



South Bayside Waste Management Authority Request for Proposal for Solid Waste Disposal and Other Material Handling Services



August 10, 2018



HF&H Consultants, LLC

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SOUTHBAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA)
A Joint Powers Authority of 12 Agencies in San Mateo County, California
REQUEST FOR PROPOSALS FOR
SOLID WASTE DISPOSAL AND OTHER MATERIAL HANDLING SERVICES

Proposal Information: The South Bayside Waste Management Authority (SBWMA) is issuing this Request for Proposals (RFP) to request proposals for solid waste disposal services, at a minimum, and, at proposer's option, proposals for other material handling services and land leasing services. Copies of this RFP may be obtained by e-mailing Tracy Swanborn, HF&H Consultants, LLC at the email address listed below.

Ms. Tracy Swanborn, P.E.
HF&H Consultants, LLC
201 N. Civic Drive, Suite 230
Walnut Creek, CA 94596
(707) 246-4803
tracy@hfh-consultants.com

All questions regarding this RFP process should also be directed to Tracy Swanborn, HF&H Consultants, LLC via e-mail.

Proposal Submittal: All proposals must be received by the SBWMA by 3:00 p.m. on Monday, September 24, 2018. Proposals received after this time and date may be rejected. Proposer shall submit their complete proposal in accordance with procedures provided in Section 4.3.3 of the RFP.

Register to Receive Future Correspondence and Announcements: If you are interested in receiving future correspondence or announcements related to the SBWMA RFP process, please contact Tracy Swanborn at HF&H Consultants, LLC (see e-mail address above) and request that your name be placed on the list of interested parties. If you do not register as an interested party by Friday, August 31, 2018, you may not receive future correspondence or announcements related to this RFP process.

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SECTION 1 - INTRODUCTION

The South Bayside Waste Management Authority (SBWMA) is a joint powers authority that was formed in 1982 by twelve public agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo and the West Bay Sanitary District) (collectively, "Member Agencies") in San Mateo County, California. SBWMA is also known as RethinkWaste. Among other responsibilities, the SBWMA contracts for disposal services on behalf of its Member Agencies. The SBWMA issued this Request for Proposal (RFP) to solicit proposals from companies interested in providing solid waste disposal services for municipal solid waste transported for disposal by the SBWMA's transfer station facility operator.

The SBWMA's primary goal for the RFP contractor selection process is to obtain low-cost disposal services for handling of the SBWMA's solid waste for a minimum of 7 to 10 years (depending on proposed rates) with up to two 3-year extensions for a maximum duration of 13 to 16 years. The services are scheduled to commence on January 1, 2020. The SBWMA's solid waste tonnage was approximately 221,000 tons for year ending December 31, 2017. All proposers must provide a proposal for disposal services in accordance with the RFP requirements.

A secondary SBWMA goal is to explore options for enhanced services such as other material handling services, processing services, and land leasing for equipment and materials storage. These additional services may be presented at the proposer's option. While the SBWMA will consider any enhanced services options proposed and the cost-benefit of the options, it may be that no enhanced services are secured through this RFP process.

1.1 RFP Overview

The SBWMA's current agreement for solid waste disposal services with Ox Mountain Landfill expires on December 31, 2019. As a result, the SBWMA needs to identify viable, cost-effective options for future solid waste disposal services and enter into a contract with a company(ies) to provide the services commencing January 1, 2020. The solid waste will be transferred from the SBWMA's transfer station at the Shoreway Environmental Center (Shoreway) in San Carlos, CA. The transfer and transportation services will be performed by the SBWMA's transfer station operator. The SBWMA is accepting proposals from companies that can provide disposal services at a minimum and, as an option, one or more material handling services and/or land leasing services at the disposal site. Proposals that present a partnering or subcontracting arrangement to provide other material handling and land leasing services are acceptable.

The SBWMA anticipates that this contractor procurement process will involve soliciting and evaluating proposals, entering into negotiations with one or more proposers, executing a contract with the selected contractor(s), and commencement of disposal services on January 1, 2020. The Future Agreement for Solid Waste Disposal Services (Future Agreement), which is provided in **Attachment B**, presents the terms and conditions for the contract. The final agreement(s) will be developed during the negotiation period.

The SBWMA's disposal procurement process will include two phases. In the first phase, which is reflected by this RFP, proposers are asked to provide, among other items, a proposal and pricing for landfill disposal services, and, at their option, a proposal for land leasing services and/or other material handling services if such material handling service(s) are currently operational and proposer can commit to providing these services to the SBWMA at the start of the Future Agreement. Proposers will be short-listed based on their

initial proposed disposal rates and the Agency's total cost, including estimated transportation costs to the proposed disposal sites, consideration of the range of other material handling services, and land leasing services offered.

