

FRANCHISE AGREEMENT
BETWEEN
CASTRO VALLEY SANITARY DISTRICT
AND
ALAMEDA COUNTY INDUSTRIES CV, INC.
FOR
RECYCLING, ORGANICS, AND GARBAGE
COLLECTION AND PROCESSING SERVICES

JUNE 13, 2018

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41 Materials, and Garbage and other services related to meeting the DISTRICT's Zero Waste goal;
42 and,

43 **WHEREAS;** the DISTRICT further declares its intent to approve and maintain reasonable Rates
44 for the Collection, Processing, Recycling, Composting, and/or Disposal of Solid Waste materials
45 including Recyclable Materials, Organic Materials, and Garbage; and,

46 **WHEREAS;** the DISTRICT desires, having determined that CONTRACTOR, by demonstrated
47 experience, reputation, and capacity is qualified to provide for both the Collection of Recyclable
48 Materials, Organic Materials, and Garbage within the corporate limits of the DISTRICT and the
49 Transportation of such material to appropriate places of Processing, Recycling, Composting,
50 and/or Disposal, that CONTRACTOR be engaged to perform such services on the basis set forth
51 in this Agreement; and,

52 **WHEREAS;** the DISTRICT and CONTRACTOR have attempted to address conditions affecting
53 their performance of services under this Agreement but recognize that reasonably unanticipated
54 conditions may occur during the Term of this Agreement that will require the Parties to meet and
55 confer to reasonably respond to such changed conditions;

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

59 **ARTICLE 1.**
60 **GRANT AND ACCEPTANCE OF FRANCHISE**

61 **1.1 GRANT AND ACCEPTANCE OF FRANCHISE**

62 By the signing of this Agreement, DISTRICT grants to CONTRACTOR and CONTRACTOR
63 accepts an exclusive franchise within the corporate limits of the DISTRICT. The franchise granted
64 to CONTRACTOR shall be for the scope of services described in this Agreement, subject to the
65 limitations described in Section 1.2 and except where otherwise precluded by Federal, State, and
66 local laws and regulations.

67 **1.2 LIMITATIONS TO THE FRANCHISE**

68 The award of this Agreement shall not preclude the categories of Recyclable Materials, Organic
69 Materials, and Garbage listed below from being delivered to and Collected and Transported by
70 others, provided that nothing in this Agreement is intended to or shall be construed to excuse any
71 Person from obtaining any authorization from DISTRICT which is otherwise required under
72 Applicable Law:

73 A. **Recyclable and Organic Materials.** Other Persons shall maintain the right to: (1) accept
74 Source Separated Recyclable Materials and Source Separated Organic Materials donated
75 from the service recipient, or (2) to pay the service recipient for Source Separated
76 Recyclable Materials and Source Separated Organic Materials, provided that there is no
77 net payment made by the service recipient to such other Person;

78 B. **Self-Hauled Materials.** A Commercial business Owner (or their employee) or Resident
79 may Dispose of Recyclable Materials, Organic Materials, and Garbage generated in or on

- 80 their own Premises with their own vehicle;
- 81 C. **In-Place Composting.** Organic Materials Composted or otherwise legally managed at
82 the site where it is generated (e.g., backyard Composting, on-site anaerobic digestion);
- 83 D. **Recyclable Materials That CONTRACTOR Does Not Accept.** Solid Waste which the
84 CONTRACTOR is not required to Collect and process under this Agreement as of the
85 Effective Date of this Agreement which subsequently, in the DISTRICT's reasonable
86 judgment, become economically feasible to Recycle. In such event, CONTRACTOR shall
87 have the exclusive right to Collect and Process such new Recyclable Materials if
88 CONTRACTOR agrees to do so without any change in Rates. If CONTRACTOR is
89 unwilling to provide service for such new Recyclable Materials at existing rates, the
90 DISTRICT may provide for Collection and Processing of new Recyclable Materials in any
91 manner it deems appropriate.
- 92 E. **Beverage Containers.** Containers delivered for Recycling under the California Beverage
93 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public
94 Resources Code;
- 95 F. **Materials Removed by Customer's Contractor as Incidental Part of Services.**
96 Recyclable Materials, Organic Materials, Garbage, Bulky Items, and/or C&D removed
97 from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service,
98 construction contractor, Residential clean-out service) as an incidental part of the service
99 being performed, rather than as a separately contracted or subcontracted hauling service;
100 or if such contractor is providing a service which is not included in the scope of this
101 Agreement; or if such materials are removed from a Premises using a Fixed Body Vehicle
102 and hauled directly to a facility that holds all applicable permits.
- 103 G. **Animal Waste, Grease Waste, and Used Cooking Oil.** Animal waste and remains from
104 slaughterhouse or butcher shops, grease, or Used Cooking Oil;
- 105 H. **Sewage Treatment By-Product.** By-products of sewage treatment, including sludge,
106 sludge ash, grit, and screenings;
- 107 I. **Excluded Waste.** Excluded Waste regardless of its source; and,
- 108 J. **Materials Generated by State and County Facilities.** Materials generated by State and
109 County facilities located in the DISTRICT, provided that the Generator has arranged
110 services with other Persons or has arranged services with the CONTRACTOR through a
111 separate agreement.

112 CONTRACTOR acknowledges and agrees that the DISTRICT may permit other Persons besides
113 the CONTRACTOR to Collect any and all types of materials excluded from the scope of this
114 exclusive franchise, as set forth above, without seeking or obtaining approval of CONTRACTOR.
115 If CONTRACTOR can produce evidence that other Persons are servicing Collection Containers
116 or are Collecting and Transporting Recyclable Materials, Organic Materials, Garbage, and/or C&D
117 in a manner that is not consistent with this Agreement or the DISTRICT's Code, it shall report the
118 location, the name and phone number of the Person or company to the DISTRICT's Contract
119 Manager along with CONTRACTOR's evidence. In such case, CONTRACTOR may provide
120 written notice to such Person of CONTRACTOR's rights under this Agreement. Such notification
121 shall be in the form of a letter which has been pre-approved by the DISTRICT Contract Manager.

122 In the event that CONTRACTOR can produce evidence that such other Person continues the
123 infringing behavior after ten (10) Business Days from CONTRACTOR providing notice, the
124 DISTRICT shall notify the Generator and Person providing service of CONTRACTOR's rights
125 under this Agreement, and CONTRACTOR shall have the right to take legal action against the
126 Generator and other Person providing service to enforce CONTRACTOR's rights under this
127 Agreement.

128 This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable
129 Law, now and during the Term of the Agreement. If future judicial interpretations of current law or
130 new laws, regulations, or judicial interpretations limit the ability of the DISTRICT to lawfully
131 contract for the scope of services in the manner and consistent with all provisions as specifically
132 set forth herein, CONTRACTOR agrees that the scope of the Agreement will be limited to those
133 services and materials which may be lawfully included herein and that the DISTRICT shall not be
134 responsible for any lost profits or losses claimed by CONTRACTOR to arise out of limitations to
135 the scope or provisions of the Agreement set forth herein. In such an event, it shall be the
136 responsibility of CONTRACTOR to minimize the financial impact of such future judicial
137 interpretations or new laws and the CONTRACTOR may meet and confer with DISTRICT and
138 may petition for a Rate adjustment pursuant to Section 8.3.

139 **1.3 OBLIGATIONS OF PARTIES**

140 In addition to the specific performance required under the Agreement, DISTRICT and
141 CONTRACTOR shall:

- 142 A. Use their reasonable commercial efforts to enforce the exclusive nature of the franchise
143 by the CONTRACTOR's identification and documentation of violations of the exclusive
144 franchise and the DISTRICT's notification of Generators and collection companies
145 reasonably believed to be violating the franchise regarding the terms of this Agreement.
- 146 B. Provide timely notice to one another of a perceived failure to perform any obligations under
147 this Agreement and access to information demonstrating the Party's failure to perform.
- 148 C. Provide timely access to the DISTRICT Contract Manager and the CONTRACTOR's
149 designated representative and complete and timely responses to requests of the other
150 Party.
- 151 D. Provide timely notice of matters which may affect either Party's ability to perform under
152 the Agreement.

153 **ARTICLE 2.**

154 **TERM OF AGREEMENT**

155 **2.1 TERM AND OPTION TO EXTEND**

- 156 A. **Base Term.** The Term of this Agreement shall commence May 1, 2019
157 (Commencement Date) and continue in full force for a period of approximately ten years
158 and two (2) months, through and including June 30, 2029, unless the Agreement is
159 extended in accordance with this Section or terminated pursuant to Section 10.2. Between
160 the Effective Date and Commencement Date, CONTRACTOR shall perform all activities
161 necessary to prepare itself to start providing services required by this Agreement on the

162 Commencement Date.

163 **B. Automatic Extension for Diversion Performance.** In the event that the CONTRACTOR
164 achieves the annual Diversion targets as described and calculated in accordance with
165 Section 5.12 in six (6) or more years during Rate Periods One through Eight, this
166 Agreement shall be extended without amendment for a period of three (3) additional years.
167 During such an extension period, all other provisions of this Agreement shall remain
168 unchanged, and any formulaic adjustments, including but not limited to Rate adjustments,
169 shall continue during such extension period.

170 **C. DISTRICT-Directed Term Extension.** Notwithstanding the provisions in Section 2.1.B, at
171 DISTRICT's sole discretion, this Agreement may be extended one (1) or more times
172 without amendment for a period of no more than five (5) additional years for a total Term
173 that does not extend beyond June 30, 2034. If DISTRICT desires to extend the
174 Agreement, DISTRICT shall provide the CONTRACTOR with written notice of its decision
175 to extend the Agreement at least one (1) year before the expiration of the initial Term and
176 at least six (6) months before the expiration of any extended term. Such notice by
177 DISTRICT shall specify the duration of the extension. During such an extension period, all
178 other provisions of this Agreement shall remain unchanged, and any formulaic
179 adjustments, including but not limited to Rate adjustments, shall continue during such
180 extension period.

181 **2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

182 The obligation of DISTRICT to permit this Agreement to become effective and to perform its
183 undertakings provided for in this Agreement is subject to the satisfaction of all the conditions
184 below, each of which may be waived, in written form, in whole or in part by DISTRICT.

185 **A. Accuracy of Representations.** The CONTRACTOR's representations and warranties
186 made in CONTRACTOR's Proposal and Article 11 of this Agreement are true and correct
187 on and as of the Effective Date.

188 **B. Furnishings of Insurance and Performance Bond.** CONTRACTOR has furnished
189 evidence of the insurance and performance bond required by Article 9 that is satisfactory
190 to the DISTRICT.

191 **C. Absence of Litigation.** To the best of CONTRACTOR's knowledge, after reasonable
192 investigation, there is no action, suit, proceeding or investigation, at law or in equity, before
193 or by any court or governmental authority, commission, board, agency or instrumentality
194 decided, pending or threatened against CONTRACTOR wherein an unfavorable decision,
195 ruling or finding, in any single case or in the aggregate, would:

196 1. Materially adversely affect the performance by CONTRACTOR of its obligations
197 hereunder;

198 2. Adversely affect the validity or enforceability of this Agreement; or,

199 3. Have a material adverse effect on the financial condition of CONTRACTOR, or any
200 surety or entity guaranteeing CONTRACTOR's performance under this
201 Agreement.

202 **D. Permits Furnished.** CONTRACTOR has provided DISTRICT with copies of all permits
203 necessary for operation of all Approved Facilities owned or operated by CONTRACTOR
204 or any Subcontractor for use under the terms of this Agreement.

205 **E. Legal Challenge.** CONTRACTOR understands and acknowledges that the award of this
206 Agreement and related decisions may be subject to review and repeal by the DISTRICT's
207 citizens through a referendum or similar petition, and to various types of legal and
208 environmental challenges (such referenda, similar petition and legal and environmental
209 challenges being referred to collectively as "Legal Challenges"). Accordingly, this
210 Agreement shall not become effective until the DISTRICT reasonably determines that (1)
211 any Legal Challenges that had been initiated as of the time of such determination have
212 been resolved in favor of the DISTRICT's award of this Agreement to CONTRACTOR;
213 and (2) the deadline to initiate any additional Legal Challenges has expired; provided,
214 however, that CONTRACTOR shall be entitled to rescind this Agreement upon thirty (30)
215 days' prior written notice to the DISTRICT if such determination is not made by July 1,
216 2018.

217 **ARTICLE 3.**
218 **SCOPE OF AGREEMENT**

219 **3.1 SUMMARY SCOPE OF SERVICES**

220 The CONTRACTOR or its Subcontractor(s) shall be responsible for the following:

221 A. Collecting Recyclable Materials, Organic Materials, Garbage, and C&D generated by and
222 placed for Collection by Customers pursuant to the requirements of Article 4 and Exhibit
223 B;

224 B. Transporting Collected materials to the appropriate Approved Facilities pursuant to
225 requirements of Article 4 and Exhibit B;

226 C. Processing Collected Recyclable Materials, Organic Materials, and C&D at the
227 appropriate Approved Facilities pursuant to the requirements of Article 4 and Exhibit B;

228 D. Performing all other services required by this Agreement including, but not limited to,
229 Customer billing, public education, Customer service, record keeping, and reporting
230 pursuant to Articles 4 and 6 and Exhibits C (Public Education & Outreach) and D
231 (Reporting);

232 E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials,
233 supplies, and all other items and services necessary to perform its obligations under this
234 Agreement;

235 F. Paying all expenses related to provision of services required by this Agreement including,
236 but not limited to, taxes, regulatory fees (including DISTRICT Fees), and utilities;

237 G. Performing or providing all services necessary to fulfill its obligations in full accordance
238 with this Agreement at all times using best industry practice for comparable operations;
239 and,

240 H. Complying with Applicable Law.

241 The enumeration and specification of particular aspects of service, labor, or equipment
242 requirements shall not relieve CONTRACTOR of the duty to perform all other tasks and activities
243 necessary to fulfill its obligations under this Agreement, regardless of whether such requirements
244 are enumerated elsewhere in the Agreement, unless excused in accordance with Section 10.7.

245 **3.2 USE OF APPROVED FACILITIES**

246 The CONTRACTOR, without constraint and as a free-market business decision in accepting this
247 Agreement, agrees to use the Approved Facilities for the purposes of Processing and/or
248 Disposing of all Recyclable Materials, Organic Materials, Garbage, C&D, and other materials
249 Collected in the DISTRICT. Such decision by CONTRACTOR in no way constitutes a restraint of
250 trade notwithstanding any Change in Law regarding flow control limitations or any definition
251 thereof.

252 **3.3 SUBCONTRACTING**

253 CONTRACTOR shall not engage any Subcontractors for Collection, Transportation, or
254 Processing of Recyclable Materials, Organic Materials, Garbage, or C&D services without the
255 prior written consent of DISTRICT Contract Manager. As of the Effective Date of this Agreement,
256 DISTRICT has approved CONTRACTOR's use of those Subcontractors identified in
257 CONTRACTOR's Proposal, included herein as Exhibit G5. If the CONTRACTOR plans to engage
258 other affiliated or related party entities in the provision of services, CONTRACTOR shall provide
259 DISTRICT Contract Manager with thirty (30) days written notification of its plans and provide an
260 explanation of any potential impacts related to the quality, timeliness, or cost of providing services
261 under this Agreement. CONTRACTOR shall ensure that Subcontractors comply with all materials
262 terms of this Agreement, including, without limitation, the insurance requirements described in
263 Section 9.2.

264 **3.4 RESPONSIBILITY FOR MATERIALS**

265 Once Recyclable Materials, Organic Materials, Garbage, and/or C&D are placed in the
266 CONTRACTOR's Containers and at the Collection location, the responsibility for their proper
267 handling shall transfer directly from the Generator to CONTRACTOR, with the exception of
268 Excluded Waste if the CONTRACTOR can identify the Generator pursuant to Section 5.8.B. Once
269 Recyclable Materials, Organic Materials, Garbage, and/or C&D are deposited by CONTRACTOR
270 at the appropriate Approved Facility, such materials shall become the responsibility of the Owner
271 or operator of the Approved Facility with the exception of Excluded Waste pursuant to Section
272 5.8.C.

273 Responsibility for Excluded Waste that has been inadvertently Collected by the CONTRACTOR
274 shall remain with the CONTRACTOR if it cannot identify the Generator, and CONTRACTOR shall
275 assume all responsibility for its proper Disposal.

276 **3.5 DISTRICT-DIRECTED CHANGES TO SCOPE**

277 DISTRICT shall require a proposal from CONTRACTOR to establish the scope of any additional
278 services or modification to existing services (which may include use of Approved Facilities) that
279 DISTRICT wishes to have provided under this Agreement. In such case, CONTRACTOR shall
280 present, within thirty (30) calendar days of DISTRICT's request, unless an alternate schedule is
281 mutually agreed-upon, a written proposal to provide such modified or additional services,
282 including changes in CONTRACTOR's Compensation.

283 DISTRICT shall review the CONTRACTOR's Proposal for the change in scope of services.
284 DISTRICT and CONTRACTOR will meet and confer to negotiate CONTRACTOR's proposed
285 revisions and costs, and amend this Agreement, as appropriate, to reflect the mutually agreed-
286 upon changes in scope.

287 If the Parties fail to reach agreement on a change proposed by the DISTRICT after sixty (60)
288 calendar days from the receipt of the proposal, the proposal is deemed rejected and the
289 DISTRICT may either implement the change itself, or through another contractor, in DISTRICT'S
290 sole discretion.

ARTICLE 4. SCOPE OF SERVICES

293 CONTRACTOR shall perform the Recyclable Materials, Organic Materials, Garbage, Bulky Item,
294 and C&D services described in this Article 4. This Article 4 describes the general requirements
295 for the services to be provided. More specific requirements for how each service shall be provided
296 to each Customer Type are described in Exhibit B. Failure to specifically require an act necessary
297 to perform the service does not relieve CONTRACTOR of its obligation to perform such act.

298 4.1 RECYCLABLE MATERIALS

299 **A. Collection.** CONTRACTOR shall provide Recyclable Materials Collection services as
300 described in Exhibit B.

301 **B. Transfer.** Not Applicable.

302 **C. Processing.** CONTRACTOR shall Transport and deliver all Source Separated
303 Recyclable Materials placed by Customers in Recyclable Material Containers in the
304 DISTRICT to the Approved Recyclable Materials Processing Facility. All tipping fees and
305 other costs associated with Transporting to and Processing such Recyclable Materials at
306 the Approved Recyclable Materials Processing Facility and Disposing of the Residue as
307 required in Section 4.1.E below shall be paid by CONTRACTOR.

308 CONTRACTOR guarantees sufficient capacity at the Approved Recyclable Materials
309 Processing Facility to Process all Source Separated Recyclable Materials Collected by
310 CONTRACTOR under this Agreement throughout the Term of the Agreement.

311 CONTRACTOR shall keep all existing permits and approvals necessary for use of the
312 Approved Recyclable Materials Processing Facility in full regulatory compliance. Upon
313 request, CONTRACTOR shall provide copies of facility permits and/or notices of violations
314 (obtained from its Processing Facility Subcontractor if necessary) to DISTRICT Contract
315 Manager.

