Agreement to it. The Parties further  
15 recognize that some quantified standards of performance are necessary and appropriate to  
16 ensure consistent and reliable service and performance. The Parties further recognize  
17 that if Contractor fails to achieve the performance standards, or fails to submit required  
18 documents in a timely manner, City and its residents and businesses will suffer damages  
19 and that it is and will be impractical and extremely difficult to ascertain and determine  
20 the exact amount of damages which City will suffer. Therefore, without prejudice to  
21 City's right to treat such non-performance as an event of default under this Section  
22 11.5.B, the Parties agree that the Liquidated Damages amounts established in Section 7.9  
23 of this Agreement and the following liquidated damage amounts represent a reasonable  
24 estimate of the amount of such damages considering all of the circumstances existing on  
25 the Effective Date of this Agreement, including the relationship of the sums to the range  
26 of harm to City that reasonably could be anticipated and the anticipation that proof of  
27 actual damages would be costly or impractical.  
28

29 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set  
30 forth in Section 7.9 of this Agreement and in the Schedule of Performance Adjustments,  
31 Exhibit D.  
32

33 City may determine the occurrence of events giving rise to Liquidated Damages through  
34 the observation of its own employees or representative or investigation of Complaints by  
35 Customers, Occupants, and Generators.  
36

37 Other than Liquidated Damages payable under Section 7.9 of this Agreement, Liquidated  
38 Damages will only be assessed after Contractor has been given the opportunity but failed  
39 to rectify the damages as described in this Agreement. Prior to assessing Liquidated  
40 Damages other than pursuant to Section 7.9 of this Agreement, City shall give Contractor  
41 notice of its intention to do so. The notice will include a brief description of the  
42 incident(s) and non-performance. The City may review (and make copies at its own  
43 expense) all information in the possession of Contractor relating to incident(s) and non-  
44 performance. City may, within ten (10) calendar days after issuing the notice, request a  
45 meeting with Contractor. City may present evidence of non-performance in writing and  
46 through testimony of its employees and others relevant to the incident(s) and non-  
47 performance. City will provide Contractor with a written explanation of his or her  
48 determination on each incident(s) and non-performance prior to authorizing the

1 assessment of Liquidated Damages under this Section 11.5. The decision of City shall be  
2 final and Contractor shall not be subject to, or required to exhaust, any further  
3 administrative remedies.  
4

5 **C. Amount.** City may assess Liquidated Damages for each calendar day or event, as  
6 appropriate, that Contractor is determined to be liable in accordance with this Agreement  
7 in the amounts specified in Exhibit D subject to annual adjustment described below. In  
8 the event the amount of Liquidated Damages for any three (3) month period exceeds the  
9 thresholds established in Section 4.13.A, the City shall have the right to request  
10 replacement of the Contractor's general manager as described in Section 4.13.A.  
11

12 The amount of Liquidated Damages specified in Exhibit D shall be adjusted annually on  
13 the first day of the Rate Period. The adjustment shall be rounded to the nearest cent.  
14 Liquidated Damage amounts such be adjusted, using the method below, to reflect  
15 changes in the All Urban Consumers Index (CPI-U) compiled and published by the U. S.  
16 Department of Labor, Bureau of Labor Statistics or its successor agency, using the  
17 following parameters:  
18

- 19 ■ Area - San Francisco-Oakland-San Jose, CA
- 20 ■ Item - All Items
- 21 ■ Base Period - 1982-84=100
- 22 ■ Not seasonally adjusted  
23

$$\begin{array}{l} \text{Adjusted Liquidated} \\ \text{Damage Amount} \end{array} = \begin{array}{l} \text{Then-current Liquidated Damage Amount x} \\ \text{most current CPI-U/previous 12-month CPI-U} \end{array}$$

24  
25 **D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City  
26 within ten (10) calendar days after they are due under Section 7.9 of this Agreement or  
27 assessed pursuant to this Section 11.5. If they are not paid within the ten (10) day period,  
28 City may proceed against the performance bond required by the Agreement, request  
29 replacement of Contractor's general manager, order the termination of the rights or  
30 "franchise" granted by this Agreement, or all of the above.  
31