The second phase of the process will be initiated by requesting that the short-listed proposers provide proposals for one or more enhanced material handling services, at their option, that can be provided beyond those considered in Phase 1. It is anticipated that, in Phase 2, proposers may present enhanced material handling and processing services that it is interested in developing in the future and offering to the SBWMA.

Potential service enhancements of interest to the SBWMA include, but are not limited to, the following:

- C&D sorting and recycling services;
- Organics grinding and processing services for green and wood waste;
- Composting or anaerobic digestion of organic waste;
- Gasification of green and wood waste to energy;
- On-site use of dirt and aggregate;
- Biosolids disposal for wastewater treatment biosolids; and,
- Other creative ideas presented by proposers (e.g., back-haul opportunities).

Please note that proposal requirements for the Phase 2 enhanced services will be provided by the SBWMA during the second phase of the procurement. It is anticipated that short-listed firms will be asked to present any diversion or operational enhancements (beyond those requested in Phase 1) and pricing. The evaluation of short-listed proposers during the second phase will consider the evaluation of the Phase 1 offerings as well as evaluation of any Phase 2 enhanced services. In addition, the selection of a preferred proposer(s) will be informed by the results of two negotiating meetings with each short-listed proposer. The SBWMA evaluation/selection committee will identify the preferred proposer(s) for consideration by the SBWMA Board of Directors (Board).

1.2 RFP Schedule

The key activities and completion dates for the RFP process are provided in Table 1. The RFP process is described in detail in Section 4.

Table 1
Schedule for RFP Process

ACTIVITY	COMPLETION DATE*
SBWMA releases RFP	August 10, 2018
Deadline for submittal of written questions	August 31, 2018, 3:00 p.m.
Proposers submit proposals	September 24, 2018, 3:00 p.m.
SBWMA seeks clarification from proposers, as needed, and intends to short-list proposers	October 2018
SBWMA provides Phase 2 request for enhanced services	October 18, 2018
Short-listed proposers submit proposal for enhanced services	November 16, 2018
SBWMA completes evaluation of proposals	December 2018
SBWMA completes negotiations with one or two of the short-listed proposers	December 2018/January 2019
SBWMA presents preferred proposer(s) to the Board for selection	February 28, 2019
SBWMA finalizes negotiations of remaining business terms with the selected proposer(s)	March 31, 2019
Contractor(s) commences services	January 1, 2020

* Note that the SBWMA may modify this schedule as needed.

SECTION 2 - BACKGROUND

Section 2 presents a brief overview of the SBWMA's current collection, transfer, processing, and disposal services, Member Agency diversion levels, and programs and policies that may impact future solid waste tonnages requiring disposal.

2.1 Current Collection, Processing, Transfer, and Disposal Services

Each Member Agency contracts with Recology San Mateo County (Recology) for collection of solid waste, recyclable materials, and organic materials from their residents and businesses. Recology transfers the materials to the Shoreway Environmental Center in San Carlos, which is owned by the SBWMA. Recology's collection services include a wide range of diversion programs for residents and businesses in the SBWMA service area including, but not limited to single-stream recyclables collection, yard trimmings collection, and food scraps collection services. These diversion programs will continue and may be expanded, modified, or replaced over time to comply with State law or to achieve SBWMA or Member Agency goals, which is likely to result in a reduction to the amount of solid waste collected and disposed. A description of Recology services can be found on the company's website at <https://www.recolgy.com/recology-san-mateo-county/>.

The SBWMA arranges for processing, transfer, and disposal services for all materials collected in the SBWMA service area by contracting with several parties (see Table 2). It has a contract with South Bay Recycling (SBR) to operate the Shoreway Environmental Center. SBR's responsibilities include operation of the Shoreway recyclables processing facility, Shoreway transfer facility, and transportation of organic materials and construction and demolition debris from the transfer facility to processing facilities, and transportation of solid waste to the disposal site. In 2017, SBR transported approximately 221,000 tons of solid waste to Ox Mountain landfill for disposal. SBR's monthly and annual reports, which include tonnages of materials handled, processed, and disposed, are available on the SBWMA's website at <http://rethinkwaste.org/about/service-providers/south-bay-recycling>.

Table 2
SBWMA Contracted Services

Services	Contractor
Collection services	Recology San Mateo County
Shoreway Environmental Center operations (including transfer and recyclables processing operations)	South Bay Recycling
Disposal services at Ox Mountain Landfill	Republic Services
Organics processing at Newby Island composting facility	Republic Services
Organics processing at Blossom Valley Organics North Composting	Recology Blossom Valley Organics North Composting
C&D processing at Zanker Road facility	Zanker Road Resource Management

2.2 Shoreway Facility Tonnage Information

Table 3 provides a summary of 2017 tonnage handled at the Shoreway Environmental Center and the amount diverted and disposed.