316 If CONTRACTOR is unable to use the Approved Recyclable Materials Processing Facility
317 due to an emergency or sudden, unforeseen closure of the Processing Facility,
318 CONTRACTOR may use the Approved Back-up Recyclable Materials Processing Facility
319 provided that the CONTRACTOR provides verbal and written notice to the DISTRICT
320 within twenty-four (24) hours of the first delivery to the Approved Back-up Facility. The
321 CONTRACTOR's written notice shall include a description of the reasons the Approved
322 Facility is not feasible and the period of time CONTRACTOR proposes to use the

323 Approved Back-up Facility. CONTRACTOR shall not be compensated for any increased
324 Transfer, Transportation and Processing and shall guarantee the net Processing cost
325 specified in Exhibit G or shall increase the net Processing costs (if net revenues)
326 associated with the use of the Approved Back-up Facility(ies). In the event that the
327 CONTRACTOR is required to use the Approved Back-up Facility for more than thirty (30)
328 calendar days, the DISTRICT, at its sole option, may redirect CONTRACTOR to an
329 alternate facility, and the DISTRICT and CONTRACTOR shall meet and confer to
330 determine any resulting changes to CONTRACTOR's Compensation.

331 Except for the emergency conditions described in this section, CONTRACTOR shall not
332 change its selection of the Approved Recyclable Materials Processing Facility without
333 DISTRICT's written approval, which may be withheld in the DISTRICT's sole discretion. If
334 CONTRACTOR elects to use a Recyclable Materials Processing Facility that is different
335 than the initial Approved Recyclable Materials Processing Facility, it shall request written
336 approval from the DISTRICT Contract Manager sixty (60) calendar days prior to use of the
337 site and obtain DISTRICT's written approval no later than ten (10) calendar days prior to
338 use of the site.

339 CONTRACTOR shall observe and comply with all regulations in effect at the Approved
340 Recyclable Materials Processing Facility and cooperate with and take direction from the
341 operator thereof with respect to delivery of Recyclable Materials. CONTRACTOR shall
342 actively work with the Approved Recyclable Materials Processing Facility operator
343 throughout the Term of this Agreement to minimize contamination of the Recyclable
344 Materials Collected under this Agreement and delivered to the Processing Facility.
345 CONTRACTOR shall notify DISTRICT Contract Manager of particular routes and/or
346 Customers with persistent contamination issues.

347 **D. Marketing.** The CONTRACTOR shall be responsible for marketing Source Separated
348 Recyclable Materials Collected in DISTRICT that are delivered for Processing at
349 CONTRACTOR's Approved Recyclable Materials Processing Facility. CONTRACTOR's
350 marketing strategy shall promote the highest and best use of materials presented in the
351 waste management hierarchy established by AB 939. Where practical, the marketing
352 strategy should include use of local, regional, and domestic markets for Recyclable
353 Materials.

354 **E. Residue Disposal.** Residue from the Processing of Source Separated Recyclable
355 Materials Collected under this Agreement at CONTRACTOR's Approved Recyclable
356 Materials Processing Facility, which cannot be marketed, shall be Disposed of by
357 CONTRACTOR, or the Approved Recyclable Materials Processing Facility Subcontractor.
358 Residue delivered for Disposal shall not include any Excluded Waste.

359 **4.2 ORGANIC MATERIALS**

360 **A. Collection.** CONTRACTOR shall provide Organic Materials Collection services as
361 described in Exhibit B.

362 **B. Transfer.** CONTRACTOR plans to Transport Organic Materials to the Approved Transfer
363 Facility where the materials will be unloaded from Collection vehicles and loaded into
364 large-capacity vehicles and Transported to the Approved Organic Materials Processing
365 Facility. CONTRACTOR shall keep all existing permits and approvals necessary for use
366 of the Approved Transfer Facility in full regulatory compliance. Upon request,

367 CONTRACTOR shall provide copies of facility permits and/or notices of violations to
368 DISTRICT Contract Manager. If the CONTRACTOR is unable to use the Approved
369 Transfer Facility, then the CONTRACTOR shall be responsible for making other
370 Transportation arrangements. In such event, CONTRACTOR shall not be compensated
371 for any additional costs. If the CONTRACTOR plans to change its Transfer method,
372 CONTRACTOR shall obtain written approval from the DISTRICT prior to making the
373 change.

374 **C. Processing.** CONTRACTOR shall Transport and deliver all Source Separated Organic
375 Materials placed by Customers in Organic Material Containers in the DISTRICT to the
376 Approved Organic Materials Processing Facility. All tipping fees and other costs
377 associated with Transporting to and Processing such Organic Materials at the Approved
378 Organic Materials Processing Facility and Disposing of the Residue as required in Section
379 4.1.E below shall be paid by CONTRACTOR.

380 CONTRACTOR shall ensure that the Approved Organic Materials Processing Facility
381 guarantees sufficient capacity at the Approved Organic Materials Processing Facility to
382 Process all Source Separated Organic Materials Collected by CONTRACTOR under this
383 Agreement throughout the Term of the Agreement.

384 CONTRACTOR shall ensure that the Approved Organic Materials Processing Facility
385 keeps all existing permits and approvals necessary for use of the Approved Organic
386 Materials Processing Facility in full regulatory compliance. Upon request, CONTRACTOR
387 shall provide copies of facility permits and/or notices of violations (obtained from its
388 Processing Facility Subcontractor if necessary) to DISTRICT Contract Manager.

389 If CONTRACTOR is unable to use the Approved Organic Materials Processing Facility
390 due to an emergency or sudden unforeseen closure of the Processing Facility,
391 CONTRACTOR may use the Approved Back-up Organic Materials Processing Facility
392 provided that the CONTRACTOR provides verbal and written notice to the DISTRICT
393 within twenty-four (24) hours of the first delivery to the Approved Back-up Facility. The
394 CONTRACTOR's written notice shall include a description of the reasons the Approved
395 Facility is not feasible and the period of time CONTRACTOR proposes to use the
396 Approved Back-up Facility. CONTRACTOR shall not be compensated for any increased
397 Transfer, Transportation and Processing and shall guarantee the net Processing cost
398 specified in Exhibit G or shall increase the net Processing costs (if net revenues)
399 associated with the use of the Approved Back-up Facility(ies). In the event that the
400 CONTRACTOR is required to use the Approved Back-up Facility for more than thirty (30)
401 calendar days, the DISTRICT, at its sole option, may redirect CONTRACTOR to an
402 alternate facility, and the DISTRICT and CONTRACTOR shall meet and confer to
403 determine any resulting changes to CONTRACTOR's Compensation.

404 Except for the emergency conditions described in this section, CONTRACTOR shall not
405 change its selection of the Approved Organic Materials Processing Facility without
406 DISTRICT's written approval, which may be withheld in the DISTRICT's sole discretion. If
407 CONTRACTOR elects to use an Organic Materials Processing Facility that is different
408 than the initial Approved Organic Materials Processing Facility, it shall request written
409 approval from the DISTRICT Contract Manager sixty (60) calendar days prior to use of the
410 site and obtain DISTRICT's written approval no later than ten (10) calendar days prior to
411 use of the site.

412 CONTRACTOR shall observe and comply with all regulations in effect at the Approved
413 Organic Materials Processing Facility and cooperate with and take direction from the
414 operator thereof with respect to delivery of Organic Materials. CONTRACTOR shall
415 actively work with the Approved Organic Materials Processing Facility operator throughout
416 the Term of this Agreement to minimize contamination of the Organic Materials Collected
417 under this Agreement and delivered to the Processing Facility. CONTRACTOR shall notify
418 DISTRICT Contract Manager of particular routes and/or Customers with persistent
419 contamination issues.

420 **D. Marketing.** The CONTRACTOR shall ensure that the Approved Organic Materials
421 Processing Facility markets Source Separated Organic Materials Collected in DISTRICT
422 that are delivered for Processing at the Approved Organic Materials Processing Facility.
423 The Approved Organic Materials Processing Facility's marketing strategy shall promote
424 the highest and best use of materials presented in the waste management hierarchy
425 established by AB 939. Where practical, the marketing strategy should include use of local
426 markets for Organic Materials.

427 **E. Residue Disposal.** Residue from the Processing of Source Separated Organic Materials
428 Collected under this Agreement at the Approved Organic Materials Processing Facility,
429 which cannot be marketed, shall be Disposed of by CONTRACTOR, or the Processing
430 Facility Subcontractor. Residue delivered for Disposal shall not include any Excluded
431 Waste.

432 **4.3 GARBAGE**

433 CONTRACTOR shall offer and provide Garbage Collection services as described in Exhibit B.

434 CONTRACTOR acknowledges that DISTRICT is committed to Diverting materials from Disposal
435 through the implementation of source reduction, reuse, Recycling, Composting, and other
436 programs, and that DISTRICT may implement new programs, with or without the involvement of
437 the CONTRACTOR (subject to Section 3.5 above), that may impact the overall quantity or
438 composition of Garbage to be Collected by CONTRACTOR. CONTRACTOR shall not be entitled
439 to any compensation or other relief resulting from a decline in Garbage volumes or Tonnage or
440 from a change in the composition of Garbage.

441 CONTRACTOR shall Transport all Garbage Collected in DISTRICT to the Designated Disposal
442 Facility. CONTRACTOR shall pay all costs associated with Transporting and Disposal of Garbage
443 including payment of any gate fees charged at the Designated Disposal Facility. CONTRACTOR
444 shall observe and comply with all regulations and posted rules in effect at the Designated Disposal
445 Facility and cooperate with and take direction from the operator thereof with respect to delivery of
446 Garbage. All Disposal costs including Disposal guarantee are pass-thru costs for Rate setting and
447 compensation purposes.

448 At any point during the Term of this Agreement, DISTRICT may request, and CONTRACTOR
449 shall cooperate with implementation of an alternative approach to billing for Garbage service
450 provided under this Agreement. Such approach may include, but is not limited to billing Customers
451 based on actual set-out frequency, as opposed to a flat monthly charge regardless of utilization
452 (i.e. "pay-per-setout"). Upon DISTRICT request, CONTRACTOR and DISTRICT shall meet and
453 confer to discuss any necessary technological, programmatic, educational changes, or
454 adjustments to CONTRACTOR's Compensation resulting from such new approach. Prior to
455 implementation of such approach, the Parties shall document their mutual agreement in writing.

456 **4.4 CONSTRUCTION AND DEMOLITION DEBRIS (C&D)**

457 CONTRACTOR shall offer Source Separated and Mixed C&D Collection services as described in
458 Exhibit B. C&D Collection service shall be a temporary service, provided only at sites where
459 construction, alteration, remodeling, repair, or demolition operations are being performed. C&D
460 Collection services shall be provided to any Customer upon request.

461 CONTRACTOR shall Transport all C&D Collected under this Agreement to the Approved C&D
462 Processing Facility. CONTRACTOR shall pay all tipping fees and other costs associated with
463 Transporting and Processing C&D.

464 If CONTRACTOR is unable to use the Approved C&D Processing Facility due to an emergency
465 or sudden unforeseen closure of the Processing Facility, CONTRACTOR may use the Approved
466 Back-up C&D Processing Facility provided that the CONTRACTOR provides verbal and written
467 notice to the DISTRICT within twenty-four (24) hours of the first delivery to the Approved Back-up
468 Facility. The CONTRACTOR's written notice shall include a description of the reasons the
469 Approved Facility is not feasible and the period of time CONTRACTOR proposes to use the
470 Approved Back-up Facility. CONTRACTOR shall not be compensated for any increased
471 Transfer, Transportation and Processing and shall guarantee the net Processing cost specified in
472 Exhibit G or shall increase the net Processing costs (if net revenues) associated with the use of
473 the Approved Back-up Facility(ies). In the event that the CONTRACTOR is required to use the
474 Approved Back-up Facility for more than thirty (30) calendar days, the DISTRICT, at its sole
475 option, may redirect CONTRACTOR to an alternate facility, and the DISTRICT and
476 CONTRACTOR shall meet and confer to determine any resulting changes to CONTRACTOR's
477 Compensation.

478 CONTRACTOR shall observe and comply with all regulations in effect at the Approved C&D
479 Processing Facility and cooperate with and take direction from the operator thereof with respect
480 to delivery of C&D.

481 In the event grinding occurs at the Approved C&D Processing Facility or another CONTRACTOR
482 controlled facility, at the DISTRICT's request, up to fifty (50) Tons per year of fill generated from
483 Processing Construction and Demolition Debris under this Agreement shall be delivered to a
484 location within the DISTRICT as specified by the DISTRICT at no additional charge to the
485 DISTRICT.

486 **4.5 BULKY ITEMS AND REUSABLE MATERIALS**

487 CONTRACTOR shall offer Bulky Item and Reusable Materials Collection services as described
488 in Exhibit B. Bulky Item and Reusable Materials Collection services shall be offered to Customers
489 pursuant to Exhibit B on an on-call basis within five (5) Business Days of CONTRACTOR's receipt
490 of such a Customer request for service. CONTRACTOR shall make reasonable efforts to
491 schedule on-call Bulky Item and Reusable Materials Collections on a day that is convenient to the
492 Customer.

493 CONTRACTOR may, at its sole discretion and expense, identify those Bulky Items and Reusable
494 Materials that can be Collected by local youth, community, or other charitable organizations and
495 arrange with such organizations to provide the Collection. Regardless of CONTRACTOR's use of
496 such an organization, CONTRACTOR shall be responsible for ensuring that service is provided
497 to the Customer in a professional and timely manner.

498 CONTRACTOR shall Transport all Bulky Items or Reusable Materials Collected under this
499 Agreement to the Approved Reusable Materials Processing Facility. CONTRACTOR shall pay all
500 costs associated with Transporting and Processing Bulky Items and Reusable Materials.
501 CONTRACTOR shall be relieved of this obligation for any items Collected by a local youth,
502 community, or other charitable organization. CONTRACTOR shall observe and comply with all
503 regulations in effect at the Approved Reusable Materials Processing Facility and cooperate with
504 and take direction from the operator thereof with respect to delivery of Bulky Items and/or
505 Reusable Materials.

506 **4.6 SPECIAL EVENTS**

507 Upon DISTRICT request, CONTRACTOR shall provide Recyclable Materials, Organic Materials,
508 and Garbage services to up to three (3) DISTRICT-sponsored special events per year at no cost
509 to the event or DISTRICT. CONTRACTOR shall cooperate with the DISTRICT to ensure that and
510 each special event complies with the DISTRICT Event Greening Plan. Special event services
511 include:

512 **A. Event Collection Stations.** Each event collection station shall include a separate
513 receptacle for each of Recyclable Materials, Organic Materials, and Garbage, as
514 appropriate. CONTRACTOR shall provide a sufficient number of event collection stations
515 of sufficient capacity to meet the needs of the event as determined by CONTRACTOR in
516 cooperation with the event organizer.

517 **B. Collection Station Monitors.** Collection station monitors should service event collection
518 stations and educate event attendees about what materials are acceptable in each event
519 collection station receptacle. CONTRACTOR shall staff the event with a sufficient number
520 of employees or volunteers to ensure that event collection stations are serviced frequently
521 enough to prevent overflow and litter.

522 **C. Containers.** CONTRACTOR shall provide Containers for the aggregation of material
523 removed from event collection stations during the course of the event. CONTRACTOR
524 shall provide Containers in sufficient number of appropriate type(s) for the needs of the
525 event as determined by CONTRACTOR in cooperation with the event organizer.
526 CONTRACTOR shall service Containers, as agreed-upon with the event organizer, and
527 deliver Collected materials to the appropriate Approved Facility for Processing and/or
528 Disposal.

529 **D. Public Education Booth.** Upon request of either the DISTRICT Contract Manager or the
530 event organizer, CONTRACTOR shall staff a booth or exhibit at the event for the purpose
531 of educating the public about the services and programs provided by CONTRACTOR
532 under this Agreement and the benefits of source reduction, reuse, Recycling, and
533 Composting.

534 **E. Reporting.** Within fourteen (14) calendar days of the end of the event, CONTRACTOR
535 shall submit a report to the DISTRICT Contract Manager and event organizer. The report
536 should include, at a minimum: the number of event collection stations deployed at the
537 event, the number of collection station monitors, the Tonnage of each material type (i.e.,
538 Recyclable Materials, Organic Materials, and Garbage) Collected, and a description of the
539 public education provided at the event.

540 For DISTRICT-sponsored special events in excess of three (3) per year, CONTRACTOR shall

541 provide the above-described special event services at the request of the event organizer and may
542 negotiate the charges for such services with the event organizer based on the specific needs of
543 the event.

544 **4.7 PUBLIC EDUCATION AND OUTREACH**

545 Public education and outreach activities related to this Agreement will be managed by the
546 DISTRICT, with assistance from CONTRACTOR. As further described in Article 7 and Exhibit C,
547 CONTRACTOR shall prepare and distribute public education and outreach materials upon
548 DISTRICT request, and contribute funds to the DISTRICT to support the DISTRICT's public
549 education and outreach efforts.

550 **A. Program Objectives.** DISTRICT's public education and outreach strategy shall focus on
551 improving Customer understanding of the benefits of and opportunities for source
552 reduction, reuse, Recycling, and Composting. In general, the public education and
553 outreach should: (i) inform Customers about the services that are provided under this
554 Agreement with specific focus on describing the methods and benefits of source reduction,
555 reuse, Recycling, and Composting; (ii) instruct Customers on the proper method for
556 placing materials in Containers for Collection and setting Containers out for Collection with
557 specific focus on minimizing contamination of Recyclable Materials and Organic Materials;
558 and, (iii) clearly define Excluded Waste and educate Customers about the hazards of such
559 materials and their opportunities for proper handling.

560 **B. Coordination with DISTRICT and StopWaste Educational Efforts.** CONTRACTOR
561 acknowledges that they are part of a multi-party effort to operate and educate the public
562 about the regional integrated waste management system. CONTRACTOR shall cooperate
563 and coordinate with the DISTRICT Contract Manager and StopWaste staff on public
564 education activities, including reviewing DISTRICT-developed materials and publications
565 for content and applicability based on its knowledge of day-to-day operations within the
566 DISTRICT and the "Zero Waste" industry in general, upon DISTRICT request.
567 CONTRACTOR is aware that StopWaste is responsible for regional public education and
568 outreach for schools, self-hauled waste, and home Composting. CONTRACTOR shall not
569 engage in public education and outreach around these subjects without coordination with
570 and approval of the DISTRICT Contract Manager or StopWaste.

571 CONTRACTOR shall obtain approval from the DISTRICT Contract Manager on any
572 CONTRACTOR-provided public education materials including, but not limited to: print, radio,
573 television, or internet media before publication, distribution, and/or release. DISTRICT shall have
574 the right to request that CONTRACTOR include DISTRICT identification and contact information
575 on CONTRACTOR-provided public education materials and approval of such requests shall not
576 be unreasonably withheld.

577 **4.8 BILLING**

578 CONTRACTOR shall bill all Customers and be solely responsible for collecting billings at Rates
579 set in accordance with Article 8. Billing shall be performed on the basis of services rendered and
580 this Agreement shall create no obligation on the part of any Person on the sole basis of the
581 ownership of property.