## 32 **11.6 EXCUSE FROM PERFORMANCE**

33 The Parties shall be excused from performing their respective obligations hereunder in the event  
34 they are prevented from so performing by reason of floods, earthquakes, other acts of nature,  
35 war, civil insurrection, riots, acts of any government (including judicial action), and other similar  
36 catastrophic events which are beyond the control of and not the fault of the Party claiming  
37 excuse from performance hereunder. Labor unrest, including but not limited to strike, work  
38 stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by  
39 Contractor's employees or directed at Contractor is not an excuse from performance and  
40 Contractor shall be obligated to continue to provide service notwithstanding the occurrence of  
41 any or all of such events. In the case of labor unrest or job action directed at a third party over  
42 whom Contractor has no control, the inability of Contractor to provide Solid Waste, Recyclable  
43 Materials, or Organic Materials Collection services due to the unwillingness or failure of the  
44 third party to provide reasonable assurance of the safety of Contractor's employees while  
45 providing Solid Waste, Recyclable Materials, or Organic Materials Collection services or to  
46 make reasonable accommodations with respect to Container placement and point of Delivery,

1 time of Collection or other operating circumstances to minimize any confrontation with pickets  
2 or the number of Persons necessary to make Collections shall, to that limited extent, excuse  
3 performance and provided further that the foregoing excuse shall be conditioned on Contractor's  
4 cooperation in making Collection at different times and in different locations.  
5

6 The Party claiming excuse from performance shall, within two (2) calendar days after such Party  
7 has notice of such cause, give the other Party notice of the facts constituting such cause and  
8 asserting its claim to excuse under this Section.  
9

10 In the event that either Party validly exercises its rights under this Section, the Parties hereby  
11 waive any claim against each other for any damages sustained thereby.  
12

13 The partial or complete interruption or discontinuance of Contractor's services caused by one or  
14 more of the events described in this Article shall not constitute a default by Contractor under this  
15 Agreement. Notwithstanding the foregoing, however, (i) the existence of an excuse from  
16 performance will not affect the City's rights under Article 10; and (ii) if Contractor is excused  
17 from performing its obligations hereunder for any of the causes listed in this Section for a period  
18 of thirty (30) calendar days or more, other than as the result of third party labor disputes where  
19 service cannot be provided for reasons described earlier in this Section, the City shall  
20 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10)  
21 calendar days notice to Contractor, in which case the provisions of Section 11.3 shall apply.  
22

#### 23 **11.7 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

24 If Contractor (i) is the subject of any labor unrest including work stoppage or slowdown, sick-  
25 out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be  
26 unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal  
27 judgment or order entered by a federal, State, regional or local agency for violation of an  
28 Applicable Law, and the City believes in good faith that Contractor's ability to perform under the  
29 Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in  
30 addition to all other remedies it may have, demand from Contractor reasonable assurances of  
31 timely and proper performance of this Agreement, in such form and substance as the City  
32 believes in good faith is reasonably necessary in the circumstances to evidence continued ability  
33 to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances  
34 of timely and proper performance in the form and by the date required by City, such failure or  
35 refusal shall be an event of default for purposes of Section 11.1.  
36  
37

## 38 **ARTICLE 12.**

### 39 **OTHER AGREEMENTS OF THE**

### 40 **PARTIES**

---

#### 41 **12.1 RELATIONSHIP OF PARTIES**

42 The Parties intend that Contractor shall perform the services required by this Agreement as an  
43 independent Contractor engaged by City and not as an officer or employee of the City nor as a  
44 partner of or joint venturer with the City. No employee or agent of Contractor shall be or shall  
45 be deemed to be an employee or agent of the City. Except as expressly provided herein,  
46 Contractor shall have the exclusive control over the manner and means of conducting the Solid  
47

1 Waste, Recyclable Materials, and Organic Materials Collection, Transportation, Processing and  
2 Disposal services performed under this Agreement, and all Persons performing such services.  
3 Contractor shall be solely responsible for the acts and omissions of its officers, employees,  
4 subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and  
5 agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other  
6 benefits which accrue to City employees by virtue of their employment with the City.  
7

## 8 **12.2 COMPLIANCE WITH LAW**

9 In providing the services required under this Agreement, Contractor shall at all times, at its sole  
10 cost, comply with all Applicable Laws, permits and licenses of the United States, the State and  
11 the City and with all applicable regulations promulgated by federal, State, regional or local  
12 administrative and regulatory agencies, now in force and as they may be enacted, issued or  
13 amended during the Term.  
14

## 15 **12.3 GOVERNING LAW**

16 This Agreement shall be governed by, and construed and enforced in accordance with, the laws  
17 of the State of California.  
18