Table 3
2017 Shoreway Environmental Center Tonnage Data

	Tons	% of Total
Municipal solid waste	221,939	46%
Recyclables from franchise collector	80,813	17%
Recyclables from self-haulers	1,615	0%
Green waste / organics	122,304	26%
Inerts / C&D	51,094	11%
Total	477,765	100%
Waste Disposed	221,939	46%
Material Diverted	255,826	54%
Total	477,765	100%

2.3 Future Impacts on Solid Waste Volumes

The future diversion level and solid waste tonnage quantities will change over the term of the Future Agreement in response to various factors. Factors include, but are not limited to:

1. The effects of the economy;
2. Diversion programs/policies of the SBWMA, Member Agencies, the SBWMA's collection, processing, and transfer services contractors, State, County, others;
3. The number of residents and residential housing units;
4. The number and types of businesses;
5. Participation levels of residents and businesses in various diversion programs;
6. Changes in collection and processing strategies and methods;
7. Rate-setting practices for collection services;
8. Recent and future federal, State, and local regulations;
9. Recycling and organic product market volatility; and,
10. Changes in waste prevention, product design and packaging, technology, and more.

Given the number of factors and the unpredictable nature of each factor, the SBWMA cannot predict the annual solid waste disposal tonnage that will be delivered to the landfill for disposal over the term of the Future Agreement.

The following is a summary of some specific program and policy conditions that may influence future solid waste tonnage levels.

- AB 939, the 1989 State Integrated Waste Management Act, which established a goal for all cities in the State to divert 50% of its waste stream by 2010.
- Construction and demolition recycling requirements adopted by the SBWMA and Member Agencies and requirements of the California Green Building Standards Code (CALGreen);
- Member Agency climate action plans; zero waste initiatives; ordinances that may reduce disposal such as bans on polystyrene to-go containers, straws, disposal of specific materials; and other programs and policies;
- AB 341, which the State passed in 2011, mandating recycling by multi-family and commercial businesses that generate four cubic yards or more of solid waste and setting a state-wide diversion goal of 75%;
- AB 1826, which the State passed in 2014, requiring organics recycling for commercial and multi-family locations; and,
- SB 1383, which the State passed in 2016, requiring a state-wide reduction of organic disposal volumes by 50% by 2020 and by 75% by 2025 and recovery of 20% of edible food by 2025.

SECTION 3 - REQUESTED SERVICES

The SBWMA's primary goal is to secure disposal services for all solid waste collected in its service area that requires disposal. In addition, it is interested in proposals that offer other material handling services and land leasing services. Given these goals, each proposer responding to this RFP is required to propose, at a minimum, disposal services described in Section 3.1. At proposer's option, the proposer may also propose land leasing services and/or other material handling services, which are described in Sections 3.2 and 3.3, respectively.

With regard to contracting for these services, the SBWMA reserves the right to:

- Contract with one or more companies for disposal services by splitting the solid waste tonnage between the disposal facilities;
- Contract with the disposal site provider(s) for one or more of the other material handling services; and,
- Secure land leasing services as part of the agreement for disposal services.

3.1 Disposal Services

The SBWMA is interested in contracting with a company that can provide landfill disposal services over a 7- or 10-year term with up to two 3-year extensions for a maximum duration of 13 to 16 years commencing January 1, 2020. The duration of the initial term will depend on proposed services, proposed rates, and contract terms. The contractor will need to guarantee disposal capacity for the duration of the Future Agreement, including any extension periods. The proposer may present a landfill disposal proposal that relies on an existing landfill site that has available permitted capacity, or may present an approach that relies on a landfill expansion plan. The SBWMA will direct its transfer services contractor to deliver the solid waste it receives from the SBWMA's current franchise collection contractor to the landfill.

As described above, the SBWMA will consider contracting with more than one company for landfill disposal services. In such case, the SBWMA would agree to split the solid waste tonnage between proposers subject to negotiation.

The transfer trailers used by the SBWMA's transfer facility operator require a tipper at the landfill for unloading. The SBWMA requests that the proposer anticipate in its pricing for disposal services the need for this equipment, and the SBWMA tonnages that need to be handled on a daily basis.

It is possible that in the future, no sooner than 5 years from now, the SBWMA may use methods that result in compaction of solid waste at a transfer or processing facility prior to delivery to the landfill ("compacted solid waste"). For this reason, the SBWMA would like to know if the proposed disposal site is currently capable of accepting compacted solid waste and, if not, will it be able to do so on a specified date in the future. In addition, SBWMA would like to know if the proposer would provide a financial benefit to SBWMA for delivery of compacted solid waste.

3.2 Land Leasing Services

The Shoreway Environmental Center provides a location for the operator's storage of equipment, baled recyclable materials, other recyclable commodities, and parking of transfer vehicles and trailers. It also houses the franchise collection contractor's corporation yard for collection vehicle maintenance, vehicle parking, and container and equipment storage. The site is very space constrained. The SBWMA and its contractors may benefit from having access to land at the proposed disposal site to provide for storage and/or parking needs. Proposers are invited, but not obligated, to propose a land leasing option for land at the proposed disposal site. This offer would be a supplement to the disposal proposal, and would not be considered by the SBWMA as a stand-alone service offering.