582 CONTRACTOR shall bill all Single-Family Residential Customers quarterly in advance of services
583 provided. For purposes of this Section, "quarterly" shall mean that CONTRACTOR shall bill for
584 service in the months of July, August, and September in July; shall bill for services in the months

585 of October, November, and December in October; shall bill for services in the months of January,
586 February, and March in January; and, shall bill for services in the months of April, May, and June
587 in April. CONTRACTOR shall bill all Commercial and Multi-Family Customers for scheduled and
588 regularly recurring services on a monthly basis in arrears of services provided. CONTRACTOR
589 shall bill Customers for any on-call and/or non-recurring services no more frequently than monthly
590 and may only bill for services provided during the previous month. CONTRACTOR shall include
591 in a list of all on-call and/or non-recurring service charges billed during the previous month to the
592 DISTRICT in accordance with Exhibit D. DISTRICT may direct CONTRACTOR to provide
593 electronic mailers to Customers related to the DISTRICT or intended to support the DISTRICT's
594 Zero Waste goals. In such event, CONTRACTOR shall comply with such request during its next
595 billing cycle for the targeted Customer group. CONTRACTOR shall perform this service with no
596 additional requirement for compensation. In the event that, during the Term of this Agreement, it
597 becomes reasonably possible to attach such electronic notices to Customer invoices,
598 CONTRACTOR shall notify the DISTRICT, and upon DISTRICT request, shall replace and/or
599 supplement electronic mailers with electronic invoice attachments.

600 CONTRACTOR's web site shall provide Customers with the ability to pay their bills through an
601 electronic check or credit card and include the ability for Customer billings to be automatically
602 charged on a recurring basis. CONTRACTOR shall prepare, mail, and collect bills from
603 Customers who decline to use such internet-based billing system. CONTRACTOR shall make
604 arrangements to allow Customers to pay bills by cash, check, electronic check, money order, and
605 credit card.

606 CONTRACTOR shall maintain copies of all billings and receipts, each in chronological order, for
607 the Term of this Agreement, for inspection and verification by the DISTRICT Contract Manager at
608 any reasonable time but in no case more than thirty (30) calendar days after receiving a request
609 to do so.

610 CONTRACTOR shall be responsible for collection of payment from Customers with past due
611 accounts ("bad debt") in accordance with this Section 4.8. CONTRACTOR shall make reasonable
612 efforts to obtain payment from delinquent accounts through issuance of late payment notices,
613 telephone requests for payments, and assistance from collection agencies.

614 In the event that any account becomes more than thirty (30) calendar days past due,
615 CONTRACTOR shall notify such Customer of the delinquency via written correspondence,
616 instructing the property Owner that unpaid bills which become more than forty-five (45) days
617 delinquent may be assessed a one and one half percent (1.5%) late fee per month.
618 CONTRACTOR shall provide a second written notice of delinquency to any account which
619 becomes more than sixty (60) calendar days past due, and a third written notice of delinquency
620 to any account which becomes more than ninety (90) calendar days past due. The sixty (60) and
621 ninety (90) day notices shall instruct the Customer that unpaid bills which become more than one
622 hundred twenty (120) calendar days delinquent will be subject to assessment through property
623 taxes.

624 Should any Customer account become more than one hundred twenty (120) calendar days past
625 due, CONTRACTOR shall provide notice to the Customer, via written correspondence with a copy
626 to the DISTRICT Contract Manager that the unpaid amount will be subject to a special
627 assessment on the Alameda County tax roll, and subject to a fifty dollar (\$50) administrative fee.
628 CONTRACTOR and DISTRICT shall comply with the process for conducting the special
629 assessment as described in Exhibit J.

630 **4.9 CUSTOMER SERVICE PROGRAM**

631 **4.9.1 Program Requirements**

632 **A. Availability of Representatives.** A representative of the CONTRACTOR who is
633 knowledgeable of the service area, services, and Rates shall be available from 7 a.m. to
634 6 p.m. Monday through Friday to communicate with the public in person and by telephone.
635 CONTRACTOR shall maintain representative(s) with the ability to communicate in
636 English, Spanish, Mandarin and Cantonese. CONTRACTOR shall maintain a local or toll-
637 free telephone number which it shall publicize. CONTRACTOR shall also maintain an
638 after-hours telephone number allowing twenty-four (24) hour per day access to
639 CONTRACTOR management by DISTRICT Contract Manager in the event of an
640 emergency involving CONTRACTOR's equipment or services including, but not
641 necessarily limited to, fires, blocked access, or property damage.

642 **B. Telephone.** CONTRACTOR shall maintain a telephone system in operation from 7 a.m.
643 to 6 p.m. and shall have sufficient equipment in place and staff available to handle the
644 volume of calls experienced on the busiest days and such telephone equipment shall be
645 capable of recording the responsiveness to calls. In the event that CONTRACTOR's
646 telephone customer service performance falls below the performance standards
647 established in Exhibit F, the DISTRICT shall have the right to require CONTRACTOR to
648 increase its staffing levels and/or call handling capacity without requirement for any
649 additional compensation to the CONTRACTOR. Recording of CONTRACTOR's
650 responsiveness to calls shall include, at a minimum, all items included in the "Service
651 Quality and Reliability" and "Customer Service" performance standards listed in Exhibit F.
652 An answering machine or voicemail service shall record Customer calls and voice
653 messages between 6:00 p.m. and 7:00 a.m. CONTRACTOR shall provide a live, not
654 automated, call back on the same day to all Customers who leave voice messages by
655 5:00 p.m. and shall provide a live call back by noon of the following Business Day for any
656 voice messages left after 5:00 p.m.

657 **C. Web Site.** CONTRACTOR shall develop and maintain a web site that is accessible by
658 the public. CONTRACTOR's web site shall include all public education and outreach
659 materials described in Exhibit C and provide the public the ability to e-mail CONTRACTOR
660 questions, service requests, or Complaints.

661 **D. Local Office.** Throughout the Term of this Agreement CONTRACTOR shall maintain a
662 local office within Alameda County where, at a minimum, the representative(s) identified
663 in 4.9.1.A above are located.

664 **4.9.2 Service Requests, Compliments, Complaints**

665 CONTRACTOR shall be responsible for the prompt and courteous attention to, and prompt and
666 reasonable resolution of, all Customer service requests and complaints. CONTRACTOR shall
667 record in its computer system or a separate log, approved as to form by DISTRICT Contract
668 Manager, all complaints, noting the name and address of complainant, date and time of complaint,
669 nature of complaint, and nature and date of resolution. The CONTRACTOR shall retain this
670 complaint log for the Term. Upon request by the DISTRICT Contract Manager, CONTRACTOR
671 shall compile and submit a summary statistical table of the complaint log.

672 CONTRACTOR shall respond to all complaints received within twenty-four (24) hours, weekends
673 and Holidays excluded. For those complaints related to missed Collections that are received by

674 12:00 p.m. from Bin or Drop Box Customers, or that are received by 3:00 p.m. from Cart
675 Customers on a Business Day, the CONTRACTOR shall return to the Customer address and
676 Collect the missed materials before leaving the Service Area for the day. For those complaints
677 related to missed Collections that are received after such time, the CONTRACTOR shall have
678 until the end of the following Business Day to resolve the complaint. For those complaints related
679 to repair or replacement of Carts or Bins, the requirements of Section 5.6 shall apply.

680 **4.10 ACCESS TO CUSTOMER SERVICE AND BILLING SYSTEMS**

681 CONTRACTOR shall provide access and any necessary training to one (1) or more DISTRICT
682 employee(s) (as designated by the DISTRICT) regarding the use of CONTRACTOR information
683 systems as described in this Section. CONTRACTOR shall designate one (1) member of
684 CONTRACTOR staff to work directly with such DISTRICT employee. CONTRACTOR shall
685 provide such DISTRICT employee with access to Customer service, call center, and operations
686 information systems in order to validate CONTRACTOR performance standards, issue
687 DISTRICT-approved credits to Customer bills, and recommend changes to Customer Service
688 Levels to resolve service issues or otherwise address Customer needs. In the event that
689 recommended Service Level changes are made, the designated DISTRICT staff will work with
690 CONTRACTOR's route manager to make such changes. CONTRACTOR shall also provide
691 access to Customer contact information (including email addresses) for purposes of DISTRICT-
692 provided public education and outreach activities. In addition, CONTRACTOR shall ensure that
693 the DISTRICT Contract Manager and any other DISTRICT staff, as requested by the DISTRICT,
694 have read-only access to all service order, billing, and Customer service records in
695 CONTRACTOR's internal information systems. Such read-only access is intended to provide the
696 DISTRICT the ability to review notes related to Customer service and/or billing issues.

697 **4.11 MARKETABILITY OF RECOVERED MATERIALS**

698 CONTRACTOR acknowledges that DISTRICT has a Zero Waste Goal and places great
699 importance on CONTRACTOR's ability to recover resources, including but not limited to
700 Recyclable Materials and Organic Materials from the Solid Waste stream through the programs
701 and services performed under this Agreement. DISTRICT acknowledges that doing so requires
702 CONTRACTOR to engage in marketing such recovered resources on the open market, which
703 involves complex global commodities that CONTRACTOR has little influence over, and to store
704 such recovered resources prior to marketing in accordance with its facility permits and to assure
705 public health and safety. Under most market conditions, including periods of severely depressed
706 and even negative value, CONTRACTOR shall market such resources to ensure that they are
707 recycled into the productive economy.

708 In the event that CONTRACTOR encounters market challenges including, but not limited to,
709 significant changes in pricing, market availability, or quality standards for any materials marketed
710 under this Agreement, CONTRACTOR shall notify DISTRICT in writing within five (5) Business
711 Days of the nature of the market challenge and the CONTRACTOR's plans for addressing the
712 challenge. CONTRACTOR shall provide DISTRICT with updates on the market challenges at
713 least every twenty (20) Business Days thereafter until CONTRACTOR determines that the
714 concern has been resolved.

715 In the event that the market challenge results in a lack of market demand for any materials
716 marketed under this Agreement, CONTRACTOR may request relief from the DISTRICT as set
717 forth below. A lack of market demand shall mean that CONTRACTOR cannot reasonably find a
718 market for the productive use of the subject material at any value, positive or negative. Within one

719 (1) Business Day of CONTRACTOR's first knowledge of the lack of markets, CONTRACTOR
720 shall notify the DISTRICT via telephone and email with a written notice to follow, such notice to
721 include CONTRACTOR's best estimate of the time when its remaining capacity to store such
722 materials under the terms of its facility permits (the "Storage Capacity") will expire.
723 CONTRACTOR and DISTRICT shall meet and confer at the earliest mutually convenient
724 opportunity to discuss the market conditions. In such case CONTRACTOR shall have the burden
725 of proving its good faith efforts to identify markets for the subject material and shall present to
726 DISTRICT any information available to CONTRACTOR about the status of primary and alternative
727 markets for the material, pricing histories, and any other information which may be helpful to the
728 DISTRICT in making a finding about the CONTRACTOR's need for relief. CONTRACTOR shall
729 also provide the DISTRICT with written notice when the Storage Capacity for the materials in
730 question has declined to thirty percent (30%) of normal, setting forth the estimated number of
731 days when no Storage Capacity will remain. The DISTRICT Contract Manager shall make a
732 reasonable finding that a market demand either does or does not exist, based on the information
733 presented and any other information available, within twenty (20) days after the Parties meet and
734 confer or, if sooner, before the date when no Storage Capacity remains. If the DISTRICT
735 reasonably determines that a market demand does exist, CONTRACTOR shall be required to
736 continue to market all materials as required under this Agreement. If the DISTRICT reasonably
737 determines that a market demand does not exist, DISTRICT shall simultaneously identify a
738 productive, non-disposal outlet for the subject material. If the DISTRICT is able to so identify such
739 an outlet and such outlet does not exceed the pricing limitation described in this section,
740 CONTRACTOR shall deliver the subject material to that outlet. If the DISTRICT is unable to so
741 identify an outlet, DISTRICT shall authorize CONTRACTOR to temporarily Dispose of the subject
742 material. In such case, CONTRACTOR and DISTRICT shall review the status of the markets at
743 a frequency established by the DISTRICT until such time as the market demand returns or
744 DISTRICT reasonably determines that the review process may be discontinued. Additionally, in
745 the event that the DISTRICT reasonably determines that a market demand does not exist, the
746 DISTRICT shall have the opportunity to take physical possession of some or all of the subject
747 material from CONTRACTOR's facility, in order to market or otherwise dispose of such materials
748 through other channels or processes.

749 In the event that the market challenge results in a significant change in pricing for any materials
750 Processed under this Agreement, CONTRACTOR may request relief from the DISTRICT as set
751 forth below. A significant change in pricing shall mean a reduction in market value such that the
752 market cost, on a per ton basis, of sending the subject material to a non-Disposal market,
753 including Transportation costs, exceeds one hundred fifty percent (150%) of the then-current
754 Disposal tipping fee under this Agreement. Processing costs which are described in and subject
755 to the adjustment provisions of Section 2.A. of Exhibit E3 shall be excluded from this calculation
756 (except for Transportation costs as set forth in the preceding sentence). Within five (5) Business
757 Days of CONTRACTOR's first knowledge of the significant change in pricing, CONTRACTOR
758 shall notify the DISTRICT via telephone and email with a written notice to follow. CONTRACTOR
759 shall also provide the DISTRICT with written notice when the Storage Capacity for the materials
760 in question has declined to thirty percent (30%) of normal, setting forth the estimated number of
761 days when no Storage Capacity will remain. CONTRACTOR and DISTRICT shall meet and confer
762 at the earliest mutually convenient opportunity to discuss the market conditions. In such case
763 CONTRACTOR shall have the burden of proving its good faith efforts to identify higher value
764 markets for the subject material and shall present to DISTRICT any information available to
765 CONTRACTOR about the status of primary and alternative markets for the material, pricing
766 histories, and any other information which may be helpful to the DISTRICT in making a finding
767 about the CONTRACTOR's need for relief. The DISTRICT Contract Manager shall make a
768 reasonable finding that a significant change in pricing has or has not occurred, based on the

769 information presented and any other information available, within twenty (20) days after the
770 parties meet and confer or, if sooner, before the date when no Storage Capacity remains. If the
771 DISTRICT reasonably determines that a significant change in pricing has not occurred,
772 CONTRACTOR shall be required to continue to market all materials as required under this
773 Agreement. If the DISTRICT reasonably determines that a significant change in pricing has
774 occurred, DISTRICT shall simultaneously either: 1) authorize the CONTRACTOR to send the
775 materials to market at the significantly reduced value and agree to compensate the
776 CONTRACTOR for any amount, including Transportation costs, that exceeds one hundred and
777 fifty percent (150%) of the Disposal tipping fee; or 2) identify an alternate, productive, non-disposal
778 outlet for the subject material at a value, including Transportation costs, less than one hundred
779 and fifty percent (150%) of the Disposal tipping fee. CONTRACTOR shall follow DISTRICT's
780 direction if either of those options is elected. If the DISTRICT is unable to identify an outlet and
781 unwilling to compensate CONTRACTOR for the significant change in price, including
782 Transportation costs, beyond one hundred and fifty percent (150%) of the Disposal tipping fee,
783 DISTRICT shall authorize CONTRACTOR to temporarily Dispose of the subject material. In such
784 case, CONTRACTOR and DISTRICT shall review the status of the markets at a frequency
785 established by the DISTRICT until such time as the market demand returns or DISTRICT
786 reasonably determines that the review process may be discontinued.

787 Notwithstanding any other provision of this Section, Contractor shall not Dispose of any material
788 prior to receiving written DISTRICT authorization to do so and, as necessary and appropriate
789 under the circumstances, CONTRACTOR may also be required by the DISTRICT to secure
790 authorization from StopWaste and/or CalRecycle and/or other relevant regulatory entities.

791 In the event that DISTRICT authorizes Disposal of materials under this Agreement related to the
792 provisions of this section, CONTRACTOR may only Dispose of materials originating from the
793 DISTRICT in the same proportion as it Disposes of materials from other jurisdictions using the
794 same facility. For example, if the DISTRICT's materials represent 33% of the materials processed
795 at the facility, CONTRACTOR may only Dispose of one ton of DISTRICT materials for every two
796 tons of other users' materials that are Disposed. This provision is intended to ensure that the
797 DISTRICT is treated equally in this regard with all other users of the facility.

798 **ARTICLE 5.**

799 **STANDARD OF PERFORMANCE**

800 **5.1 GENERAL**

801 CONTRACTOR shall at all times comply with Applicable Law and provide services in a manner
802 that is safe to the public and the CONTRACTOR's employees. Except to the extent that a higher
803 performance standard is specified in this Agreement, CONTRACTOR shall perform services in
804 accordance with Recyclable Materials, Organic Materials, Garbage, and C&D management
805 practices common to the San Francisco Bay Area.

806 **5.2 OPERATING HOURS AND SCHEDULES**

807 **A. Hours of Collection.** Unless otherwise authorized by the DISTRICT Contract Manager,
808 CONTRACTOR's days and hours for Collection operations shall be as follows:

809 **1. Residential Premises.** Collection from Residential Premises shall only occur
810 between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, with the

811 exception that Collection from Premises in the Canyonlands area may begin at
812 5:00 a.m.

813 **2. Commercial Premises.** Collection from Commercial Premises that are two
814 hundred (200) feet or less from Residential Premises shall only occur between the
815 hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday. Collection from
816 Commercial Premises more than two hundred (200) feet from Residential
817 Premises shall only occur between the hours of 4:00 a.m. and 10:00 p.m., Monday
818 through Saturday. CONTRACTOR shall refrain from Collecting from Commercial
819 Premises at or adjacent to schools within one hour of daily school start and end
820 times (e.g. 8:00 a.m. and 3:00 p.m.).

821 **B. Holiday Collection Schedule.** CONTRACTOR, at its sole discretion, may choose not to
822 provide Collection services on a Holiday. In such event, CONTRACTOR shall provide
823 Single-Family Collection services on the day following the Holiday thereby adjusting
824 subsequent work that week with normally scheduled Friday Collection Services being
825 performed on Saturday; however, Customer service days shall be returned to the normal
826 schedule within one (1) week of the Holiday. Multi-Family, Commercial, and DISTRICT
827 Collection Services shall be adjusted as agreed between the CONTRACTOR and the
828 Customer but must meet the minimum frequency requirement of one (1) time per week.
829 The CONTRACTOR shall provide Customers notice of Holiday-related changes in
830 Collection schedules at least two weeks prior to the change.

831 **5.3 COLLECTION STANDARDS**

832 **A. Servicing Containers.** CONTRACTOR shall pick up and return each Container to the
833 location where the Occupant properly placed the Container for Collection. CONTRACTOR
834 shall not replace Containers in such a manner that blocks the public right-of-way or bicycle
835 lanes, regardless of how the Containers were placed for Collection. CONTRACTOR shall
836 place the Containers upright with lids properly secured.

837 CONTRACTOR, at the request of Customers, may provide special services including: (i)
838 unlocking Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or
839 pushing Containers to the Collection vehicle. CONTRACTOR may charge Customers for
840 such extra services at the Rates approved by DISTRICT for such services.

841 CONTRACTOR shall establish a hard-to-service route for each material type, using
842 smaller Collection vehicles for the purposes of servicing Single-Family Customers in areas
843 of the DISTRICT that are difficult to access, do not have space to make turn-arounds, or
844 where CONTRACTOR is otherwise unable to provide service meeting the highest safety
845 standards. The DISTRICT Contract Manager may, within reason and based on the specific
846 circumstances of the Customer, require the CONTRACTOR to provide service to specific
847 Single-Family Customers on this hard-to-service route.

848 CONTRACTOR may require Customers on private roads to sign road damage liability
849 waivers prior to operating on such private streets. If Customers on private roads fail to
850 sign such waivers, CONTRACTOR may require them to receive service at the nearest
851 public right of way.