## 19 **12.4 JURISDICTION**

20 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded  
21 in the courts of Alameda County in the State of California, which shall have exclusive  
22 jurisdiction over such lawsuits.  
23

24 With respect to venue, the Parties agree that this Agreement is made in and will be performed in  
25 Alameda County.  
26

## 27 **12.5 THIS SECTION INTENTIONALLY DELETED**

## 28 **12.6 ASSIGNMENT**

29 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this  
30 Agreement to any other Person without the prior written consent of the other Party. Any such  
31 assignment made without the consent of the other Party shall be void and the attempted  
32 assignment shall constitute a material breach of this Agreement.  
33  
34

35 For purposes of this Section, "assignment" shall include, but not be limited to (i) a sale, exchange  
36 or other transfer of substantially all of Contractor's assets dedicated to service under this  
37 Agreement to a third party; (ii) a sale, exchange or other transfer of ten percent (10%) or more of  
38 the outstanding common stock of Contractor; (iii) any reorganization, consolidation, merger,  
39 recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrange-  
40 ment, liquidation or other transaction to which Contractor or any of its shareholders is a party  
41 which results in a change of ownership or control of thirty (30%) or more of the value or voting  
42 rights in the stock of Contractor; and (iv) any combination of the foregoing (whether or not in  
43 related, contemporaneous or sequential transactions) which has the effect of any such transfer or  
44 change of ownership and/or control of Contractor. For purposes of this Section, the term  
45 "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest  
46 pursuant to the assignment. Assignment may exclude a change in ownership of Contractor's

1 assets or stocks which occurs for interfamilial planning purposes only and does not involve a  
2 change in the management of the Agreement or services performed thereunder.  
3

4 Contractor acknowledges that this Agreement involves rendering a vital service to City's  
5 residents and businesses, and that City has selected Contractor to perform the services specified  
6 herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste,  
7 Recyclable Materials and Organic Materials management operations in a safe, effective and  
8 responsible fashion, at all times in keeping with Applicable Laws, regulations and good waste  
9 management practices, and (2) Contractor's financial resources to maintain the required  
10 equipment and to support its indemnity obligations to City under this Agreement. City has relied  
11 on each of these factors, among others, in choosing Contractor to perform the services to be  
12 rendered by Contractor under this Agreement.  
13

14 If Contractor requests City's consideration of and consent to an assignment, City may deny or  
15 approve such request in its complete discretion. No request by Contractor for consent to an  
16 assignment need be considered by City unless and until Contractor has met the following  
17 requirements:  
18

- 19 A. Contractor shall undertake to pay City its reasonable expenses for attorney's fees and  
20 investigation costs necessary to investigate the suitability of any proposed assignee, and  
21 to review and finalize any documentation required as a condition for approving any such  
22 assignment;  
23
- 24 B. Contractor shall furnish City with audited financial statements of the proposed assignee's  
25 operations for the immediately preceding three (3) operating years;  
26
- 27 C. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at  
28 least ten (10) years of Solid Waste, Recyclable Materials, and Organic Materials  
29 management experience on a scale equal to or exceeding the scale of operations  
30 conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the pro-  
31 posed assignee has not suffered any citations or other censure from any federal, state or  
32 local contractor having jurisdiction over its waste management operations due to any  
33 significant failure to comply with state, federal or local waste management laws and that  
34 the assignee has provided the City with a complete list of such citations and censures;  
35 (iii) that the proposed assignee has at all times conducted its operations in an  
36 environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts  
37 its Solid Waste, Recyclable Materials, and Organic Materials management practices in  
38 accordance with sound waste management practices in full compliance with all federal,  
39 state and local laws regulating the Collection, Transportation, Processing and Disposal of  
40 Solid Waste, Recyclable Materials, and Organic Materials, including Hazardous Waste as  
41 identified in Title 22 of the California Code of Regulations; and (v) that any other  
42 information required by City demonstrates that the proposed assignee can fulfill the terms  
43 of this Agreement in a timely, safe and effective manner.  
44

45 Under no circumstances shall any proposed assignment be considered by City if Contractor is in  
46 default at any time during the period of consideration.  
47

1 **12.7 SUBCONTRACTING**

2 Contractor shall not engage any subcontractors for Collection, Transportation, Processing or  
3 Disposal of Solid Waste, Recyclable Materials, or Organic Materials without the prior written  
4 consent of the City. As of the Effective Date of this Agreement, the City has approved  
5 Contractor's use of the subcontractors listed in Exhibit O.  
6