3.3 Other Material Handling Services

The SBWMA desires proposers to provide "enhanced services" for other material handling and processing that help the agency further its goals of cost effective waste handling and reduced environmental impact. Specifically, the SBWMA seeks to anticipate trends and implement innovative material handling solutions for waste reduction and greenhouse gas mitigation. As described in Section 1.1, the SBWMA is interested in receiving proposals for additional types of material handling and processing service that the proposer can currently provide or may be capable of providing in the future. Table 4 provides examples of the types of handling, processing, and/or disposal services that the SBWMA is interested in exploring.

Table 4
Examples of Other Material Handling Services

Material	Examples Service
Dirt	Receipt and on-site use
Aggregate (primarily delivered to the Shoreway Transfer Facility by commercial self-haul customers)	Receipt and on-site use
Mixed C&D	Receipt, processing, and marketing
Dimension wood waste	Grinding, on-site use, or marketing as mulch product or possible conversion to energy or other commodities
Clean green waste / brush	Grinding, on-site use, or marketing
Biosolids disposal (wastewater treatment biosolids, not mixed with solid waste)	Receipt and disposal
Residential green waste	Composting and marketing
Mixed paper	Processing into non-landfill products
Mixed municipal solid waste	Further processing of solid waste or its residues to divert commodities of value for beneficial use
Organics processing	Processing for possible downstream systems including composting, anaerobic digestion, or other uses
Other services not necessarily listed here	Various processing methods

For the purposes of responding to Phase 1 of the RFP process, proposers are requested to provide a statement of interest and qualifications for providing one or more of the additional services listed in Table 4 or other innovative service enhancements. If any other these enhanced services are currently operational and the proposer can commit to the providing these services to the SBWMA at the start of the Future Agreement, the proposer shall include proposed rates for the service(s). During Phase 2, the short-listed proposers will be requested to present enhanced service options that it can develop and offer to the SBWMA in the future. Note that the SBWMA may be willing to consider a longer term Agreement for enhanced services, if significant capital expenditures are associated with the enhanced services.

3.4 Future Agreement

The SBWMA's proposed Future Agreement is included as **Attachment B**. The scope of the agreement addresses disposal services only. If the SBWMA selects one or more additional services considered in Section 3.3, parties will negotiate the terms and conditions of the additional services and compensation arrangements for inclusion in the Future Agreement. Enhanced services, if desired by the SBWMA, may commence on January 1, 2020 or at a later date, and the term of those services may be different than the term of the disposal services.

SECTION 4 - RFP CONDITIONS AND SUBMITTAL PROCESS

4.1 Rights Reserved by the SBWMA

The SBWMA reserves the right, in its sole discretion, to pursue any or all of the following actions in regard to this RFP process:

- Issue addenda and amend this RFP and proposed terms of the Future Agreement;
- Request additional information and/or clarification from proposers;
- Extend the deadline for submitting proposals;
- Allow for the timely correction of errors and waive minor deviations;
- Withdraw this RFP;
- Reject proposals that do not fully comply with the requirements detailed in this RFP, its attachments, addenda, or clarifications;
- Reject incomplete proposals; proposals containing errors, inconsistencies, false, inaccurate or misleading information; proposals submitted after the deadline; and/or, proposals with other process or content errors or deficiencies;
- Reject a proposal that is given the highest quantitative scoring in the evaluation process (if a scoring process is used) if it is not in the best interest of the SBWMA, its Member Agencies, and/or its residents and businesses;
- Reject any or all proposals or portions of proposals;
- Select one or more proposers for disposal services;
- Select proposer(s) based on a combination of its qualitative and quantitative attributes;
- Select proposer(s) with or without further discussion or negotiation;
- Negotiate changes in the services proposed and/or described in the RFP or to incorporate non-propriety programs proposed by others;
- Negotiate with selected proposer(s) for a later commencement date;
- Issue subsequent RFP(s) or Request(s) for Proposals for the same, similar, or related services at a later date; and,
- Take other actions the SBWMA deems is in the best interest of the SBWMA, its Member Agencies, and/or its residents and businesses.

4.2 General RFP Agreements

This RFP shall not be construed by any party as an agreement of any kind between the SBWMA, Member Agencies, proposer(s), contractor(s), and other parties.

This RFP does not obligate the SBWMA to accept any proposal, negotiate with any proposer, award a Future Agreement(s) for disposal services, other material handling services, land leasing services, or

enhanced services, or proceed with the development of any project or service described in response to this RFP. The SBWMA has no obligation to compensate any proposer for its expense of preparing its RFP and participating in this RFP and contracting process.