852 **B. Litter Abatement.** CONTRACTOR shall use due care to prevent spills or leaks of material
853 placed for Collection, Used Motor Oil, Used Cooking Oil, fuel, and fluids while providing

854 services under this Agreement. If any materials are spilled or leaked during Collection and
855 Transportation, the CONTRACTOR shall clean up all spills or leaks before leaving the site
856 of the spill.

857 CONTRACTOR shall not transfer loads from one vehicle to another on any public street,
858 unless it is necessary to do so because of mechanical failure, combustion of material in
859 the truck, or accidental damage to a vehicle.

860 CONTRACTOR shall cover all open Drop Boxes at the pickup location before Transporting
861 materials to the Approved Facility.

862 CONTRACTOR shall conduct public outreach and staff training to Customers on best
863 management practices for litter abatement at no extra charge. Such best management
864 practices include, without limitation:

865 • Closing Container lids and right sizing service: CONTRACTOR staff will tag
866 overfull Containers with "reminder stickers," which will serve as outreach and
867 education to the Customer. Photos of the Container will be taken by drivers,
868 attached to the Customer's account, and will be available to outreach and
869 Customer service staff in order to demonstrate to the Customer where a problem
870 exists.

871 • Outreach to Customer on importance of bagging lightweight materials such as
872 plastic bags, film plastics, foam peanuts, and other materials that can easily
873 become litter due to their lightweight nature.

874 • Driver training on litter reduction techniques and litter removal best management
875 practices.

876 • Affixing signage to the back of CONTRACTOR trucks which provides a phone
877 number for residents to report material spills.

878 • Collaboration with DISTRICT's street sweeping operators, as appropriate, in order
879 to align schedules with Collection schedules to have sweeping following the
880 standard Collection day.

881 **C. Development and Review of Collection Specifications.** CONTRACTOR shall work with
882 the DISTRICT to develop standard specifications for Collection Container enclosures at
883 Commercial and Multi-Family Premises. These specifications shall be developed to
884 ensure that the Collection Container enclosures are built to provide adequate space for
885 and suitable configuration to allow the CONTRACTOR to safely and efficiently service
886 Recyclable Materials, Organic Materials, and Garbage Containers. CONTRACTOR's
887 Operations Manager or other appropriately qualified staff shall, upon request by the
888 DISTRICT Contract Manager, provide a review of plans for new Multi-family and
889 Commercial development or project design drawings. CONTRACTOR shall provide
890 comments and recommendations resulting from the review in writing within ten (10) days
891 of receipt of the documents for review. In each review report, CONTRACTOR shall
892 comment on the acceptability of the proposed enclosure arrangements in terms of: i) the
893 adequacy of space for Recyclable Materials, Organic Materials, and Garbage Containers;
894 ii) the accessibility of the Containers for Collection including whether additional charges
895 (e.g., push/pull, etc.) would apply; and iii) ease of use by tenants.

896 **D. No Commingling of Materials.** CONTRACTOR shall Collect materials generated in the
897 DISTRICT in Collection Vehicles separately from other materials generated outside the
898 DISTRICT. CONTRACTOR shall not commingle materials which have been Source
899 Separated with other materials types (for example, Source Separated Recyclable
900 Materials which have been properly placed for Collection shall not be combined with
901 Garbage or Source Separated Organic Materials). CONTRACTOR may present cost
902 sharing or cost saving proposals to the DISTRICT at any time during the Term of this
903 Agreement, however, under no circumstances shall CONTRACTOR attempt to reduce
904 costs through commingling without written approval from the DISTRICT Contract
905 Manager.

906 **E. Emergency Action Plan.** Prior to the Commencement Date, CONTRACTOR shall work
907 with the DISTRICT Contract Manager to prepare an Emergency Action Plan for Disaster
908 Preparedness (Emergency Action Plan) in a form and format which is satisfactory to the
909 DISTRICT Contract Manager. The Emergency Action Plan shall provide a framework for
910 CONTRACTOR to continue Collection services within the DISTRICT after a catastrophic
911 event, and to facilitate collaborative efforts with the DISTRICT that mitigate the threat to
912 the health, safety and welfare of DISTRICT residents. Annually, CONTRACTOR shall
913 perform a drill to ensure that CONTRACTOR staff is familiar with the Emergency Action
914 Plan. CONTRACTOR shall notify the DISTRICT Contract Manager no fewer than five (5)
915 Business Days in advance of the date of such drills, and shall allow DISTRICT staff to
916 participate in and/or observe such drills. CONTRACTOR shall work with the DISTRICT
917 Contract Manager to update the Emergency Action Plan no fewer than two (2) times during
918 the Term of this Agreement to ensure that the Emergency Action Plan is at all times current
919 and actionable.

920 **5.4 TRANSFER AND PROCESSING STANDARDS**

921 **5.4.1 Equipment and Supplies**

922 CONTRACTOR shall equip and operate the Approved Processing Facilities that are run by
923 Affiliates in a manner to fulfill CONTRACTOR's obligations under this Agreement.
924 CONTRACTOR is solely responsible for the adequacy, safety, and suitability of the Approved
925 Processing Facilities that are run by Affiliates. CONTRACTOR shall modify, enhance, and/or
926 improve the Approved Processing Facilities that are run by Affiliates as needed to fulfill Services
927 under this Agreement.

928 CONTRACTOR shall provide all rolling stock, stationary equipment, material storage containers,
929 spare parts, maintenance supplies, Transfer, Transport, and Processing equipment, and other
930 consumables as appropriate and necessary to operate the Approved Processing Facilities that
931 are run by Affiliates and provide all services required by this Agreement. CONTRACTOR shall
932 place the equipment in the charge of competent operators. CONTRACTOR or such Affiliates
933 shall repair and maintain all such equipment at their own cost and expense.

934 **5.4.2 Scales and Weighing**

935 CONTRACTOR is solely responsible for ensuring accurate weighing of all materials entering and
936 leaving the Approved Processing Facilities that are run by CONTRACTOR or Affiliates. For any
937 Approved Facility not run by CONTRACTOR or an Affiliate, CONTRACTOR shall ensure that it
938 receives certified weight tickets for each and every load delivered under this Agreement.

939 **A. Facility Scales.** CONTRACTOR shall maintain State-certified motor vehicle scales in

940 accordance with Applicable Law. All scales shall be linked to a centralized computer
941 recording system at such Approved Processing Facilities to record weights for all incoming
942 and outgoing materials. CONTRACTOR shall provide back-up generator(s) capable of
943 supplying power to the scales in the event of a power outage. CONTRACTOR or such
944 Facilities shall promptly arrange for use of substitute portable scales should its usual
945 scales not be available for whatever reason. Pending substitution of portable scales,
946 CONTRACTOR or such Facility shall as necessary estimate the Tonnages of materials
947 delivered to and Transported from such Facilities, on the basis of delivery vehicle and
948 Transfer trailer volumes, tare weights, and/or other available facility weight records. These
949 estimates shall take the place of actual weights while scales are inoperable, and shall be
950 identified as estimates in electronic records and reporting.

951 **B. Tare Weights.** No less than thirty (30) days prior to the Commencement Date,
952 CONTRACTOR shall ensure that all vehicles used by CONTRACTOR to deliver
953 Recyclable Materials, Organic Materials, Garbage, and C&D to the Approved Processing
954 Facilities are weighed to determine unloaded ("tare") weights. CONTRACTOR shall
955 electronically record the tare weight, identify vehicle as CONTRACTOR owned, and
956 provide a distinct vehicle identification number for each vehicle. CONTRACTOR shall
957 provide DISTRICT with a report listing the vehicle tare weight information upon request.
958 CONTRACTOR shall promptly weigh additional or replacement vehicles prior to placing
959 them into service. CONTRACTOR shall check tare weights at least annually, or within
960 fourteen (14) days of a DISTRICT request, and shall re-tare vehicles immediately after
961 any major maintenance or service event.

962 **C. Testing.** CONTRACTOR shall test and calibrate all such scales in accordance with
963 Applicable Law, but at least every twelve (12) months or upon DISTRICT request.

964 **D. Records.** CONTRACTOR shall maintain computerized scale records and reports that
965 provide information including date of receipt, inbound time, inbound and outbound weights
966 of vehicles, and vehicle identification number. CONTRACTOR shall also maintain
967 computerized scale records and reports providing historical vehicle tare weights for each
968 vehicle and the date and location for each tare weight recorded.

969 **E. Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on
970 video cameras at the Approved Processing Facilities, CONTRACTOR shall make those
971 videos available for DISTRICT review during the Approved Processing Facility's operating
972 hours, upon request of the DISTRICT, and shall provide the name of the driver of any
973 particular load if available.

974 **5.5 COLLECTION VEHICLE REQUIREMENTS**

975 CONTRACTOR shall provide a fleet of Collection vehicles sufficient in number and capacity to
976 efficiently perform the work required by the Agreement in strict accordance with its terms.
977 CONTRACTOR shall have available sufficient back-up vehicles for each type of Collection vehicle
978 used to respond to scheduled and unscheduled maintenance, service requests, complaints, and
979 emergencies. All Collection vehicles shall operate on compressed natural gas (CNG). All such
980 vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such
981 vehicles shall meet On-Road Heavy Duty Vehicle emissions requirements for model year 2019,
982 regardless of the actual model year of CONTRACTOR's vehicles, and generally comply with all
983 Federal, State, and local laws and regulations.

984 Collection vehicles shall present a clean appearance while providing service under this
985 Agreement. CONTRACTOR's name and local telephone number shall be displayed on all
986 vehicles in at least four (4) inch characters. Vehicles shall be equipped with sign board holders or
987 other hardware to allow public education signage of no less than thirty-six (36) by forty-eight (48)
988 inches to be displayed on both sides of the vehicle.

989 CONTRACTOR shall inspect each vehicle daily to ensure that all equipment is operating properly.
990 Vehicles that are not operating properly shall be taken out of service until they are repaired and
991 operate properly. CONTRACTOR shall repair, or arrange for the repair of, all of its vehicles and
992 equipment for which repairs are needed because of accident, breakdown or any other cause so
993 as to maintain all equipment in a safe and operable condition. DISTRICT Contract Manager may
994 inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to
995 determine compliance with sanitation requirements.

996 All Collection operations shall be conducted as quietly as possible and shall conform to applicable
997 Federal, State, County, and DISTRICT noise level regulations, including the requirement that the
998 noise level during the stationary compaction process not exceed sixty (60) decibels with the
999 exception of sixty-five (65) decibels for one-minute duration. All decibel readings shall be based
1000 on a distance of ten (10) feet from any part of the Vehicle. The DISTRICT may request
1001 CONTRACTOR to check any piece of equipment for conformance with the noise limits in
1002 response to complaints and/or when the DISTRICT Contract Manager believes it is reasonable
1003 to do so.

1004 **5.6 CONTAINER REQUIREMENTS**

1005 Prior to the Commencement Date, the DISTRICT will have assumed ownership of all Carts in
1006 service in the DISTRICT at that time, and will transfer any existing inventory of Carts not in service
1007 to CONTRACTOR for purposes of storing, maintaining, and distributing such Carts to Customers.
1008 CONTRACTOR shall be responsible for purchasing new Carts throughout the Term of this
1009 Agreement and replacing the existing inventory as Carts become unserviceable. CONTRACTOR
1010 shall procure and provide all Bins and Drop Boxes to all Customers subscribing to Bin and Drop
1011 Box service. CONTRACTOR-provided Containers shall be designed and constructed to be
1012 watertight and prevent the leakage of liquids. All Carts shall display the DISTRICT's name, logo,
1013 telephone number, website, and some identifying inventory or serial number. All Bins and Drop
1014 Boxes shall display the CONTRACTOR's name, telephone number, website, and some identifying
1015 inventory or serial number.

1016 In the interest of creating effective and consistent public education and outreach, CONTRACTOR
1017 will utilize its Containers to reinforce public education messages. All Recyclable Materials Carts,
1018 Bins and other Containers shall be blue in color. All Organic Materials Carts, Bins and other
1019 Containers shall be green in color. All Garbage Carts, Bins and other Containers shall be grey in
1020 color. CONTRACTOR's Containers shall also be labeled with a list of acceptable and prohibited
1021 materials which complies with the requirements of the Alameda County Mandatory Recycling
1022 Ordinance. Specific color selections and labels shall be approved by the DISTRICT Contract
1023 Manager prior to placing the order for any new Containers.

1024 All Containers shall be maintained in a safe, serviceable, and functional condition and present a
1025 clean appearance. Customers using Carts shall be responsible for cleaning such Carts.
1026 CONTRACTOR shall resolve any Customer complaints related to any damaged Container(s) by
1027 repairing, to the Customer's satisfaction, or replacing such Container(s) within three (3) Business
1028 Days of CONTRACTOR's first receipt of the Customer complaint. CONTRACTOR shall steam

1029 clean and repaint all Containers, except Carts, as requested by Customer or as deemed
1030 necessary by CONTRACTOR or DISTRICT Contract Manager to present a clean appearance. If
1031 Customer requests steam cleaning, or painting more frequently than one (1) time per year,
1032 CONTRACTOR may charge the Customer at approved Rates for such service. If any Container
1033 is impacted by graffiti, CONTRACTOR shall remedy the situation within fourteen (14) calendar
1034 days of notification at no additional charge.

1035 **5.7 PERSONNEL**

1036 **A. General.** CONTRACTOR shall furnish such qualified personnel as may be necessary to
1037 provide the services required by this Agreement in a safe and efficient manner.
1038 CONTRACTOR shall designate at least one (1) qualified employee as DISTRICT's
1039 primary point of contact with CONTRACTOR who is principally responsible for Collection
1040 operations and resolution of service requests and complaints. Such individual shall be
1041 empowered to negotiate on behalf of and bind CONTRACTOR with respect to any
1042 changes in scope, dispute resolution, compensation adjustments, and service related
1043 matters which may arise during the Term of this Agreement.

1044 CONTRACTOR shall use its best efforts to assure that all employees present a neat
1045 appearance and conduct themselves in a courteous manner. CONTRACTOR shall not
1046 permit its employees to accept, demand, or solicit, directly or indirectly, any additional
1047 compensation, or gratuity from Customers or members of the public.

1048 **B. Hiring of Displaced Employees.** CONTRACTOR is aware of and shall comply with the
1049 requirements of and duties imposed by Sections 1072 and 1075 of the California Labor
1050 Code regarding offers of employment to any displaced employees resulting from a change
1051 in service provider, if any, resulting from this Agreement or upon the expiration of this
1052 Agreement.

1053 The minimum staffing positions to be provided by CONTRACTOR to perform the services
1054 described herein to the DISTRICT are identified in Exhibit H. Failure to consistently
1055 maintain these staffing levels during the Term of the Agreement shall be considered a
1056 material breach.

1057 **C. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate
1058 class, issued by the California Department of Motor Vehicles. CONTRACTOR shall use
1059 the Class II California Department of Motor Vehicles employer "Pull Notice Program" to
1060 monitor its drivers for safety.

1061 **D. Health and Safety Training.** CONTRACTOR shall provide suitable operational health
1062 and safety training for all of its employees who operate Collection vehicles or equipment.
1063 CONTRACTOR shall train its employees involved in Collection to identify, and not to
1064 collect, Excluded Waste. Upon the DISTRICT Contract Manager's request,
1065 CONTRACTOR shall provide a copy of its health and safety policy and health and safety
1066 training program, the name of its safety officer, and the frequency of its trainings.

1067 **5.8 HAZARDOUS WASTE INSPECTION AND HANDLING**

1068 **A. Inspection Program and Training.** CONTRACTOR shall develop a load inspection
1069 program that includes the following components: (i) personnel and training; (ii) load

1070 checking activities; (iii) management of wastes; and, (iv) record keeping and emergency
1071 procedures.

1072 CONTRACTOR's load checking personnel, including its Collection vehicle drivers, shall
1073 be trained in: (i) the effects of Hazardous Substances on human health and the
1074 environment; (ii) identification of prohibited materials; and, (iii) emergency notification and
1075 response procedures. Collection vehicle drivers shall inspect Containers before Collection
1076 when practical.

1077 **B. Response to Excluded Waste Identified During Collection.** If CONTRACTOR
1078 determines that material placed in any Container for Collection is Excluded Waste or
1079 presents a hazard to CONTRACTOR's employees, the CONTRACTOR shall have the
1080 right to refuse to accept such material. The Generator shall be contacted by the
1081 CONTRACTOR and requested to arrange proper Disposal. If the Generator cannot be
1082 reached immediately, the CONTRACTOR shall, before leaving the Premises, leave a Non-
1083 Collection Notice which indicates the reason for refusing to Collect the material and lists
1084 the phone number of a facility that accepts the Excluded Waste or a phone number of an
1085 entity that can provide information on proper Disposal of the Excluded Waste. Under no
1086 circumstances shall CONTRACTOR's employees knowingly Collect Excluded Waste or
1087 remove unsafe or poorly containerized Excluded Waste from a Collection Container. Prior
1088 to Commencement of this Agreement, the tag that will be used to notice Customers of
1089 reason for non-Collection shall be reviewed and approved by the DISTRICT Contract
1090 Manager.

1091 If Excluded Waste is found in a Collection Container or Collection area that could possibly
1092 result in imminent danger to people or property, the CONTRACTOR shall immediately
1093 notify the Fire Department.

1094 **C. Response to Excluded Waste Identified At Processing or Disposal Facility.** Materials
1095 Collected by CONTRACTOR will be delivered to the Approved Facilities for purposes of
1096 Processing or Disposal. In the event that load checkers and/or equipment operators at
1097 such facility identify Excluded Waste in the loads delivered by CONTRACTOR, such
1098 personnel shall remove these materials for storage in approved, on-site, Excluded Waste
1099 storage Container(s). CONTRACTOR shall arrange for removal of the Excluded Wastes
1100 at its cost by permitted haulers in accordance with Applicable Law and regulatory
1101 requirements. The CONTRACTOR may at its sole expense attempt to identify and recover
1102 the cost of Disposal from the Generator. If the Generator can be successfully identified,
1103 the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.

1104 **5.9 CONTRACT MANAGEMENT**

1105 DISTRICT has designated the DISTRICT Contract Manager to be responsible for the monitoring
1106 and administration of this Agreement. CONTRACTOR shall designate an employee (the General
1107 Manager) to serve as CONTRACTOR's Contract Manager(s), to be responsible for working
1108 closely with the DISTRICT Contract Manager in the monitoring and administration of this
1109 Agreement. If at any point during the Term of this Agreement, the CONTRACTOR's General
1110 Manager (or similar title) is responsible for managing more than four (4) waste collection
1111 franchises, DISTRICT and CONTRACTOR shall meet and confer to determine a strategy for
1112 ensuring an adequate proportion of the CONTRACTOR's Contract Manager's time is allocated to
1113 the DISTRICT.

1114 The CONTRACTOR's Contract Manager shall meet and confer with the DISTRICT Contract
1115 Manager to resolve differences of interpretation and implement and execute the requirements of
1116 this Agreement in an efficient, effective, manner that is consistent with the stated objectives of
1117 this Agreement.