7 **12.8 BINDING ON SUCCESSORS**

8 The provisions of this Agreement shall inure to the benefit to and be binding on the successors  
9 and permitted assigns of the Parties.  
10

11 **12.9 TRANSITION TO NEXT CONTRACTOR AT END OF AGREEMENT**

12 Prior to expiration or earlier termination of this Agreement, Contractor will cooperate with City  
13 and subsequent Contractor(s) to assist in an orderly transition of services from Contractor to  
14 subsequent contractor. Such cooperation shall include, but not be limited to, Contractor  
15 providing route lists and detailed Customer account and Billing information. Contractor shall  
16 not be obliged to sell Collection vehicles, equipment or facilities to the next contractor.  
17 Depending on Contractor's circumstances at the point of transition, the Contractor at its option  
18 may enter into negotiations with the next contractor to sell (in part or all) Collection vehicles,  
19 Containers, and other equipment or facilities. If subsequent Contractor does not accept  
20 ownership of Containers, Contractor shall be responsible for removal and Recycling or Disposal  
21 of Containers within five (5) Business Days of the expiration date of the Agreement.  
22

23 In connection therewith, Contractor acknowledges that the provisions of Public Resources Code  
24 Sections 49520-49523 have no application to this Agreement and agrees, to the extent such  
25 sections may have application, to waive whatever rights they may afford.  
26

27 **12.10 PARTIES IN INTEREST**

28 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any  
29 Persons other than the Parties to it and their representatives, successors and permitted assigns.  
30

31 **12.11 WAIVER**

32 The waiver by either Party of any breach or violation of any provisions of this Agreement shall  
33 not be deemed to be a waiver of any breach or violation of any other provision nor of any  
34 subsequent breach or violation of the same or any other provision. The subsequent acceptance  
35 by either Party of any monies which become due hereunder shall not be deemed to be a waiver of  
36 any pre-existing or concurrent breach or violation by the other Party of any provision of this  
37 Agreement.  
38

39 **12.12 CONDEMNATION**

40 The City fully reserves the rights to acquire the Contractor's property utilized in the performance  
41 of this Agreement, by purchase or through the exercise of the right of eminent domain.  
42

43 **12.13 NOTICE**

44 All notices, demands, requests, proposals, approvals, consents and other communications which  
45 this Agreement requires, authorizes or contemplates all, except as provided in Section 10.1, shall  
46 be in writing and shall either be personally delivered to a representative of the Parties at the

1 address below or deposited in the United States mail, first class postage prepaid, addressed as  
2 follows:

3  
4 **A. If to City:**

5  
6 City Manager  
7 City of Alameda  
8 City Hall  
9 2263 Santa Clara Avenue  
10 Alameda, CA 94501

11  
12 **B. If to Contractor:**

13  
14 Mr. Louie Pellegrini, Vice President  
15 Alameda County Industries AR, Inc.  
16 610 Aladdin Ave.  
17 San Leandro, CA 94577-4302  
18

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

21  
22 Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3)  
23 calendar days from the date it is deposited in the mail.  
24

25 **12.14 REPRESENTATIVES OF THE PARTIES**

26 References in this Agreement to the "City" shall mean the City Council and all actions to be  
27 taken by the City shall be taken by the City Council except as provided below. The City Council  
28 may delegate, in writing, authority to the City Manager, the Director of the Department of Public  
29 Works and/or to other City officials and may permit such officials, in turn, to delegate in writing  
30 some or all of such authority to subordinate officers. The Contractor may rely upon actions  
31 taken by such delegates if they are within the scope of the authority properly delegated to them.  
32

33 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall  
34 serve as the representative of the Contractor in all matters related to the Agreement and shall  
35 inform the City in writing of such designation and of any limitations upon his or her authority to  
36 bind the Contractor. The City may rely upon action taken by such designated representative as  
37 actions of the Contractor unless they are outside the scope of the authority delegated to him/her  
38 by the Contractor as communicated to City.  
39

40 **12.15 CITY FREE TO NEGOTIATE WITH THIRD PARTIES**

41 The City may investigate all options for Solid Waste, Recyclable Materials and Organic  
42 Materials Collection, Transportation, Processing and Disposal services to commence after the  
43 expiration of the Term or earlier termination of this Agreement. Without limiting the generality  
44 of the foregoing, the City may solicit proposals from Contractor and from third parties for the  
45 provision of Collection services, Disposal services, Recycling services, Organic Materials  
46 Collection and composting, and any combination thereof, and may negotiate and execute  
47 agreements for such services which will take effect upon the expiration or earlier termination  
48 under Section 11.2 of this Agreement.