The SBWMA shall have the right (but not the obligation) to perform a review of any one, or each, proposer's ability to perform the work required. Each proposer must agree to cooperate with such a review. Such cooperation by proposer shall apply to the verification of the proposer's capability and experience in disposal, material handling, and/or processing services (as applicable to the proposer's proposal) and the permit and regulatory status of the proposed disposal or processing site(s), if proposed, and any other component of work or enhanced service that may be required or proposed under this procurement process.

The SBWMA, or its consultants, may conduct reference checks on proposers that may involve contacting municipalities currently or previously served by proposer, as well as contacting regulatory agencies involved in oversight of proposers' facilities. In addition, the SBWMA and/or its consultants may research proposers' past performance by reviewing litigation history, regulatory actions, highway driving records, and recycling history. The proposer's submission of a proposal shall constitute an agreement to cooperate with the SBWMA's review.

4.3 Proposal Submittal Process

Proposers shall follow the procedures described in Section 4.3 and the procedures included in subsequent clarifications or addendums to this RFP, which are issued by the SBWMA or its consultants. The required content of the proposal is presented in Section 5.

4.3.1 Step One – Register for Correspondence and Announcements

By 3:00 p.m. on August 31, 2018, prospective proposers shall request in writing via email to be placed on the list of interested parties in order to facilitate their receipt of future correspondence and announcements related to this RFP process. Proposer shall send its request via email to SBWMA's consultant:

Ms. Tracy Swanborn, Senior Manager
HF&H Consultants, LLC
201 N. Civic Drive, Suite 230
Walnut Creek, CA 94596
(707) 246-4803
tracy@hfh-consultants.com

4.3.2 Step Two – Submission of Written Questions

The SBWMA directs proposers to submit all questions and requests for information related to this RFP process in writing via email directly to Ms. Swanborn and refrain from contacting SBWMA employees. Therefore, any questions, requests for clarification, or requests for additional information regarding this RFP process must be submitted in writing via email to Ms. Swanborn at the email address listed in Section 4.3.1 on or before 3:00 p.m., August 31, 2018. Written requests for clarifications will be responded to in writing and shared with all interested proposers of record via email.

4.3.3 Step Three – Proposal Submittal

Proposer shall submit the complete proposal by mail, email, or a web-based document-sharing service if the document is bigger than 10MB (e.g., Hightail, DropBox, etc.). The document shall be provided in searchable portable document format (PDF) that is formatted for printing on 8.5- by 11-inch paper. All pages shall be consecutively numbered; although, each section may start with a new page number if preceded with the section number (e.g., Page 2-1 for the first page of Section 2).

As part of its submittal, proposers are required to submit a surety made payable to the “SBWMA” in the amount of twenty thousand dollars (\$20,000) and in the form of a certified check, cashier’s check, or proposal bond. Short-listed proposers that participate in Phase 2 will be required to increase this proposal surety to a total of fifty thousand dollars (\$50,000). The purpose of the surety is to guarantee that the successful proposer will execute all necessary agreement(s) with the SBWMA. If the selected proposer does not execute an agreement(s) within thirty (30) calendar days after receiving notice of its selection, SBWMA shall keep the surety to offset the potential cost associated with the selection of an alternate proposer and any schedule delays. Surety payments will be returned to all proposers no later than thirty (30) calendar days after the SBWMA has executed all necessary agreement(s) with the successful proposer(s) (with the exception of any surety withheld from a selected proposer(s) that does not execute an agreement).

The proposal shall be submitted by 3:00 p.m. on Monday, September 24, 2018. Proposals received after this time and date will be rejected.

If the proposal is submitted by email or web-based document-sharing service, it shall be emailed to the Hilary Gans, SBWMA, with a copy to Tracy Swanborn, HF&H Consultants, at the addresses listed below and the proposer shall be responsible for any failure of the email to be successfully transmitted to the parties in a timely manner. In this case, the surety shall be mailed to Hilary Gans at the SBWMA address listed below.

- Email submittal to: Hilary Gans, Senior Facilities and Contracts Manager, SBWMA hgans@rethinkwaste.org
- Email copy to: Tracy Swanborn, Senior Manager, HF&H Consultants, LLC tracy@hfh-consultants.com

If the proposal is submitted by mail or in person, the proposal shall be delivered to the following address:

Hilary Gans
SBWMA
610 Elm Street, Suite 202
San Carlos, CA 94070
(650) 802-3507

4.3.4 Step Four – Qualification of Proposers and Clarification of Information

The SBWMA, with assistance from its consultants, will be responsible for reviewing all timely proposals received and determining their compliance with this RFP. This initial review may include a review of proposer qualifications, review of regulatory and/or litigation history, and any other investigation required to determine that a respondent is qualified and capable of performing the services. Proposers

may be asked to clarify information contained in their proposal through written communications or to provide supplemental information.