1118 From time to time the DISTRICT Contract Manager may designate other agents of DISTRICT to
1119 work with CONTRACTOR on specific matters. In such cases, those individuals should be
1120 considered designates of the DISTRICT Contract Manager for those matters to which they have
1121 been engaged. Such designates shall be afforded all of the rights and access granted thereto. In
1122 the event of a dispute between the DISTRICT Contract Manager's designate and CONTRACTOR,
1123 the DISTRICT Contract Manager's determination shall be conclusive.

1124 In the event of dispute between the DISTRICT Contract Manager and the CONTRACTOR
1125 regarding the interpretation of or the performance of services under this Agreement, the
1126 DISTRICT Contract Manager's determination shall be conclusive except where such
1127 determination results in a material impact to the CONTRACTOR's revenue and/or cost of
1128 operations. In the event of a dispute between the DISTRICT Contract Manager and the
1129 CONTRACTOR results in such material impact to the CONTRACTOR, the provisions of Section
1130 10.9 shall apply. For the purposes of this section, "material impact" is an amount equal to or
1131 greater than fifty thousand dollars (\$50,000) per year.

1132 DISTRICT Contract Manager or their designate shall have the right to observe and review
1133 CONTRACTOR operations and Processing Facilities and enter Premises for the purposes of such
1134 observation and review, including review of CONTRACTOR's records, during reasonable hours
1135 with reasonable notice. In no event shall CONTRACTOR prevent access to such Premises for a
1136 period of more than three (3) calendar days after receiving such a request. DISTRICT Contract
1137 Manager shall be granted access to CONTRACTOR's information systems and Customer service
1138 database in accordance with Section 4.10.

1139 **5.10 ENVIRONMENTALLY-PREFERRABLE PURCHASING**

1140 CONTRACTOR shall, prior to the Commencement Date, develop and implement an
1141 "Environmentally Preferable Purchasing Policy" for purchases related to services provided under
1142 this Agreement. The policy shall be subject to review, request for modification, and approval by
1143 the DISTRICT Contract Manager, which approval will not be unreasonably delayed or withheld.
1144 The policy shall, at a minimum, include provisions for: (1) purchasing materials with the highest
1145 available recycled content without materially degrading the performance of the product; (2)
1146 purchasing materials that utilize non-toxic, non-polluting alternative chemistry; (3) a twenty
1147 percent (20%) price preference, relative to virgin or toxic content products, for purchasing
1148 environmentally preferable materials and supplies; and, (4) source reduction and pollution
1149 prevention strategies for CONTRACTOR's operations. CONTRACTOR shall include a summary
1150 of their environmentally-preferable purchasing activities in their Annual Report to DISTRICT (e.g.,
1151 volume of recycled content paper purchased, purchase or acquisition of reused items, source
1152 reduction strategies implemented during the year and the quantified results of that strategy, etc.).

1153 **5.11 LOCAL PURCHASING PREFERENCE**

1154 CONTRACTOR shall, throughout the Term of this Agreement, give preference to purchasing
1155 materials and supplies used in connection with Agreement from local vendors within the County
1156 or State; and in that order of preference. At a minimum, CONTRACTOR shall purchase the
1157 following items from vendors within the County: vehicle supplies (e.g., fuel; fluids; tires; parts, to

1158 the extent available; etc.); printing and publishing services for any and all public education and
 1159 outreach materials required to be provided by CONTRACTOR; uniforms, safety
 1160 clothing/equipment, and work boots; and office supplies, unless otherwise approved by the
 1161 DISTRICT Contract Manager.

1162 **5.12 DIVERSION REQUIREMENTS**

1163 CONTRACTOR shall perform services under this Agreement in a manner which supports the
 1164 DISTRICT's Zero Waste Policy goals, and at all times complies with and supports the Alameda
 1165 County Mandatory Recycling Ordinance. This includes, but is not limited to, providing services,
 1166 education, and outreach to Customers and in the community which promote source reduction,
 1167 reuse, Recycling, Composting, and other methods to reduce landfill Disposal. CONTRACTOR's
 1168 management and Customer service personnel (e.g. General Manager, Finance Officer, CSRs,
 1169 etc.) are expected, during each and every one of their interactions with Customers, to promote
 1170 the DISTRICT's "Zero Waste" principals, and, when appropriate, to suggest opportunities for
 1171 Customers to increase the relative level of Recyclable Materials and Organic Materials service
 1172 received compared to the level of Garbage service received through downsizing the Garbage
 1173 subscription level, and to reduce the overall level of Solid Waste (including Recyclable Materials
 1174 and Organic Materials) discarded. CONTRACTOR's operations personnel are expected, when
 1175 approached by Customers, to do the same. CONTRACTOR shall use its best efforts to achieve
 1176 the following minimum Diversion and overall generation reduction targets:

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**Figure 5.12.A
 Single-Family Zero Waste Targets**

	Avg Mo. Accounts	Garbage Tons	Recycling Tons	Organics Tons	All Mats. Tons	Diversion %	Tons/Acct /Yr.
2014 Actual	14,913	8,101	6,860	8,485	23,446	65.4%	1.57
2015 Actual	14,993	8,094	6,942	8,554	23,590	65.0%	1.54
2016 Actual	14,973	7,687	6,252	8,630	22,569	65.9%	1.51
2020 Target						67.8%	1.48
2021 Target						70.2%	1.48
2022 Target						72.6%	1.49
2023 Target						75.2%	1.49
2024 Target						77.9%	1.50
2025 Target						80.7%	1.50
2026 Target						83.5%	1.50
2027 Target						86.5%	1.51

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**Figure 5.12.B
Multi-Family Zero Waste Targets**

	Avg Mo. Accts	Garbage Tons	Recycling Tons	Organics Tons	All Mats. Tons	Diversion %	Tons/Acct /Yr.
2014 Actual	162	1,502	540	224	2,266	33.7%	13.99
2015 Actual	162	1,503	612	252	2,367	36.5%	14.61
2016 Actual	164	1,766	595	317	2,678	34.1%	16.33
2020 Target						35.7%	15.66
2021 Target						37.2%	15.71
2022 Target						38.6%	15.76
2023 Target						40.2%	15.80
2024 Target						41.8%	15.85
2025 Target						43.5%	15.90
2026 Target						45.2%	15.95
2027 Target						47.1%	16.00

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**Figure 5.12.C
Commercial, District, School, Drop Box (excl. C&D) Zero Waste Targets**

	Avg Mo. Accts	Garbage Tons	Recycling Tons	Organics Tons	All Mats. Tons	Diversion %	Tons/Acct /Yr.
2014 Actual	402	3,360	800	472	4,632	27.5%	11.52
2015 Actual	387	3,871	931	636	5,438	28.8%	14.05
2016 Actual	395	5,006	1,160	1,138	7,304	31.5%	18.49
2020 Target						33.5%	17.94
2021 Target						34.7%	17.99
2022 Target						36.0%	18.05
2023 Target						37.3%	18.10
2024 Target						38.7%	18.16
2025 Target						40.1%	18.22
2026 Target						41.6%	18.27
2027 Target						43.2%	18.33

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1187 Failure to achieve any target presented in Figures 5.12.A, 5.12.B, or 5.12.C in any calendar year
1188 shall result in adjustments to the Contract Administration Fee, as described in Section 7.1. Values
1189 for calendar years 2014-2016 have been provided as an example to demonstrate calculation of
1190 the targets.

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**ARTICLE 6.
RECORD KEEPING AND REPORTING**

1193 6.1 RECORD KEEPING

1194 CONTRACTOR shall maintain accounting, statistical, operational, and other records related to its
1195 performance as shall be necessary to provide reporting under this Agreement, Applicable Law,
1196 and to demonstrate compliance with this Agreement. Unless otherwise required in this Article,

1197 CONTRACTOR shall retain all records and data required to be maintained by this Agreement for
1198 the Term of this Agreement plus three (3) years after its expiration or earlier termination. Records
1199 and data shall be in chronological and organized form and readily and easily interpreted. Upon
1200 request, any such records shall be retrieved within ten (10) Business Days of a request by the
1201 DISTRICT Contract Manager and made available to the DISTRICT Contract Manager.
1202 CONTRACTOR shall maintain adequate record security to preserve records from events that can
1203 be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data
1204 and records shall be protected and backed-up. To the extent that CONTRACTOR utilizes its
1205 computer systems to comply with record keeping and reporting requirements under this
1206 Agreement, CONTRACTOR shall, on a monthly basis, save all system-generated reports
1207 supporting those record keeping and reporting requirements in a static format in order to provide
1208 an audit trail for all data required.

1209 DISTRICT views its ability to defend itself against Comprehensive Environmental Response,
1210 Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance.
1211 For this reason, DISTRICT regards its ability to prove where Collected Recyclable Materials,
1212 Organic Materials, Garbage, and C&D are taken for Transfer, Processing, or Disposal.
1213 CONTRACTOR shall maintain records which can establish where Recyclable Materials, Organic
1214 Materials, Garbage, and C&D Collected were Transferred, Processed, or Disposed. This
1215 provision shall survive the expiration or earlier termination of this Agreement. CONTRACTOR
1216 shall maintain these records for a minimum of ten (10) years beyond expiration or earlier
1217 termination of the Agreement. CONTRACTOR shall provide these records to DISTRICT (upon
1218 request or at the end of the record retention period) in an organized and indexed manner rather
1219 than destroying or Disposing of them.

1220 **6.2 REPORT SUBMITTAL REQUIREMENTS**

1221 CONTRACTOR shall submit monthly reports no later than twenty (20) calendar days after the
1222 end of the reporting month. Quarterly reports shall be submitted within twenty (20) calendar days
1223 after the end of the calendar quarter. CONTRACTOR shall submit annual reports no later than
1224 forty-five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual
1225 reports shall, at a minimum, include all data and information as described in Exhibit D.

1226 CONTRACTOR may propose report formats that are responsive to the objectives and audiences
1227 for each report. The format of each report shall be approved by the DISTRICT Contract Manager,
1228 in their sole discretion. DISTRICT Contract Manager may, from time to time during the Term,
1229 review and request changes to CONTRACTOR's report formats and content and CONTRACTOR
1230 shall not unreasonably deny such requests.

1231 CONTRACTOR shall submit all reports to the DISTRICT Contract Manager in hard copy, and
1232 electronically via e-mail using software acceptable to the DISTRICT.

1233 DISTRICT reserves the right to require CONTRACTOR to provide additional reports or
1234 documents as DISTRICT Contract Manager reasonably determines to be required for the
1235 administration of this Agreement or compliance with Applicable Law.

1236 **6.3 PERFORMANCE REVIEW AND AUDIT**

1237 The DISTRICT shall conduct, and CONTRACTOR shall cooperate with, a performance review
1238 and/or detailed audit during Rate Periods Four, Seven, Ten, and, if the Term is extended, Twelve
1239 to verify CONTRACTOR has fulfilled its financial and operational obligations under this

1240 Agreement. The purpose of such reviews and audits shall be, without limitation, to review
1241 complaints, billings, and fee payments to DISTRICT, and to determine if CONTRACTOR has met
1242 the performance standards described in this Agreement (including, without limitation,
1243 performance standards established in Exhibit F). DISTRICT may choose to enlist professional
1244 service providers to perform such reviews and audits, and CONTRACTOR shall be required to
1245 pay DISTRICT's actual costs for such services up to thirty thousand dollars (\$30,000) per audit
1246 and up to fifty thousand dollars (\$50,000) per performance review. CONTRACTOR may not
1247 influence or control the DISTRICT's selection of professional service providers. CONTRACTOR
1248 shall cooperate with the DISTRICT and its agents during the review and audit process. If any
1249 noncompliance with the Agreement is found, the DISTRICT may direct the CONTRACTOR to
1250 correct the inadequacies in accordance with Article 10 of this Agreement. The dollar amount
1251 stated in this Section 6.3 shall be adjusted annually by the same percentage used to adjust Rates
1252 as described in Section 8.2 and Exhibit E.

1253 At the DISTRICT's sole option, with at least thirty (30) days written notification to the
1254 CONTRACTOR, it may conduct a public hearing at which the CONTRACTOR shall be present
1255 and shall participate, to review the CONTRACTOR's performance and quality of service and
1256 provide for evaluation of technological and regulatory changes. The reports required by Exhibit D
1257 to this Agreement regarding Customer complaints may be utilized as a basis for review as well
1258 as any findings from performance review and/or audits. Performance and service quality review
1259 hearings may be scheduled by the DISTRICT at its discretion throughout the Term of the
1260 Agreement.

1261 **6.4 BILLING AND SERVICE LEVEL AUDIT**

1262 In addition to any other auditing activities required by this Agreement, CONTRACTOR shall
1263 perform a comprehensive audit of all Collection routes every full or partial two (2) calendar years,
1264 and submit to the DISTRICT a written report on the results of that audit, no later than the 30th day
1265 of April of the subsequent year, commencing on April 30, 2021. The purpose of such audit shall
1266 be to ensure that each Customer is receiving the service for which the Customer is being billed.
1267 CONTRACTOR shall submit a description of the scope of the audit and the audit work plan for
1268 DISTRICT approval no later than October 1, 2020, and October 1st of each subsequent two (2)
1269 year period. If the DISTRICT requests, CONTRACTOR shall cooperate fully with the DISTRICT
1270 to allow the DISTRICT to verify the accuracy of CONTRACTOR'S billing and Service Level audit
1271 report.

1272 **ARTICLE 7.**

1273 **DISTRICT FEES AND PAYMENTS**

1274 **7.1 CONTRACT ADMINISTRATION FEE**

1275 **A. Standard Contract Administration Fee.** Within twenty (20) calendar days of the end of
1276 each calendar month during the Term of this Agreement, CONTRACTOR shall pay a
1277 Contract Administration Fee to DISTRICT. The amount of the Contract Administration Fee
1278 shall be equal to ten percent (10%) of Gross Receipts for all services performed under this
1279 Agreement and shall be paid in monthly installments. DISTRICT shall use the Contract
1280 Administration Fee to offset expenses including staffing costs related to contract
1281 management, compliance, and monitoring, and to enforce the franchise with respect to
1282 any violations by third parties, including initiating and/or assisting in prosecuting
1283 enforcement actions. The DISTRICT shall retain the sole right to set priorities for its

1284 contract monitoring and enforcement among DISTRICT personnel. This fee shall be a
1285 pass-through cost and included in the adjustment of Rates as described in Exhibit E, with
1286 the exception that any additional amounts paid in accordance with Section 7.1.B shall not
1287 be pass-through costs.

1288 **B. Additional Fee Amounts for Diversion Non-Performance.** In the event that the
1289 CONTRACTOR fails to meet one or more of the minimum Diversion requirements
1290 specified in Figures 5.12.A, 5.12.B, or 5.12.C of Section 5.12 in any calendar year, the
1291 following amounts shall be added to the Contract Administration Fee in the subsequent
1292 calendar year:

Diversion Target Shortfall	Additional Contract Administration Fee Amount
0.001% - 2.000%	\$10,000.00 per calendar year per sector per target
2.001% or greater	\$25,000.00 per calendar year per sector per target

1293
1294 Additional Contract Administration Fee payments as described in this Section 7.1.B shall
1295 only be implemented one (1) time per target per sector per year, such that the failure to
1296 achieve a target in one year may not be reflected as cumulative payments in subsequent
1297 years. CONTRACTOR shall submit all additional payments required by this Section 7.1.B
1298 by June 30 of the calendar year directly following the calendar year in which the non-
1299 performance occurred, unless otherwise approved by the DISTRICT Contract Manager.

1300 **7.2 AB 939 FEE**

1301 On July 1 of each Rate Period, CONTRACTOR shall pay an AB 939 Fee to DISTRICT. The
1302 amount of the AB 939 Fee shall be one hundred three thousand nine hundred and seventy-four
1303 dollars (\$103,974) in Rate Period One and shall be paid in a single annual installment. The
1304 amount of the AB 939 Fee for subsequent Rate Periods shall be adjusted annually as follows:

1305 The AB 939 Fee shall be one hundred nine thousand one hundred seventy-two dollars (\$109,172)
1306 in Rate Period Two.

1307 The AB 939 Fee shall be one hundred fourteen thousand six hundred thirty-one dollars (\$114,631)
1308 in Rate Period Three.

1309 The AB 939 Fee shall be one hundred twenty thousand three hundred sixty-three dollars
1310 (\$120,363) in Rate Period Four.

1311 The AB 939 Fee shall be one hundred twenty-six thousand three hundred eighty-one dollars
1312 (\$126,381) in Rate Period Five.

1313 The AB 939 Fee shall be one hundred thirty-one thousand four hundred thirty-six dollars
1314 (\$131,436) in Rate Period Six.

1315 The AB 939 Fee shall be one hundred thirty-six thousand six hundred ninety-three dollars
1316 (\$136,693) in Rate Period Seven.

1317 The AB 939 Fee shall be one hundred forty-two thousand one hundred sixty-one dollars
1318 (\$142,161) in Rate Period Eight.

1319 The AB 939 Fee shall be one hundred forty-seven thousand eight hundred forty-seven dollars
1320 (\$147,847) in Rate Period Nine.

1321 The AB 939 Fee shall be one hundred fifty-three thousand seven hundred sixty-one dollars
1322 (\$153,761) in Rate Period Ten.

1323 The AB 939 Fee during any extension period shall be adjusted by the annual percentage change
1324 in CPI-U, in accordance with the adjustment method described in Exhibit E, or shall be the amount
1325 specified by the DISTRICT.

1326 DISTRICT shall use the AB 939 Fee to offset expenses including staffing costs related to
1327 DISTRICT programs, pilot studies, reporting, compliance, or other activities involved in
1328 compliance with AB 939. The DISTRICT shall retain the sole right to set priorities for the use of
1329 its AB 939 Fee. This fee shall be a pass-through cost and included in the adjustment of Rates as
1330 described in Exhibit E.

1331 **7.3 PUBLIC EDUCATION AND OUTREACH PAYMENT**

1332 On July 1 of each Rate Period, CONTRACTOR shall pay a Public Education and Outreach
1333 Payment to the DISTRICT. The amount of the Public Education and Outreach Payment shall be
1334 thirty-five thousand dollars (\$35,000) in Rate Period One, and shall be paid in a single annual
1335 installment. The amount of the Public Education and Outreach Payment for subsequent Rate
1336 Periods shall be adjusted annually by the annual percentage change in the CPI-U, in accordance
1337 with the adjustment method described in Exhibit E, or shall be the amount specified by the
1338 DISTRICT. DISTRICT shall use the Public Education and Outreach Payment to offset expenses
1339 including staffing costs related to providing public education and outreach services to Customers
1340 within the District. This fee shall be a pass-through cost and included in the adjustment of Rates
1341 as described in Exhibit E.

1342 **7.4 ADJUSTMENT TO FEES**

1343 DISTRICT may set other fees or adjust the fees established in this Article from time-to-time during
1344 the Term of this Agreement and such adjustments shall be pass-through costs and included in
1345 the adjustment of Rates as described in Exhibit E.

1346 **7.5 PAYMENT SCHEDULE AND LATE FEES**

1347 CONTRACTOR shall remit all fees and payments described in this Article 7 in accordance with
1348 the schedules identified in Sections 7.1, 7.2, and 7.3. Such fees shall be remitted to DISTRICT
1349 and sent or delivered to the DISTRICT Contract Manager. If such remittance is not paid to
1350 DISTRICT within the time specified in Sections 7.1, 7.2, and 7.3, all fees due shall be subject to
1351 a delinquency penalty of one and one half percent (1.5%), which attaches on the first day of
1352 delinquency. The delinquency penalty shall be increased an additional one and one half percent
1353 (1.5%) for each additional month the payment remains delinquent.