1  
2 **12.16 STATEMENTS AND SUPPLEMENTAL INFORMATION**

3 The Contactor's Proposal submitted October 12, 2001 and submitted supplemental information  
4 describing new services, and any other information submitted to the City supplementary thereto,  
5 on which the City has relied in awarding this Agreement to Contractor and entering into this  
6 Agreement, does not contain any untrue statement of a material fact nor omit to state a material  
7 fact necessary in order to make the statements made, in light of the circumstances in which they  
8 were made, not misleading.  
9

10 **12.17 CRIMINAL ACTIVITY OF CONTRACTOR**

11  
12 **12.17.1 Criminal Activity.** For purpose of this Section, Criminal Activity shall mean any of  
13 the following events or circumstances:  
14

15 **A. Convictions.** The entry against any Contractor Party of a criminal conviction or a  
16 permanent mandatory or prohibitory injunction from a court, municipality or regulatory  
17 agency of competent jurisdiction based on acts taken in his or her official capacity on  
18 behalf of Contractor with respect to:  
19

- 20 1. Fraud or criminal offense in connection with obtaining, attempting to obtain,  
21 procuring or performing a public or private agreement related to municipal Solid  
22 Waste, Recyclable Materials or Organic Materials services of any kind (including  
23 Collection, Transportation, transfer, Processing, composting or Disposal), including  
24 this Agreement or any amendment thereto;  
25
- 26 2. Bribery or attempting to bribe a public officer or employee of a local, State, or  
27 federal agency;  
28
- 29 3. Embezzlement, extortion, racketeering, false claims, false statements, forgery,  
30 falsification or destruction of records, obstruction of justice, knowingly receiving  
31 stolen property, theft, or misprision (failure to disclose) of a felony;  
32
- 33 4. Unlawful disposal of Hazardous Waste or Designated Waste the occurrence of which  
34 any of Contractor Party knew or should have known;  
35
- 36 5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and  
37 sales and market allocation, and of unfair and anti-competitive trade practices laws,  
38 including with respect to inflation of fees for Solid Waste, Recyclable Materials or  
39 Organic Materials Collection, Transportation, Processing, or Disposal;  
40
- 41 6. Violation of securities laws;  
42
- 43 7. Felonies.  
44

45 **B. Pleas.** Entry of a plea of "guilty," "nolo contendere" or "no contest" by a Contracting  
46 Party based on acts taken in his, her or its official capacity on behalf of Contractor with  
47 respect to the conduct described in preceding subdivision (1) of this Section.  
48

1 **12.17.2 Notice**

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

4  
5 **12.17.3 Contractor's Cure**

6 Upon occurrence of any Criminal Activity, Contractor shall immediately do or cause to be done  
7 all of the following:

8  
9 **A.** Terminate from employment or remove from office any offending individual Contractor  
10 Party, unless otherwise directed or ordered by a court or regulatory agency of competent  
11 jurisdiction or authority, and unless that termination would constitute a breach of any  
12 labor agreement entered into by Contractor, and

13  
14 **B.** Eliminate participation by any individual offending Contractor Party in any management,  
15 supervision, or decision activity that affects or could affect, directly or indirectly, the  
16 performance of the Contractor under this Agreement.

17  
18 **12.17.4 Transfer and Hiring**

19 Contractor shall not allow or cause to be allowed the hire or transfer of any individual Contractor  
20 Party from any Parent Company or subsidiary company or business entity of Contractor who has  
21 committed Criminal Activity for a position as a Contractor representative, field supervisor,  
22 officer or director who is directly or indirectly responsible for performance of this Agreement  
23 without obtaining prior written consent of City, following full disclosure to City of the facts and  
24 circumstances surrounding such Criminal Activity.

25  
26 **12.17.5 City's Remedy**

27 City, in its sole discretion, may terminate the Agreement upon thirty (30) calendar days written  
28 notice to Contractor, or may impose other sanctions (which may include financial sanctions,  
29 temporary suspensions or any other condition deemed appropriate short of termination) as it will  
30 deem proper, in the following events:

31  
32 **A.** Contractor fails to comply with the foregoing obligation of this Section, or

33  
34 **B.** The Criminal Activity concerns or relates directly or indirectly to this Agreement.