In the event the SBWMA determines a respondent is not qualified, the respondent will be notified of such determination. In this case, they will not have the opportunity to request reconsideration of this determination, will have their proposal returned to them, and will not have their proposal provided to the SBWMA Board (unless the respondent specifically requests otherwise).

4.3.5 Step Five – Evaluation and Short-Listing of Top Proposers

The SBWMA staff and its consultants will conduct an initial evaluation of proposals and present the evaluation to an evaluation/selection committee. For the purpose of determining a short-list of proposers, the initial evaluation will focus on the proposed disposal rates along with SBWMA's estimated cost of transporting materials from Shoreway transfer station to the disposal site. It may also include consideration of the proposed range of other material handling services and land leasing service.

The evaluation/selection committee is anticipated to identify a short list of qualified proposers that will advance to Phase 2 of the procurement process. At this time, each proposer will be notified of whether or not its response will be recommended for this short list.

4.3.6 Step Six – SBWMA Board Update

At SBWMA's option, the SBWMA may present a summary of the short-listed proposals to the SBWMA Board. At this stage of the process, the SBWMA Board may take any number of actions, including those described in Section 4.1.

4.3.7 Step Seven – Commencement of Phase 2 and Contract Negotiations

The SBWMA staff and its consultants will initiate Phase 2 by meeting with the short-listed proposers and then requesting proposals for enhanced services from the short-listed proposers. Upon receipt of the enhanced services proposals, SBWMA staff and its consultants will analyze the proposals. At this time, the SBWMA will initiate negotiations of the Future Agreement, which will include addressing the proposed contract modifications included in each proposer's response to this RFP and key contract terms related to the provision of enhanced services. Such negotiations may involve one or more meetings. Upon the SBWMA's request, proposer(s) shall participate in the meeting(s); review amended contract language for the Future Agreement; and/or provide or draft sample contract language related to the proposed enhanced services.

In addition, Phase 2 of the procurement process may include, but is not necessarily limited to: obtaining additional information regarding the proposers' qualifications, particularly related to enhanced services; modification of proposed rates for other material handling services, land leasing, and/or other enhanced services to reflect refinements, if any, of the proposed services and negotiated terms and conditions of the agreement(s); requests for further data or information from the proposers; and/or negotiation on any other issues, which may need to be resolved prior to the evaluation/selection committee's formation of a recommendation for proposer(s) selection, and before the SBWMA Board can consider final proposer selection and award of one or more agreements.

During this period of time, the SBWMA and its consultants will expand the evaluation of the disposal proposals beyond the initial cost review conducted in Step Four. This evaluation process may include ranking of the proposals using evaluation criteria, although the SBWMA and the evaluation/selection committee are not obligated to rank proposals and may focus on identifying the proposal(s) offering the best overall value. Evaluation criteria may include, but may not necessarily be limited to, criteria described in Section 6. Evaluation of other material handling services, land leasing, and/or other enhanced services proposals will also be conducted at this time.

4.3.8 Step Eight – Contractor Selection and Contract Award

The final proposals, as developed and negotiated during Step Seven, will be presented to the evaluation/selection committee and then to the SBWMA Board for their consideration. The SBWMA anticipates the evaluation/selection committee will make a recommendation of its preferred proposer(s) to the Board. The Board will have the sole discretion to proceed with the selection of one or more service providers, award negotiated agreement(s), direct staff to continue negotiations with one or more proposers, or take any other actions the Board deems to be in the best interest of the SBWMA, its Member Agencies, and residents and businesses.

Each proposer may be given the opportunity to make a presentation of their proposal to the Board during a public meeting.

4.3.9 Schedule

The timeline for the proposal process is summarized in Table 1 in Section 1. The SBWMA may modify the proposal process for various reasons. For example, the process and timeline may be modified depending on the number and nature of the proposals received, which will influence, in particular, how the negotiations and the Phase 2 process will proceed, and how often and when Board input will be sought.

SECTION 5 - PROPOSAL SUBMITTAL REQUIREMENTS

Section 5 includes the required proposal outline and a description of the specific information proposers must include in their proposal.

5.1 Proposal Outline

Proposer shall present its proposal in accordance with the outline provided in Table 5. Items that are not required elements of the proposal are noted as "Optional." At proposer's option, the proposer may include additional information or data on other relevant topics or more detail on the information requested herein that is relevant to the proposal. Any additional information shall be included as attachments to the proposal. **The length of Sections 1 through 3 shall be limited to 12 pages, and "Other Attachments" shall be limited to 10 pages (excluding financial statements). No page limit is specified for Sections 5 to 7.**