1354 Each remittance to DISTRICT shall be accompanied by a statement listing the amount of each
1355 fee paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the
1356 period collected from all operations conducted or permitted by this Agreement. DISTRICT
1357 Contract Manager may, at any time during the Term, request a detailed calculation of Gross
1358 Receipts which may include, but is not necessarily limited to, the number of Customers charged
1359 at each Service Level and Rate for each billing period. CONTRACTOR shall maintain all

1360 supporting documents and calculations for each payment made to DISTRICT as required by
1361 Section 6.1.

1362 DISTRICT Contract Manager may, at any time during the Term, perform an audit of
1363 CONTRACTOR's billings and payment of fees. CONTRACTOR shall cooperate with the
1364 DISTRICT Contract Manager in any such audit. Should DISTRICT or its agent perform this review
1365 and identify billing errors or other errors in payment of fees valued at one (1) percent or more of
1366 Gross Receipts for the period reviewed, CONTRACTOR shall, in addition to compensating
1367 DISTRICT for lost fees, reimburse the DISTRICT's actual cost of the review.

1368 **7.6 PROCUREMENT REIMBURSEMENT FEE**

1369 Within (5) Business Days of the Effective Date of this Agreement, CONTRACTOR shall pay the
1370 DISTRICT two hundred fifty thousand dollars (\$250,000). The CONTRACTOR may recover this
1371 payment through CONTRACTOR's Compensation if the expense is amortized equally over ten
1372 (10) years.

1373 **7.7 DEFERRAL PAYMENT TO CONTRACTOR**

1374 No later than April 30, 2024, DISTRICT shall pay to CONTRACTOR a payment of deferred
1375 compensation from the first Rate Period equal to three hundred thousand dollars (\$300,000),
1376 which amount shall not be subject to adjustment over the Term of this Agreement. Such payment
1377 obligation may be fulfilled through one or more payments made during the period between the
1378 Commencement Date and April 30, 2024. In the DISTRICT's sole discretion, such payment(s)
1379 may be derived through methods including but not limited to a reduction in the Contract
1380 Administration Fee amounts retained by the DISTRICT, or as an "Other Adjustment" in
1381 accordance with Exhibit E.

1382 **ARTICLE 8.**

1383 **CONTRACTOR'S COMPENSATION AND RATE** 1384 **SETTING**

1385 **8.1 GENERAL**

1386 The CONTRACTOR's Compensation for performance of all its obligations under this Agreement
1387 shall be Gross Receipts. CONTRACTOR's Compensation provided for in this Article shall be the
1388 full, entire and complete compensation due to CONTRACTOR pursuant to this Agreement for all
1389 labor, equipment, materials and supplies, Transfer, Processing and Disposal fees, DISTRICT
1390 Fees, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to
1391 perform all the services required by this Agreement in the manner and at the times prescribed.
1392 Nothing herein shall obligate DISTRICT to provide any compensation to CONTRACTOR beyond
1393 Gross Receipts.

1394 If CONTRACTOR's actual costs, including fees due to DISTRICT, are more than Gross Receipts,
1395 CONTRACTOR shall not be compensated for the difference in actual costs and actual Gross
1396 Receipts. If CONTRACTOR's actual costs are less than the actual Gross Receipts,
1397 CONTRACTOR shall retain the difference provided that CONTRACTOR has paid DISTRICT
1398 Fees pursuant to Article 7.

1399 Under this Agreement, CONTRACTOR shall have the right and obligation to charge and collect

1400 from Customers, Rates in Exhibit G3 that are approved by the DISTRICT for provision of services
1401 to Customers. The Rates for Rate Period One are based on the CONTRACTOR's Proposal.
1402 CONTRACTOR's proposed costs and operating assumptions for Rate Period One are presented
1403 in Exhibit G2.

1404 The Approved Recyclable Materials Processing Facility shall retain revenues received for the sale
1405 of Recyclable Materials including California Redemption Value revenues. Such revenues have
1406 been considered in the establishment of Rates for services provided under this Agreement.
1407 Neither CONTRACTOR nor the Approved Recyclable Materials Processing Facility are entitled
1408 to grant funds available through the Department of Resources Recycling and Recovery
1409 (CalRecycle) through its "City/County Payment Program" pursuant to Section 14581(a)(5)(A) of
1410 the California Beverage Container Recycling and Litter Reduction Act.

1411 **8.2 RATES AND ANNUAL ADJUSTMENTS**

1412 **A. General.** The DISTRICT shall be responsible for approving Rates as described in this
1413 Article. If at any time during the Term of the Agreement, the CONTRACTOR determines
1414 the need for a Rate that does not appear on the DISTRICT-approved Rate schedule in
1415 Exhibit G3, CONTRACTOR shall immediately notify the DISTRICT and request
1416 establishment of such Rate. For example, if a Customer requires Collection of Organic
1417 Materials in a fifteen (15) cubic yard Compactor five (5) times per week and the DISTRICT-
1418 approved Rate schedule does not include this level of service, the CONTRACTOR must
1419 request that the DISTRICT approve a Rate for this level of service. For any Rate not
1420 subject to the DISTRICT's noticing requirements under Proposition 218, this approval may
1421 be made by the DISTRICT Contract Manager. For any Rate that requires a Proposition
1422 218 notice, as determined by the DISTRICT's legal counsel, the DISTRICT may delay
1423 establishment of that Rate until the next scheduled noticing opportunity.

1424 **B. Rates for Rate Period One.** Rates for Rate Period One, which are presented in Exhibit
1425 G3, were determined by CONTRACTOR and DISTRICT and were approved along with
1426 the Agreement. The Rates for Rate Period One shall be effective from the
1427 Commencement Date of this Agreement through June 30, 2020.

1428 **C. Rates for Subsequent Rate Periods.** Rates for subsequent Rate Periods shall be
1429 adjusted annually in accordance with this Section 8.2 and Exhibit E.

1430 The index-based adjustment, which is described in Exhibit E1, involves use of various cost
1431 adjustment factors (such as the percentage change in the consumer price index and
1432 changes in Tonnage and tipping fees) to calculate adjusted Rates. Such Rate adjustment
1433 calculations shall be performed in strict conformance to the procedures described in
1434 Exhibit E1.

1435 On a scheduled basis, two (2) times during the initial term of the Agreement, Rates shall
1436 be adjusted using the cost-based methodology described in Exhibit E2 that involves a
1437 review of CONTRACTOR's actual costs and revenues and projection of costs and
1438 revenues for the coming Rate Period. The first scheduled review using the methodology
1439 described in Exhibit E2 shall occur to adjust Rates for Rate Period Three. The second
1440 scheduled review using the methodology described in Exhibit E2 shall be used to adjust
1441 Rates for Rate Period Eight, unless the DISTRICT notifies CONTRACTOR no later than
1442 November 1 of the preceding calendar year that it will be used to adjust Rates for Rate
1443 Period Seven. In addition, the DISTRICT shall have the sole option to require the

1444 methodology described in Exhibit E2 be used to adjust Rates one (1) time for any
1445 extension period approved in accordance with Section 2.1.B, and up to one (1) additional
1446 time for any extension period(s) approved in accordance with Section 2.1.C. This cost-
1447 based Rate adjustment, will be performed instead of the index-based rate adjustment for
1448 such Rate Periods. The cost-based adjustment process is intended to provide the
1449 DISTRICT an opportunity to adjust Rates to more accurately reflect actual revenues and
1450 costs of operations. Such Rate adjustment calculations shall be performed in strict
1451 conformance to the procedures described in Exhibit E2.

1452 **D. Rate Structure.** The DISTRICT may, at any time during the Term of this Agreement and
1453 in its sole discretion, change the relationship of individual Rates in comparison with other
1454 Rates. Any such changes would occur in conjunction with the annual Rate adjustment
1455 process described in Section 8.2.C or in conjunction with a Rate adjustment resulting from
1456 an extraordinary Rate adjustment in accordance with Section 8.3. Changes to the Rates
1457 charged under the new structure shall be calculated in such a way that the revised Rate
1458 structure generates at least the same amount of total revenue when the current number
1459 of accounts at each Service Level are multiplied by the Rates charged for each Service
1460 Level and the total for all Service Levels are summed.

1461 **8.3 EXTRAORDINARY RATE ADJUSTMENTS**

1462 It is understood that the CONTRACTOR accepts the risk for changes in cost of providing services
1463 and the Service Levels requested by Customers and therefore the extraordinary adjustments to
1464 Rates shall be limited to adjustments in costs and/or revenue resulting from a Change in Law or
1465 a DISTRICT-directed change in scope. If a Change in Law or DISTRICT-directed change in
1466 scope (pursuant to Section 3.5) occurs, the CONTRACTOR may petition DISTRICT for an
1467 adjustment to the Rates in excess of the annual adjustment described in Section 8.2.

1468 CONTRACTOR shall prepare an application for the extraordinary Rate increase. Such submittal
1469 shall be prepared in compliance with the procedures for a cost-based adjustment described in
1470 Exhibit E2 and shall provide all information requested by DISTRICT Contract Manager specific to
1471 the nature of the request being made. CONTRACTOR shall pay all reasonable costs incurred by
1472 DISTRICT, including the costs of outside accountants, attorneys, and/or consultants, in order to
1473 make a determination of the reasonableness of the requested Rate adjustment. The application
1474 shall clearly document the reason for the proposed adjustment, include calculation of the
1475 proposed Rate adjustments, and provide supporting documentation.

1476 In the event of such an application for extraordinary Rate increase, it is understood that the
1477 CONTRACTOR shall have the burden of demonstrating to the reasonable satisfaction of the
1478 DISTRICT Contract Manager that the failure of DISTRICT to adjust the Rates will result in the
1479 CONTRACTOR's financial loss or failure to achieve reasonable profitability due to the Change in
1480 Law or DISTRICT-directed change in scope. The CONTRACTOR will have to demonstrate
1481 financial loss or a failure to achieve reasonable profitability by allowing for DISTRICT Contract
1482 Manager review of financial statements and supporting documentation.

1483 The DISTRICT Contract Manager shall have the right to request any other information that they,
1484 in their reasonable judgment, determine is necessary to establish the reasonableness or accuracy
1485 of CONTRACTOR's request for an extraordinary Rate increase. CONTRACTOR's failure to fully
1486 cooperate in a timely manner with any reasonable request for information by the DISTRICT
1487 Contract Manager may result in either the denial of or a delay in the approval of the request for
1488 an extraordinary Rate increase.

1489 CONTRACTOR may, at any time during the Term of this Agreement, present to DISTRICT
1490 opportunities for reducing costs. Upon CONTRACTOR's presentation of their cost saving
1491 proposal, DISTRICT may request and CONTRACTOR shall provide such information as may be
1492 reasonably necessary to fully understand the proposed change. In no case shall CONTRACTOR
1493 undertake significant cost reduction efforts which, in the DISTRICT'S reasonable determination,
1494 negatively impacts the services provided under this Agreement without the prior written approval
1495 of the DISTRICT. Should CONTRACTOR propose and DISTRICT accept an approach to
1496 reducing costs, the Parties shall establish the portion of the cost savings which will accrue to the
1497 benefit of the CONTRACTOR and the portion that will accrue to the benefit of the Customers
1498 through a reduction in the Rates. Should no other mutually acceptable apportionment be agreed
1499 upon, the CONTRACTOR shall retain fifty percent (50%) of the projected cost savings and the
1500 Customers shall gain the benefit of the other fifty percent (50%). Such cost savings shall be
1501 reflected as a negative value in the "Other Adjustment" portion of the Rate application submitted
1502 pursuant to Exhibit E1 or Exhibit E2, depending on the type of Rate adjustment procedure used
1503 in that Rate Period.

1504 **ARTICLE 9.**
1505 **INDEMNITY, INSURANCE, AND PERFORMANCE**
1506 **BOND**

1507 **9.1 INDEMNIFICATION**

1508 **A. General.** CONTRACTOR shall indemnify, defend with counsel acceptable to DISTRICT,
1509 and hold harmless (to the full extent permitted by law) DISTRICT and its officers, officials,
1510 employees, volunteers, and agents from and against any and all claims, liability, loss,
1511 injuries, damage, expense, and costs (including without limitation costs and fees of
1512 litigation, including reasonable attorneys' and expert witness fees) (collectively,
1513 "Damages") of every nature arising out of or in connection with CONTRACTOR's
1514 performance under this Agreement, or its failure to comply with any of its obligations
1515 contained in the Agreement, except to the extent such loss or damage was caused by the
1516 negligence or willful misconduct of DISTRICT.

1517 **B. Excluded Waste.** CONTRACTOR acknowledges that it is responsible for compliance
1518 during the entire Term of this Agreement with all Applicable Laws. CONTRACTOR shall
1519 not store, Transport, use, or Dispose of any Excluded Waste except in strict compliance
1520 with all Applicable Laws.

1521 In the event that CONTRACTOR negligently or willfully mishandles Excluded Waste in the
1522 course of carrying out its activities under this Agreement, CONTRACTOR shall at its sole
1523 expense promptly take all investigatory and/or remedial action reasonably required for the
1524 remediation of such environmental contamination. Prior to undertaking any investigatory
1525 or remedial action, however, CONTRACTOR shall first obtain DISTRICT's approval of any
1526 proposed investigatory or remedial action. Should CONTRACTOR fail at any time to
1527 promptly take such action, DISTRICT may undertake such action at CONTRACTOR's sole
1528 cost and expense, and CONTRACTOR shall reimburse DISTRICT for all such expenses
1529 within thirty (30) calendar days of being billed for those expenses, and any amount not
1530 paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and
1531 subject to the delinquent fee payment provision of Section 7.5. These obligations are in
1532 addition to any defense and indemnity obligations that CONTRACTOR may have under
1533 this Agreement. The provisions of this Section shall survive the termination or expiration

1534 of this Agreement.

1535 Notwithstanding the foregoing, CONTRACTOR's duties under this subsection shall not
1536 extend to any claims arising from the Disposal of Garbage at the Designated Disposal
1537 Facility, including, but not limited to, claims arising under Comprehensive Environmental
1538 Response, Compensation and Liability Act (CERCLA) unless such claim is a direct result
1539 of CONTRACTOR's negligence or willful misconduct.

1540 **C. Environmental Indemnity.** CONTRACTOR shall defend, indemnify, and hold DISTRICT
1541 harmless against and from any and all claims, suits, losses, penalties, damages, and
1542 liability for damages of every name, kind and description, including reasonable attorneys'
1543 fees and costs incurred, attributable to the negligence or willful misconduct of
1544 CONTRACTOR in handling Excluded Waste.

1545 **D. Related to AB 939, AB 341, AB 1826, and SB 1383.** Subject to the provisions of Public
1546 Resources Code 40059.1, CONTRACTOR's duty to defend and indemnify herein includes
1547 all fines and/or penalties imposed by CalRecycle, if the requirements of AB 939, AB 341,
1548 AB 1826, and/or SB 1383 are not met by the County of Alameda with respect to the waste
1549 stream Collected under this Agreement, and such failure is: (i) due to the failure of
1550 CONTRACTOR to meet its obligations under this Agreement; or, (ii) due to
1551 CONTRACTOR delays in providing information that prevents CONTRACTOR or
1552 DISTRICT from submitting reports to regulators in a timely manner.

1553 **E. Related to Proposition 218.** Should there be a Change in Law or a new judicial
1554 interpretation of Applicable Law, including, but not limited to, Article XIII C and D of the
1555 California Constitution (Commonly known as Proposition 218), which impacts the Rates
1556 for the Collection services established in accordance with this Agreement, CONTRACTOR
1557 agrees to meet and confer with DISTRICT to discuss the impact of such Change in Law
1558 on either Party's ability to perform under this Agreement.

1559 If, at any time, a Rate adjustment determined to be appropriate by both DISTRICT and
1560 CONTRACTOR to compensate CONTRACTOR for increases in costs as described in this
1561 Agreement cannot be implemented for any reason, CONTRACTOR shall be granted the
1562 option to negotiate with DISTRICT, in good faith, a reduction of services equal to the value
1563 of the Rate adjustment that cannot be implemented. If DISTRICT and CONTRACTOR are
1564 unable to reach agreement about such a reduction in services, then CONTRACTOR may
1565 terminate this Agreement upon one year's prior written notice to DISTRICT, in which case
1566 the CONTRACTOR and DISTRICT shall each be entitled to payment of amounts due for
1567 contract performance through the date of termination but otherwise will have no further
1568 obligation to one another pursuant to this Agreement after the date of such termination.
1569 Should a court of competent jurisdiction determine that the CONTRACTOR cannot charge
1570 and/or increase its Rates for charges related to Contract Administration Fees and/or other
1571 governmental fees and charges, CONTRACTOR shall reduce the Rates it charges
1572 Customers a corresponding amount and shall be relieved from paying any such fees that
1573 are payable to the DISTRICT, provided said fees, Rates and/or charges disallowed by the
1574 court were determined not to be related to the cost of providing service hereunder and
1575 had been incorporated in the Rates charged by CONTRACTOR to its Customers.

1576 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID,
1577 apply to the Rates established for services provided under this Agreement; rather this
1578 Section is provided merely to allocate risk of an adverse judicial interpretation between

1579 the Parties.

1580 This provision (i.e., Section 9.1) will survive the expiration or earlier termination of this
1581 Agreement and shall not be construed as a waiver of rights by DISTRICT to contribution
1582 or indemnity from third parties.

1583 9.2 INSURANCE

1584 **A. General Requirements.** CONTRACTOR shall, at its sole cost and expense, maintain in
1585 effect at all times during the Term of this Agreement not less than the following coverage and
1586 limits of insurance:

1587 **B. Coverages and Requirements.** During the Term of this Agreement, CONTRACTOR
1588 shall at all times maintain, at its expense, the following coverages and requirements. The
1589 comprehensive general liability insurance shall include broad form property damage
1590 insurance.

1591 1. Minimum Coverages. Insurance coverage shall be with limits not less than the
1592 following:

1593 **Comprehensive General Liability** – \$10,000,000 combined single limit per
1594 occurrence for bodily injury, personal injury, and property damage.

1595 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily
1596 injury and property damage (include coverage for Hired and Non-owned vehicles).

1597 **Workers' Compensation – Statutory Limits/Employers' Liability** -
1598 \$1,000,000/accident for bodily injury or disease.

1599 **Employee Blanket Fidelity Bond** – \$500,000 per employee loss covering
1600 dishonesty, forgery, alteration, theft, disappearance, and destruction (inside or
1601 outside).

1602 2. Additional Insured. DISTRICT, its officers, agents, employees, and volunteers
1603 shall be named as additional insured on all but the workers' compensation and
1604 professional liability coverages.

1605 3. Said policies shall remain in force through the life of this Agreement and, with the
1606 exception of professional liability coverage, shall be payable on a "per occurrence"
1607 basis unless DISTRICT's Risk Manager specifically consents in writing to a "claims
1608 made" basis. For all "claims made" coverage, in the event that the CONTRACTOR
1609 changes insurance carriers CONTRACTOR shall purchase "tail" coverage or
1610 otherwise provide for continuous coverage covering the Term of this Agreement
1611 and not less than three (3) years thereafter. Proof of such "tail" or other continuous
1612 coverage shall be required at any time that the CONTRACTOR changes to a new
1613 carrier prior to receipt of any payments due.