35  
36 Contractor shall be given the opportunity to present evidence in mitigation during the thirty (30)  
37 calendar day notice period.

38  
39 **12.18 OFFER OF EMPLOYMENT**

40 Contractor shall make good faith effort to offer employment to displaced workers employed by  
41 the City's franchise contractor that provided Collection services prior to the Commencement  
42 Date of this Agreement for Collection vehicle drivers, mechanics, helpers, container distribution  
43 personnel and other similar operating staff positions to the extent such displaced workers are  
44 needed to perform the services described in this Agreement. However, the Contractor is not  
45 required (i) to displace any of its current employees, (ii) to modify its current job performance  
46 requirements or employee selection standards, (iii) to alter its current wage and employment  
47 conditions, or (iv) to offer employment to more of the displaced workers than are needed to  
48 perform the services described hereunder.

1  
2 **12.19 PUBLIC HEARING ON CONTRACTOR'S PERFORMANCE**

3 At any time, but no more than once annually, the City may hold a public hearing at which  
4 Contractor may be required by City to attend and participate in, to review the Contractor's  
5 performance and to solicit feedback from the public regarding Contractor's performance of  
6 services under this Agreement. The purpose of the public hearing shall be to provide for  
7 discussion and review of technological, economic, and regulatory changes in order to achieve a  
8 continuing, state-of-the-art Collection, Transportation, Processing, and Disposal system and to  
9 ensure services are being provided with adequate quality, effectiveness, and economy. Input  
10 provided during the public hearing may be used by the City at its discretion.

11  
12 **12.20 PREVAILING WAGES**

13 The Parties acknowledge that the services provided by Contractor do not constitute a "public  
14 work" and are not subject to any of the provisions of the Public Works law, Labor Code Section  
15 1720-1901, nor of the regulations promulgated thereunder. However, in accordance with City of  
16 Alameda Resolution No. 12743, until and unless otherwise directed by the City, Contractor shall  
17 pay its personnel wages and benefits not less than the general prevailing rate of wages applicable  
18 to such work done in Alameda County as of October 1, 2001 based on data provided by the  
19 California Department of Industrial Relations. Contractor may provide any combination of  
20 wages and benefits so long as the hourly cash equivalent of such combination equals the  
21 corresponding prevailing wage rate plus benefits as of that date. Claims for increased  
22 Contractor's Compensation based on wage rates paid in excess of the range of the prevailing  
23 wage may be disallowed to the extent of the excess as determined by the City.

24  
25  
26 **ARTICLE 13.**  
27 **MISCELLANEOUS AGREEMENTS**

28  
29 **13.1 ENTIRE AGREEMENT**

30 This Agreement, including the Exhibits, represents the full and entire Agreement between the  
31 Parties with respect to the matters covered herein.

32  
33 **13.2 SECTION HEADINGS**

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

37  
38 **13.3 REFERENCES TO LAWS**

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

41  
42 **13.4 INTERPRETATION**

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

1 **13.5 AMENDMENT**

2 This Agreement may not be modified or amended in any respect except in writing signed by the  
3 Parties.  
4

5 **13.6 SEVERABILITY**

6 If any non-material provision of this Agreement is for any reason deemed to be invalid and  
7 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the  
8 remaining provisions of this Agreement which shall be enforced as if such invalid or  
9 unenforceable provision had not been contained herein.  
10

11 **13.7 COUNTERPARTS**

12 This Agreement may be executed in counterparts each of which shall be considered an original.  
13

14 **13.8 EXHIBITS**

15 Each of the Exhibits identified as Exhibit "A" through "O" is attached hereto and incorporated  
16 herein and made a part hereof by this reference.  
17  
18

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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**

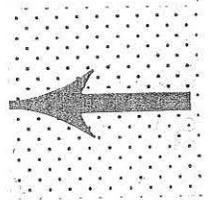
*Jon Pellegrini*  
Name *Jon Pellegrini*  
Title *Vice President*

CITY OF ALAMEDA  
A Municipal Corporation

*Joseph M. Tanner*  
Joseph M. Tanner  
Assistant City Manager, C&ED

RECOMMENDED FOR APPROVAL:

*M. T. Naclerio*  
Matthew T. Naclerio  
Public Works Director



APPROVED AS TO FORM:  
City Attorney

*Julie Harryman*  
Julie Harryman  
Deputy City Attorney