**Table 5
Proposal Outline**

i.	Title Page
ii.	Cover Letter
iii.	Table of Contents
1.	Executive Summary
2.	Company Description
	A. Business Structure
	B. Qualifications
	C. Key Personnel
	D. Past Performance Record
	E. Labor Agreements
	F. Financial Information
	G. Experience Modification Factor
3.	Technical Proposal
	A. Disposal Services
	B. Land Leasing Services
	C. Other Material Handling Services
	D. Capacity Guarantee
	E. Emergency Services
4.	Proposal Forms
	A. Rate Proposal Form
	B. Secretary's Certificate
	C. Non-Collusion Affidavit
	D. Iran Contracting Certification Act
5.	Key Terms and Conditions of Future Agreement
6.	Future Agreement with Redline Changes
7.	Financial Statement
Attachment(s)	Additional material (<i>Optional</i>)

5.2 Cover Letter

The cover letter shall identify the legal entity(ies) submitting the proposal and state whether each entity is a sole proprietorship, partnership, corporation, joint venture, or other form of legal entity. In addition, the cover letter may briefly highlight the disposal services and other material handling and land leasing services offered. Lastly, the cover letter shall be signed by the proposer's designated representative(s) authorized to submit the proposal.

5.3 Executive Summary

Proposer shall provide an executive summary to introduce its proposal, briefly summarize the proposed disposal services, other material handling services (if any), and land leasing services, and highlight any unique aspects of its approach. In addition, the executive summary can be used to describe any additional programs, enhancements, or other innovations proposed.

5.4 Company Description

A. Business Structure

Proposer shall:

1. Confirm that proposer is authorized to do business in California;
2. Identify the legal entity(ies) that would execute the Future Agreement and any performance guarantee. State whether each entity is a sole proprietorship, partnership, corporation, joint venture, or other form of legal entity. Describe the relationship of the proposer to the executing entity(ies). If the proposer is a joint venture, describe the circumstances under which the entities have collaborated before;
3. State the number of years the entities have been organized and doing business under this legal structure;
4. Identify other entities with common ownership and/or management; and,
5. Describe all services to be performed by subcontractors or affiliated companies, and identify each subcontractor by full name and principal business address.

B. Qualifications

Provide a brief description of proposer's experience, providing comparable disposal service and material handling services to municipal agencies in California. Include subcontractor's experience as well.

C. Key Personnel

Provide an organization chart for key personnel. At a minimum, key personnel shall include the chief executive officer (CEO), chief financial officer (CFO), president, vice-president, general manager, operations manager, and primary contract manager (e.g., primary liaison with the SBWMA) for the proposed facility, or other personnel with similar titles.

D. Past Performance Record

1. Litigation and Regulatory Actions. Describe past and pending civil, legal, regulatory, and criminal actions (including arrests, indictments, litigation, grand jury investigations, etc.) now, pending, or that have occurred in the past five years against key personnel, proposing entity, its parent company, and all subsidiaries owned by proposing entity.
2. Payment of Fines, Penalties, Settlements, or Damages. Provide a statement disclosing any and all fines, penalties (including liquidated damages or administrative fees), settlements, or damages of any kind paid by proposer, its parent company and subsidiaries, to public agencies in the past five years. For each payment, list the amount the company has paid, the name of the jurisdiction to which damages were paid, and the event(s) which triggered the damages. Identify what personnel and/or policy changes the company made in response to such incidents (e.g., terminated or reassigned employees involved, new process protocols, etc.).

If the proposer is relying on a subcontractor(s) to provide the disposal services and/or other material handling services, the proposal shall include both the proposer's and its subcontractor's responses to the above past performance record information requirements.

E. Labor Arrangements

Proposer shall identify what, if any, collective bargaining agreements represent its, or its subcontractor(s)', labor forces. If so, proposer shall identify the nature of the collective bargaining agreement(s). If proposer or its subcontractor(s) anticipate new labor agreements, proposer shall describe when it or its subcontractor(s) plans to enter into any new collective bargaining agreement(s), the labor organization(s) the proposer or subcontractor(s) will work with, and the nature of the collective bargaining agreement(s).

F. Financial Information

Proposer shall submit the most recently-completed audited financial statements for the legal entity(ies) that would execute the Future Agreement. All such statements are to be prepared in accordance with Generally Accepted Accounting Principles applied on a consistent basis and shall be audited in accordance with Generally Accepted Auditing Standards by an Accountant certified in the State of California and shall include a statement by the chief financial officer (CFO) of the entity(ies) that there has been no material adverse change in such condition or operations as reflected in the submitted balance sheet and income statements since the date on which they were prepared.

The proposer may submit an electronic version of the audited financial statements or may provide a website address linking to audited financial statements if available on the proposer's website. Copies of the statements do not need to be submitted with the proposal if web access is made available.

If the proposer is relying on a subcontractor(s) to provide any of the services, the proposal shall include both the proposer's and its subcontractor's financial information.

G. Experience Modification Rating

Provide documentation or proof of the proposer's worker's compensation experience modification rating.

5.5 Technical Proposal

A. Disposal Services

The proposal shall address the items in this section.