1614 4. The CONTRACTOR shall declare all aggregate limits on the coverage before
1615 commencing performance of this Agreement, and DISTRICT's Risk Manager
1616 reserves the right to require higher aggregate limits to ensure that the coverage
1617 limits required for this Agreement as set forth above are available throughout the

1618 performance of this Agreement. In the event that the DISTRICT's Risk Manager
1619 requests a change in accordance with this Section 9.2.B.4 which results in
1620 increased costs to CONTRACTOR, such change shall be addressed in
1621 accordance with Section 3.5.

1622 5. The deductibles or self-insured retentions are for the account of CONTRACTOR
1623 and shall be the sole responsibility of the CONTRACTOR.

1624 6. Each insurance policy shall provide or be endorsed to state that coverage shall not
1625 be suspended, voided, canceled by either Party, reduced in coverage or in limits
1626 except after thirty (30) calendar days prior written notice by certified mail, return
1627 receipt requested, has been given to DISTRICT Contract Manager ten (10)
1628 Business Days for delinquent insurance premium payments.

1629 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less
1630 than A-VII, unless otherwise approved by DISTRICT Risk Manager.

1631 8. The policies shall cover all activities of CONTRACTOR, its officers, employees,
1632 agents and volunteers arising out of or in connection with this Agreement.

1633 9. For any claims relating to this Agreement, the CONTRACTOR's insurance
1634 coverage shall be primary, including as respects DISTRICT, its officers, agents,
1635 employees, and volunteers. Any insurance maintained by DISTRICT shall apply in
1636 excess of, and not contribute with, insurance provided by CONTRACTOR's liability
1637 insurance policy.

1638 10. The CONTRACTOR shall waive all rights of subrogation against DISTRICT, its
1639 officers, employees, agents, and volunteers.

1640 **B. Endorsements.** Prior to the Effective Date pursuant to this Agreement, CONTRACTOR
1641 shall furnish DISTRICT Contract Manager with certificates or original endorsements
1642 reflecting coverage required by this Agreement. The certificates or endorsements are to
1643 be signed by a Person authorized by that insurer to bind coverage on its behalf. All
1644 certificates or endorsements are to be received by, and are subject to the approval of,
1645 DISTRICT Risk Manager before work commences.

1646 **C. Renewals.** During the Term of this Agreement, CONTRACTOR shall furnish DISTRICT
1647 Contract Manager with certificates or original endorsements reflecting renewals, changes
1648 in insurance companies, and any other documents reflecting the maintenance of the
1649 required coverage throughout the entire Term of this Agreement. The certificates or
1650 endorsements are to be signed by a Person authorized by that insurer to bind coverage
1651 on its behalf.

1652 **Workers' Compensation.** CONTRACTOR shall provide workers' compensation coverage as
1653 required by State law, and shall comply with Section 3700 of the State Labor Code.

1654 **9.3 PERFORMANCE BOND**

1655 Within seven (7) calendar days of the DISTRICT's notification to CONTRACTOR that the
1656 DISTRICT has executed this Agreement, CONTRACTOR shall file with the DISTRICT a bond,
1657 payable to the DISTRICT, securing the CONTRACTOR's performance of its obligations under

1658 this Agreement and such bond shall be renewed annually if necessary so that the performance
1659 bond is maintained at all times during the Term. The principal sum of the bond shall be three
1660 million three hundred sixty-six thousand dollars (\$3,366,000) and shall be adjusted every three
1661 (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate
1662 Period's annual Gross Receipts. The bond shall be executed as surety by a corporation
1663 authorized to issue surety bonds in the State of California that has a rating of A or better in the
1664 most recent edition of Best's Key Rating Guide, and that has a record of service and financial
1665 condition satisfactory to the DISTRICT.

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ARTICLE 10. DEFAULT AND REMEDIES

1668 10.1 EVENTS OF DEFAULT

1669 All provisions of the Agreement are considered material. Each of the following shall constitute an
1670 event of default.

1671 **A. Fraud or Deceit.** CONTRACTOR practices, or attempts to practice, any fraud or deceit
1672 upon the DISTRICT.

1673 **B. Insolvency or Bankruptcy.** CONTRACTOR becomes insolvent, unable, or unwilling to
1674 pay its debts, or upon entry of an order for relief in favor of CONTRACTOR in a bankruptcy
1675 proceeding.

1676 **C. Failure to Maintain Coverage.** CONTRACTOR fails to provide or maintain in full force
1677 and affect the Workers' Compensation, liability, or indemnification coverage as required
1678 by this Agreement.

1679 **D. Violations of Regulation.** CONTRACTOR violates any orders or filings of any regulatory
1680 body having authority over CONTRACTOR relative to this Agreement, provided that
1681 CONTRACTOR may contest any such orders or filings by appropriate proceedings
1682 conducted in good faith, in which case no breach or default of this Agreement shall be
1683 deemed to have occurred.

1684 **E. Violations of Applicable Law.** CONTRACTOR violates Applicable Law relative to this
1685 Agreement.

1686 **F. Failure to Perform Direct Services.** CONTRACTOR ceases to provide Collection,
1687 Transportation, or Processing services as required under this Agreement for a period of
1688 two (2) consecutive calendar days or more, for any reason within the control of
1689 CONTRACTOR.

1690 **G. Failure to Pay or Report.** CONTRACTOR fails to make any payments to DISTRICT
1691 required under this Agreement including payment of DISTRICT Fees or Liquidated
1692 Damages and/or refuses to provide DISTRICT with required information, reports, and/or
1693 records in a timely manner as provided for in the Agreement.

1694 **H. Acts or Omissions.** Any other act or omission by CONTRACTOR which violates the
1695 terms, conditions, or requirements of this Agreement, or Applicable Law and which is not
1696 corrected or remedied within the time set in the written notice of the violation or, if
1697 CONTRACTOR cannot reasonably correct or remedy the breach within the time set forth

1698 in such notice, if CONTRACTOR should fail to commence to correct or remedy such
1699 violation within the time set forth in such notice and diligently effect such correction or
1700 remedy thereafter.

1701 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made
1702 to the DISTRICT by CONTRACTOR in connection with or as an inducement to entering
1703 into this Agreement, or any future amendment to this Agreement, which proves to be false
1704 or misleading in any material respect as of the time such representation or disclosure is
1705 made, whether or not any such representation or disclosure appears as part of this
1706 Agreement; and, any CONTRACTOR-provided report containing a misstatement,
1707 misrepresentation, data manipulation, or an omission of fact or content explicitly defined
1708 by the Agreement, excepting non-numerical typographical and grammatical errors.

1709 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of
1710 CONTRACTOR's operating equipment, including without limits its equipment,
1711 maintenance or office facilities, Approved Facility(ies), or any part thereof.

1712 **K. Suspension or Termination of Service.** There is any termination or suspension of the
1713 transaction of business by CONTRACTOR related to this Agreement, including without
1714 limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing,
1715 or other concerted job action lasting more than two (2) calendar days.

1716 **L. Criminal Activity.** CONTRACTOR, its officers, managers, or employees are found guilty
1717 of criminal activity related directly or indirectly to performance of this Agreement or any
1718 other agreement held with the DISTRICT.

1719 **M. Assignment without Approval.** CONTRACTOR transfers or assigns this Agreement
1720 without the express written approval of the DISTRICT unless the assignment is permitted
1721 without DISTRICT approval pursuant to Section 12.6.

1722 **N. Failure to Provide Proposal or Implement Change in Service.** CONTRACTOR fails to
1723 provide a proposal for new services or changes to services or fails to implement a change
1724 in service as requested by the DISTRICT as specified in Section 3.5.

1725 **O. Failure to Perform Any Obligation.** CONTRACTOR fails to perform any obligation
1726 established under this Agreement.

1727 DISTRICT shall provide CONTRACTOR written notice of default within seven (7) calendar days
1728 of the DISTRICT's first knowledge of the CONTRACTOR's default.

1729 **10.2 RIGHT TO TERMINATE UPON EVENT OF DEFAULT**

1730 CONTRACTOR shall be given ten (10) Business Days from written notification by DISTRICT to
1731 cure any default which, in the DISTRICT Contract Manager's sole opinion, creates a potential
1732 public health and safety threat.

1733 CONTRACTOR shall be given ten (10) Business Days from written notification by DISTRICT to
1734 cure any default arising under subsections C, E, F, I, J, and K in Section 10.1 provided, however,
1735 that the DISTRICT shall not be obligated to provide CONTRACTOR with a notice and cure
1736 opportunity if the CONTRACTOR has committed the same or similar breach/default within a
1737 twenty-four (24) month period.

1738 CONTRACTOR shall be given thirty (30) calendar days from written notification by DISTRICT to
1739 cure any other default (which is not required to be cured within ten (10) Business Days); however,
1740 that the DISTRICT shall not be obligated to provide CONTRACTOR with a notice and cure
1741 opportunity if the CONTRACTOR has committed the same or similar breach/default within a
1742 twenty-four (24) month period.

1743 **10.3 DISTRICT'S REMEDIES IN THE EVENT OF DEFAULT**

1744 Upon CONTRACTOR's default, DISTRICT has the following remedies:

1745 **A. Waiver of Default.** DISTRICT may waive any event of default or may waive
1746 CONTRACTOR's requirement to cure a default event if DISTRICT determines that such
1747 waiver would be in the best interest of the DISTRICT. DISTRICT's waiver of an event of
1748 default is not a waiver of future events of default that may have the same or similar
1749 conditions.

1750 **B. Suspension of CONTRACTOR's Obligation.** DISTRICT may suspend
1751 CONTRACTOR's performance of its obligations if CONTRACTOR fails to cure default in
1752 the time frame specified in Section 10.2 until such time the CONTRACTOR can provide
1753 assurance of performance in accordance with Section 10.8.

1754 **C. Liquidated Damages.** DISTRICT may assess Liquidated Damages for CONTRACTOR's
1755 failure to meet specific performance standards pursuant to Section 10.6 and Exhibit F.

1756 **D. Termination.** In the event that CONTRACTOR should default and subject to the right of
1757 the CONTRACTOR to cure, in the performance of any provisions of this Agreement, and
1758 the default is not cured for any default within in ten (10) calendar days if the default creates
1759 a potential public health and safety threat or arises under Section 10.1.C., E, F, I, J, or K,
1760 or otherwise thirty (30) calendar days after receipt of written notice of default from the
1761 DISTRICT, then the DISTRICT may, at its option, terminate this Agreement and/or hold a
1762 hearing at its DISTRICT Board meeting to determine whether this Agreement should be
1763 terminated. In the event DISTRICT decides to terminate this Agreement, the DISTRICT
1764 shall serve twenty (20) calendar days written notice of its intention to terminate upon
1765 CONTRACTOR. In the event DISTRICT exercises its right to terminate this Agreement,
1766 the DISTRICT may, at its option, upon such termination, either directly undertake
1767 performance of the services or arrange with other Persons to perform the services with or
1768 without a written agreement. This right of termination is in addition to any other rights of
1769 DISTRICT upon a failure of CONTRACTOR to perform its obligations under this
1770 Agreement.

1771 CONTRACTOR shall not be entitled to any further revenues from Collection operations
1772 authorized hereunder from and after the date of termination.

1773 **E. Other Available Remedies.** DISTRICT's election of one (1) or more remedies described
1774 herein shall not limit the DISTRICT from any and all other remedies at law and in equity
1775 including injunctive relief, etc.

1776 **10.4 POSSESSION OF RECORDS UPON TERMINATION**

1777 In the event of termination for an event of default, the CONTRACTOR shall furnish DISTRICT
1778 Contract Manager with immediate access to all of its business records, including without limitation,

1779 proprietary CONTRACTOR computer systems, related to its Customers, Collection routes, and
1780 billing of accounts for Collection services.

1781 **10.5 DISTRICT'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE**

1782 DISTRICT's rights to terminate the Agreement under Section 10.2 and to take possession of the
1783 CONTRACTOR's records under Section 10.4 are not exclusive, and DISTRICT's termination of
1784 the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of
1785 remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights
1786 and remedies which DISTRICT may have.

1787 By virtue of: (i) the nature of this Agreement; (ii) the urgency of timely, continuous, and high quality
1788 service; (iii) the lead time required to effect alternative service; and, (iv) the rights granted by
1789 DISTRICT to the CONTRACTOR, the remedy of damages for a breach hereof by CONTRACTOR
1790 is inadequate and DISTRICT shall be entitled to injunctive relief (including but not limited to
1791 specific performance).

1792 **10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES**

1793 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is
1794 impractical, if not impossible, to reasonably ascertain the extent of damages which shall
1795 be incurred by DISTRICT as a result of a breach by CONTRACTOR of its obligations
1796 under this Agreement. The factors relating to the impracticability of ascertaining damages
1797 include, but are not limited to, the fact that: (i) substantial damage results to members of
1798 the public who are denied services or denied quality or reliable service; (ii) such breaches
1799 cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement
1800 to individual members of the general public for whose benefit this Agreement exists, in
1801 subjective ways and in varying degrees of intensity which are incapable of measurement
1802 in precise monetary terms; (iii) that exclusive services might be available at substantially
1803 lower costs than alternative services and the monetary loss resulting from denial of
1804 services or denial of quality or reliable services is impossible to calculate in precise
1805 monetary terms; and, (iv) the termination of this Agreement for such breaches, and other
1806 remedies are, at best, a means of future correction and not remedies which make the
1807 public whole for past breaches.

1808 **B. Service Performance Standards; Liquidated Damages for Failure to Meet**
1809 **Standards.** The Parties further acknowledge that consistent, reliable Collection services
1810 are of utmost importance to DISTRICT and that DISTRICT has considered and relied on
1811 CONTRACTOR's representations as to its quality of service commitment in awarding the
1812 Agreement to it. The Parties recognize that some quantified standards of performance are
1813 necessary and appropriate to ensure consistent and reliable service and performance.
1814 The Parties further recognize that if CONTRACTOR fails to achieve the performance
1815 standards, or fails to submit required documents in a timely manner, DISTRICT and its
1816 residents and businesses will suffer damages, and that it is, and will be, impractical and
1817 extremely difficult to ascertain and determine the exact amount of damages which
1818 DISTRICT will suffer. Therefore, without prejudice to DISTRICT's right to treat such non-
1819 performance as an event of default under this Section, the Parties agree that the
1820 Liquidated Damages amounts established in Exhibit F of this Agreement and the
1821 Liquidated Damage amounts therein represent a reasonable estimate of the amount of
1822 such damages considering all of the circumstances existing on the Effective Date of this
1823 Agreement, including the relationship of the sums to the range of harm to DISTRICT that

1824 reasonably could be anticipated and the anticipation that proof of actual damages would
1825 be costly or impractical.

1826 CONTRACTOR agrees to pay (as Liquidated Damages and not as a penalty) the amounts
1827 set forth in the Performance Standards and Liquidated Damages, Exhibit F.

1828 Before assessing Liquidated Damages, DISTRICT shall give CONTRACTOR notice of its
1829 intention to do so. The notice will include a brief description of the incident(s) and non-
1830 performance. DISTRICT may review (and make copies at its own expense) all information
1831 in the possession of CONTRACTOR relating to incident(s) and/or non-performance.
1832 DISTRICT may, within ten (10) Business Days after issuing the notice, request a meeting
1833 with CONTRACTOR. DISTRICT may present evidence of non-performance in writing and
1834 through testimony of its employees and others relevant to the incident(s) and non-
1835 performance. DISTRICT Contract Manager will provide CONTRACTOR with a written
1836 explanation of their determination on each incident(s) and non-performance prior to
1837 authorizing the assessment of Liquidated Damages under this Section 10.6. Within ten
1838 (10) Business Days of receipt of such notice of intention to assess Liquidated Damages,
1839 or within twenty (20) Business Days if the intended assessment totals over fifty thousand
1840 dollars (\$50,000), CONTRACTOR may notify DISTRICT of its objection to the imposition
1841 of Liquidated Damages and its desire to present potentially exculpatory information. Upon
1842 such notice, the DISTRICT Contract Manager and the CONTRACTOR's representative
1843 shall each be afforded an opportunity to present information to the DISTRICT's General
1844 Manager. The DISTRICT's General Manager shall consider the information presented and
1845 notify CONTRACTOR in writing of their finding regarding the alleged performance
1846 deficiency. If the DISTRICT's General Manager finds that the alleged performance
1847 deficiency does warrant imposition of Liquidated Damages of less than fifty thousand
1848 dollars (\$50,000), that finding shall be conclusive. If the DISTRICT's General Manager
1849 finds that the alleged performance deficiency does warrant imposition of Liquidated
1850 Damages of more than fifty thousand dollars (\$50,000), CONTRACTOR shall notify the
1851 DISTRICT in writing within ten (10) Business Days of receipt of the notice of finding from
1852 the DISTRICT's General Manager whether it wishes to appeal the finding to the
1853 DISTRICT's Board of Directors. If CONTRACTOR fails to provide such notice within ten
1854 (10) Business Days, CONTRACTOR shall be determined to have accepted the findings.
1855 Should CONTRACTOR request an appeal to the DISTRICT's Board of Directors, any
1856 payment of Liquidated Damages shall be suspended until such time as the DISTRICT can
1857 arrange for a hearing on the matter with its Board of Directors. Upon such appeal, the
1858 determination of the Board of Directors shall be conclusive. Should CONTRACTOR not
1859 exercise its right to present to the DISTRICT General Manager, and in all other cases, the
1860 decision of DISTRICT Contract Manager shall be final and CONTRACTOR shall not be
1861 subject to, or required to exhaust, any further administrative remedies.

1862 **C. Amount.** DISTRICT may assess Liquidated Damages for each calendar day or event, as
1863 appropriate, that CONTRACTOR is determined to be liable in accordance with this
1864 Agreement in the amounts specified in Exhibit F subject to annual adjustment described
1865 below.

1866 **D. Timing of Payment.** CONTRACTOR shall pay any Liquidated Damages assessed by
1867 DISTRICT within ten (10) Business Days of the date the Liquidated Damages are
1868 assessed. If they are not paid within the ten (10) Business Day period, DISTRICT may
1869 proceed against the performance bond required by the Agreement, order the termination
1870 of the rights or "franchise" granted by this Agreement, or all of the above.

1871 **10.7 EXCUSE FROM PERFORMANCE**

1872 The Parties shall be excused from performing their respective obligations hereunder and from
1873 any obligation to pay Liquidated Damages if they are prevented from so performing by reason of
1874 floods, earthquakes, other acts of nature, domestic war, acts of terrorism, civil insurrection, riots,
1875 and other similar catastrophic events which are beyond the control of and not the fault of the Party
1876 claiming excuse from performance hereunder. In the case of labor unrest or job action directed at
1877 a third party over whom CONTRACTOR has no control, the inability of CONTRACTOR to provide
1878 services in accordance with this Agreement due to the unwillingness or failure of the third party
1879 to: (i) provide reasonable assurance of the safety of CONTRACTOR's employees while providing
1880 such services; or, (ii) make reasonable accommodations with respect to Container placement and
1881 point of Delivery, time of Collection, or other operating circumstances to minimize any
1882 confrontation with pickets or the number of Persons necessary to make Collections shall, to that
1883 limited extent, excuse performance. The foregoing excuse shall be conditioned on
1884 CONTRACTOR's cooperation in performing Collection services at different times and in different
1885 locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage
1886 or slowdown, sickout, picketing, or other concerted job action conducted by the CONTRACTOR's
1887 employees or directed at the CONTRACTOR, or a subsidiary, the CONTRACTOR shall not be
1888 excused from performance. In such case, CONTRACTOR shall continue to provide a reasonably
1889 satisfactory level of performance during the pendency thereof, but the CONTRACTOR shall not
1890 be required to adhere strictly to the specific requirements of this Agreement regarding routes,
1891 Collection times or similar matters; provided, however, that in no event shall more than seven (7)
1892 calendar days elapse between pickups for Residential and Commercial Customers. Any labor
1893 action initiated by CONTRACTOR, including but not limited to a lock-out, shall not be grounds for
1894 any excuse from performance and CONTRACTOR shall perform all obligations under this
1895 Agreement during the pendency of such CONTRACTOR-initiated labor action.

1896 The Party claiming excuse from performance shall, within two (2) calendar days after such Party
1897 has notice of such cause, give the other Party notice of the facts constituting such cause and
1898 asserting its claim to excuse under this Section.

1899 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim
1900 against each other for any damages sustained thereby.

1901 The partial or complete interruption or discontinuance of CONTRACTOR's services caused by
1902 one (1) or more of the events described in this Article shall not constitute a default by
1903 CONTRACTOR under this Agreement. Notwithstanding the foregoing, however, if
1904 CONTRACTOR is excused from performing its obligations hereunder for any of the causes listed
1905 in this Section for a period of thirty (30) calendar days or more, DISTRICT shall nevertheless have
1906 the right, in its sole discretion, to terminate this Agreement by giving ten (10) Business Days'
1907 notice to CONTRACTOR, in which case the provisions of Sections 10.2 and 10.3 shall apply.

1908 **10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

1909 The Parties acknowledge that it is of the utmost importance to DISTRICT and the health and
1910 safety of all those members of the public residing or doing business within DISTRICT who will be
1911 adversely affected by interrupted waste management service, that there be no material
1912 interruption in services provided under this Agreement.

1913 If CONTRACTOR: (i) is the subject of any labor unrest including work stoppage or slowdown,
1914 sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of

1915 DISTRICT to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a
1916 civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation
1917 of an Applicable Law, and DISTRICT believes in good faith that CONTRACTOR's ability to
1918 perform under the Agreement has thereby been placed in substantial jeopardy, DISTRICT may,
1919 at its sole option and in addition to all other remedies it may have, demand from CONTRACTOR
1920 reasonable assurances of timely and proper performance of this Agreement, in such form and
1921 substance as DISTRICT believes in good faith is reasonably necessary in the circumstances to
1922 evidence continued ability to perform under the Agreement. If CONTRACTOR fails or refuses to
1923 provide satisfactory assurances of timely and proper performance in the form and by the date
1924 required by DISTRICT, such failure or refusal shall be an event of default for purposes of Section
1925 10.1.

1926 **10.9 DISPUTE RESOLUTION**

1927 In the event of dispute between the DISTRICT Contract Manager and the CONTRACTOR
1928 regarding the interpretation of or the performance of services under this Agreement which results
1929 in a material impact to the CONTRACTOR's revenue and/or cost of operations, as defined in
1930 Section 5.9, the provisions of Section 10.9 shall apply.

1931 **A. Meet and Confer.** In the event of disputes regarding the performance of any obligation
1932 under this Agreement which results in a material impact to the CONTRACTOR's revenue
1933 and/or cost of operations, the DISTRICT and CONTRACTOR agree that they promptly will
1934 meet and confer to attempt to resolve the matter between themselves.

1935 **B. Mediation.** In the event that disputes which arise under this Agreement cannot be
1936 resolved satisfactorily between the Parties in accordance with Section 10.9.A, the
1937 DISTRICT and CONTRACTOR agree that such disputes shall be submitted to mandatory,
1938 non-binding mediation by a mutually agreed upon independent third party. If the mediator
1939 is unable, within sixty (60) days thereafter, to reach a determination as to the matter in
1940 dispute in a manner acceptable to the Parties hereto, then either Party may refer the
1941 matter to a court of competent jurisdiction.

1942 **C. Period of Time.** Insofar as allowed by Applicable Law, the period of time otherwise
1943 applicable for filing claims against the DISTRICT under Applicable Law shall be tolled
1944 during the period of time for which meet and confer or mediation procedures are pending,
1945 in accordance with Sections 10.9.A and 10.9.B.

1946 **D. Litigation.** Litigation may be commenced only after all reasonable efforts to resolve the
1947 dispute(s) pursuant to Sections 10.9.A, 10.9.B, and 10.9.C have failed and any necessary
1948 claim(s) have been denied.

1949 **ARTICLE 11.** 1950 **REPRESENTATIONS AND WARRANTIES OF** 1951 **THE PARTIES**

1952 The Parties, by acceptance of this Agreement, represents and warrants the conditions presented
1953 in this Article.

1954 **11.1 CONTRACTOR'S CORPORATE STATUS**

1955 CONTRACTOR is a corporation duly organized, validly existing and in good standing under the
1956 laws of the State. It is qualified to transact business in the State and has the power to own its
1957 properties and to carry on its business as now owned and operated and as required by this
1958 Agreement.

1959 **11.2 CONTRACTOR'S CORPORATE AUTHORIZATION**

1960 CONTRACTOR has the authority to enter this Agreement and perform its obligations under this
1961 Agreement. The Board of Directors of CONTRACTOR (or the shareholders, if necessary) has
1962 taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize
1963 the execution of this Agreement. The Person signing this Agreement on behalf of CONTRACTOR
1964 represents and warrants that they have authority to do so. This Agreement constitutes the legal,
1965 valid, and binding obligation of the CONTRACTOR.

1966 **11.3 AGREEMENT WILL NOT CAUSE BREACH**

1967 To the best of CONTRACTOR's and DISTRICT's knowledge after reasonable investigation, the
1968 execution or delivery of this Agreement or the performance by either Party of their obligations
1969 hereunder does not conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii)
1970 any term or condition of any judgment, order, or decree of any court, administrative agency or
1971 other governmental authority, or any agreement or instrument to which CONTRACTOR or
1972 DISTRICT is a party or by which CONTRACTOR or any of its properties or assets are bound, or
1973 constitutes a default hereunder.

1974 **11.4 NO LITIGATION**

1975 To the best of CONTRACTOR's and DISTRICT's knowledge after reasonable investigation, there
1976 is no action, suit, proceeding or investigation, at law or in equity, before or by any court or
1977 governmental authority, commission, board, agency or instrumentality decided, pending or
1978 threatened against either Party wherein an unfavorable decision, ruling or finding, in any single
1979 case or in the aggregate, would:

- 1980 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 1981 B. Adversely affect the validity or enforceability of this Agreement; or,
- 1982 C. Have a material adverse effect on the financial condition of CONTRACTOR, or any surety
1983 or entity guaranteeing CONTRACTOR's performance under this Agreement.

1984 **11.5 NO ADVERSE JUDICIAL DECISIONS**

1985 To the best of CONTRACTOR's and DISTRICT's knowledge after reasonable investigation, there
1986 is no judicial decision that would prohibit this Agreement or subject this Agreement to legal
1987 challenge.

1988 **11.6 NO LEGAL PROHIBITION**

1989 To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law
1990 in effect on the date that Party signed this Agreement that would prohibit the performance of either

1991 their obligations under this Agreement and the transactions contemplated hereby.

1992 **11.7 CONTRACTOR'S ABILITY TO PERFORM**

1993 CONTRACTOR possesses the business, professional, and technical expertise to perform all
1994 services, obligations, and duties as described in and required by this Agreement including all
1995 Exhibits thereto. CONTRACTOR possesses the ability to secure equipment, facility, and
1996 employee resources required to perform its obligations under this Agreement.

1997 **ARTICLE 12.**

1998 **OTHER AGREEMENTS OF THE PARTIES**

1999 **12.1 RELATIONSHIP OF PARTIES**

2000 The Parties intend that CONTRACTOR shall perform the services required by this Agreement as
2001 an independent CONTRACTOR engaged by DISTRICT and neither as an officer nor employee
2002 of DISTRICT, nor as a partner or agent of, or joint venturer with, DISTRICT. No employee or
2003 agent of CONTRACTOR shall be, or shall be deemed to be, an employee or agent of DISTRICT.
2004 CONTRACTOR shall have the exclusive control over the manner and means of performing
2005 services under this Agreement, except as expressly provided herein. CONTRACTOR shall be
2006 solely responsible for the acts and omissions of its officers, employees, Subcontractors and
2007 agents. Neither CONTRACTOR nor its officers, employees, Subcontractors, and agents shall
2008 obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits
2009 which accrue to DISTRICT employees by virtue of their employment with DISTRICT.

2010 **12.2 COMPLIANCE WITH LAW**

2011 CONTRACTOR shall at all times, at its sole cost, comply with all Applicable Laws, permits and
2012 licenses of the United States, the State, County of Alameda, and DISTRICT and with all applicable
2013 regulations promulgated by Federal, State, regional or local administrative and regulatory
2014 agencies, now in force and as they may be enacted, issued or amended during the Term.

2015 **12.3 GOVERNING LAW**

2016 This Agreement shall be governed by, and construed and enforced in accordance with, the laws
2017 of the State.

2018 **12.4 JURISDICTION**

2019 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded
2020 in the courts of Alameda County in the State of California, which shall have exclusive jurisdiction
2021 over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and
2022 will be performed in Alameda County.

2023 **12.5 BINDING ON SUCCESSORS**

2024 The provisions of this Agreement shall inure to the benefit to and be binding on the successors
2025 and permitted assigns of the Parties.

2026 **12.6 ASSIGNMENT**

2027 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this
2028 Agreement to any other Person without the prior written consent of the other Party. Any such
2029 assignment made without the consent of the other Party shall be void and the attempted
2030 assignment shall constitute a material breach of this Agreement.

2031 For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange
2032 or other transfer of substantially all of CONTRACTOR's local, regional, and/or corporate assets
2033 dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer
2034 of ten percent (10%) or more of the local, regional, and/or corporate assets, stock, or ownership
2035 of CONTRACTOR to a Person (other than a transfer of shares in CONTRACTOR by the owner
2036 of such shares to a revocable trust for the benefit of his family or to another owner of shares in
2037 CONTRACTOR) except that no cumulative sale, exchange, or transfer of shares may exceed
2038 twenty percent (20%) during the Term of the Agreement (other than a transfer of shares in
2039 CONTRACTOR by the owner of such shares to a revocable trust for the benefit of his family or to
2040 another owner of shares in CONTRACTOR); (iii) any reorganization, consolidation, merger,
2041 recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
2042 arrangement, liquidation or other transaction to which CONTRACTOR or any of its shareholders
2043 is a party which results in a change of ownership or control of ten percent (10%) or more of the
2044 value or voting rights in the local, regional, and/or corporate stock of CONTRACTOR; (iv)
2045 divestiture of an Affiliate (e.g., trucking company, materials recovery facility, Transfer station, etc.)
2046 used by CONTRACTOR to fulfill its obligations under this Agreement; and, (v) any combination
2047 of the foregoing (whether or not in related or contemporaneous transactions) which has the effect
2048 of any such transfer or change of local, regional, and/or corporate ownership and/or control of
2049 CONTRACTOR. For purposes of this Section, the term "proposed assignee" shall refer to the
2050 proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

2051 CONTRACTOR acknowledges that this Agreement involves rendering a vital service to
2052 DISTRICT's residents and businesses, and that DISTRICT has selected CONTRACTOR to
2053 perform the services specified herein based on: (i) CONTRACTOR's experience, skill, and
2054 reputation for conducting its Recyclable Materials, Organic Materials, and Garbage management
2055 operations in a safe, effective, and responsible fashion, at all times in keeping with applicable
2056 waste management laws, regulations, and good waste management practices; and, (ii)
2057 CONTRACTOR's financial resources on a local, regional, and/or corporate level to maintain the
2058 required equipment and to support its indemnity obligations to DISTRICT under this Agreement.
2059 DISTRICT has relied on each of these factors, among others, in choosing CONTRACTOR to
2060 perform the services to be rendered by CONTRACTOR under this Agreement.

2061 If CONTRACTOR requests DISTRICT's consideration of and consent to an assignment,
2062 DISTRICT may deny or approve such request in its sole and complete discretion. No request by
2063 CONTRACTOR for consent to an assignment need be considered by DISTRICT unless and until
2064 CONTRACTOR has met the following requirements. The DISTRICT may, in its sole discretion,
2065 waive one (1) or more of these requirements.

2066 A. On the date the DISTRICT approves CONTRACTOR's written request for the DISTRICT's
2067 written consent of an assignment, CONTRACTOR shall pay the DISTRICT a transfer fee
2068 in the amount of one percent (1%) of the Gross Receipts for the most-recently completed
2069 Rate Period.

2070 B. CONTRACTOR shall pay DISTRICT its actual expenses for attorneys', consultants',

2071 accountants' fees, staff time, and investigation costs necessary to investigate the
2072 suitability of any proposed assignee, and to review and finalize any documentation
2073 required as a condition for approving any such assignment. Such payment shall be
2074 required regardless of the ultimate determination of the DISTRICT with regard to the
2075 approval or denial of the assignment. Upon submittal of CONTRACTOR's request for
2076 assignment to DISTRICT, CONTRACTOR shall submit an initial deposit of one hundred
2077 thousand dollars (\$100,000) for this purpose.

2078 C. CONTRACTOR shall furnish DISTRICT with audited financial statements of the proposed
2079 assignee's operations for the immediately preceding three (3) operating years.

2080 D. CONTRACTOR shall furnish DISTRICT with satisfactory proof: (i) that the proposed
2081 assignee has at least ten (10) years of Recyclable Materials, Organic Materials, and
2082 Garbage management experience on a scale equal to or exceeding the scale of
2083 operations conducted by CONTRACTOR under this Agreement; (ii) that in the last five (5)
2084 years, the proposed assignee has not suffered any citations or other censure from any
2085 Federal, State or local contractor having jurisdiction over its waste management
2086 operations due to any significant failure to comply with State, Federal or local waste
2087 management laws and that the assignee has provided the DISTRICT with a complete list
2088 of such citations and censures; (iii) that the proposed assignee has at all times conducted
2089 its operations in an environmentally safe and conscientious fashion; (iv) that the proposed
2090 assignee conducts its operations and management practices in accordance with sound
2091 waste management practices in full compliance with all Federal, State, and local laws
2092 regulating the Collection, Transportation, Processing and Disposal of Recyclable
2093 Materials, Organic Materials, and Garbage including Hazardous Waste; and, (v) that any
2094 other information required by DISTRICT demonstrates that the proposed assignee can
2095 fulfill the terms of this Agreement in a timely, safe and effective manner.

2096 E. CONTRACTOR shall provide the DISTRICT with any and all additional records or
2097 documentation which, in the DISTRICT Contract Manager's sole determination, would
2098 facilitate the review of the proposed assignment.

2099 Under no circumstances shall any proposed assignment be considered by DISTRICT if
2100 CONTRACTOR is in default at any time during the period of consideration. If, in the DISTRICT's
2101 sole determination, there is any doubt regarding the compliance of the CONTRACTOR with the
2102 Agreement, DISTRICT may require an audit of the CONTRACTOR's compliance and the costs
2103 of such audit shall be paid by CONTRACTOR in advance of the performance of said audit.

2104 **12.7 NO THIRD PARTY BENEFICIARIES**

2105 This Agreement is not intended to, and will not be construed to, create any right on the part of any
2106 third party to bring an action to enforce any of its terms.

2107 **12.8 WAIVER**

2108 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not
2109 be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent
2110 breach of violation of the same or any other provision. The subsequent acceptance by either Party
2111 of any monies which become due hereunder shall not be deemed to be a waiver of any pre-
2112 existing or concurrent breach or violation by the other Party of any provision of this Agreement.

2113 **12.9 NOTICE PROCEDURES**

2114 All notices, demands, requests, proposals, approvals, consents, and other communications,
2115 which this Agreement requires, authorizes or contemplates, shall be in writing and shall either be
2116 personally delivered to a representative of the Parties at the address below or deposited in the
2117 United States mail, first class postage prepaid, addressed as follows:

2118 If to DISTRICT:

2119 Castro Valley Sanitary District
2120 Attn.: Solid Waste Supervisor
2121 21040 Marshall Street
2122 Castro Valley, CA 94546
2123

2124 If to CONTRACTOR:

2125 Alameda County Industries CV, Inc.
2126 Attn: General Manager
2127 610 Aladdin Ave.
2128 San Leandro, CA 94577
2129

2130 The address to which communications may be delivered may be changed from time to time by a
2131 notice given in accordance with this Section. Notice shall be deemed given on the day it is
2132 personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail.
2133 Either Party may choose to provide email notification to the other Party that notice has been
2134 deposited in the mail, however such email notification shall not constitute official notice.

2135 **12.10 REPRESENTATIVES OF THE PARTIES**

2136 References in this Agreement to the "DISTRICT" shall mean the DISTRICT's elected body and
2137 all actions to be taken by DISTRICT except as provided below. The DISTRICT may delegate, in
2138 writing (which may include email correspondence), authority to the DISTRICT Contract Manager
2139 and/or to other DISTRICT officials and may permit such officials, in turn, to delegate in writing
2140 some or all of such authority to subordinate officers. The CONTRACTOR may rely upon actions
2141 taken by such delegates if they are within the scope of the authority properly delegated to them.

2142 The CONTRACTOR shall, by the Effective Date, designate in writing (which may include email
2143 correspondence) a responsible officer who shall serve as the representative of the
2144 CONTRACTOR in all matters related to the Agreement and shall inform DISTRICT in writing of
2145 such designation and of any limitations upon his or her authority to bind the CONTRACTOR.
2146 DISTRICT may rely upon action taken by such designated representative as actions of the
2147 CONTRACTOR unless they are outside the scope of the authority delegated to him/her by the
2148 CONTRACTOR as communicated to DISTRICT.

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ARTICLE 13.
MISCELLANEOUS AGREEMENTS

13.1 ENTIRE AGREEMENT

This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be construed against any Party on the basis of drafting. This Agreement may be amended only by an agreement in writing, signed by each of the Parties hereto.

13.2 SECTION HEADINGS

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

13.3 REFERENCES TO LAWS

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

13.4 AMENDMENTS

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

13.5 SEVERABILITY

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

13.6 COUNTERPARTS

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

13.7 EXHIBITS

Each of the Exhibits identified as Exhibit "A" through "L" is attached hereto and incorporated herein and made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement shall control. In the event of a conflict between Exhibit G1 and any other Exhibit(s), such other Exhibit(s) shall control.

2181

2182 IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto in Alameda County,
2183 California on the day and year first above written.

2184

2185

2186 CASTRO VALLEY SANITARY DISTRICT

Alameda County Industries CV, Inc.

2187

2188 BY:  _____

BY:  _____

2189
2190 Roland P. Williams, Jr.

NAME: Louie Pellegrini

2191
2192 General Manager

TITLE U-Pres

2193

2194 APPROVED AS TO FORM:

2195  _____

2196 Anthony B. Varni

NAME: _____

2197
2198 Varni, Fraser, Hartwell & Rodgers

TITLE _____

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