1. Facility. Identify the landfill name, location, owner, and operator. Provide a copy of the Solid Waste Facility Permit.
2. Capacity. State the permitted and remaining capacity of the site and the forecasted closure date of the landfill. Provide the average daily tonnage received over the past year. Provide the Remaining Life Assessment Report, which is typically submitted annually to California Department of Resources Recycling and Recovery (CalRecycle) by each landfill site. Provide a list of contracts with jurisdictions for landfill capacity, the estimated annual tonnage for each, the contract expiration dates, and possible extensions for each.
3. Operating Conditions
 - a) Highlight additional capabilities or unique features, if any, of the operations and maintenance activities of the facility.
 - b) Identify operating hours and days, and specifically indicate if the facility can accept materials seven days per week.
 - c) Address whether the facility currently has a landfill tipper to accommodate the SBWMA tonnages or if additional equipment will be purchased. Include the make, model, and year of the landfill tipper.
 - d) Describe current and/or planned capability (if any) of handling compacted solid waste (e.g., waste compacted prior to delivery to the landfill) and any relevant experience. Note that on the rate proposal form, proposer is requested to identify rates for disposal of compacted solid waste (if SBWMA compacts solid waste in the future).
4. Expansion and/or Permit Modifications. If the capacity to be guaranteed to the SBWMA relies on an expansion of the landfill and/or some type of permit modification, describe the expansion plans and permit modification process, additional capacity to be constructed, schedule for expansion and permitting process, and status of the expansion plan.
5. Closure and Post-Closure. Provide closure and post-closure care costs and financial assurance documents.
6. GHG Management. Provide a description of how on-site greenhouse gas (GHG) emissions are managed. As part of this description, include the total disposal tonnage in place to date; landfill gas (LFG) capture methods, including quantities of methane captured; and, description of how the harvested methane is being used.
7. Regulatory Compliance Summary. Provide a summary of any recent, significant notices of violation, and/or enforcement actions or orders against the site in the past five years and the status of each.
8. Regulatory Compliance Reports. Provide the following regulatory compliance reports for the past five years including:

- a) Quarterly monitoring reports supporting compliance with California Code of Regulations Title 27 (CCR Title 27).
- b) Reports related to compliance with surface emissions regulations established through the New Source Performance Standards (NSPS – federal guidelines), Assembly Bill 32 Landfill Methane Rule (if applicable), other State regulations, and local-level requirements.
- c) Reports regarding compliance with gas collection and control systems (GCCS) such as Operations, Monitoring and Maintenance (OM&M) reports, quarterly reports, semi-annual, and/or annual monitoring reports. These reports typically include equipment monitoring data, GCCS Start-up, Shutdown, and Malfunction (SSM) forms, extraction wells status updates, Destruction or Removal Efficiency test reports, and any other information pertinent to the compliance status of the landfill.
- d) Reports related to compliance with Groundwater Monitoring Standards including quarterly and/or annual reports that identify any contaminants that have impacted the ground water, and if any corrective actions have been implemented.
- e) Reports related to compliance with Storm Water Standards including Storm Water Pollution Prevention Plan (SWPPP), Storm Water Monitoring Plan, and two years of annual reports, which detail inspections and sampling results.
- f) Provide contact names for regulatory agencies that monitor the facility's(ies') compliance with applicable local, State, and federal laws and regulations including name of the regulatory agency, contact person's title, and telephone number.

B. Land Leasing Services

In response to the requested services described in Section 3.2, provide a description of proposer's offer to lease land, if any, for land at the proposed disposal facility. If an offer is proposed, identify the amount of land, current condition of the land, and other information at the proposer's option.

C. Other Material Handling Services

Identify proposer's interest, if any, in providing other material handling services. If proposer is interested in providing one or more enhanced service, provide a description of the other material handling services or innovative services, if any, that responds to the requested services described in Section 3.3. For services that are currently operational, describe the proposed enhanced service; methods used to handle or process the materials; permitted capacity limits (if applicable); residue rates (if applicable); the number of years these services have been performed at the facility; party conducting the operations (i.e., proposer or subcontractor); and, other information at the proposer's option.

For any enhanced service that proposer is offering to develop in the future, provide a brief description of the service. During Phase 2, the SBWMA intends to request additional information on those enhanced services from shortlisted proposers.

If offering to handle biosolids, please describe the capabilities of facility(ies) in terms of handling biosolids that have been mixed with solid waste or not, and specify the minimum and maximum moisture content.

D. Capacity Guarantee

Provide a written commitment guaranteeing capacity (on a daily basis and annual basis) for SBWMA's solid waste throughout the term of the Future Agreement for disposal services and other material handling services, if any are proposed. If the proposed facility(ies) or service(s) is(are) not owned and operated by the proposer, the proposer shall include a letter of commitment from the owner/operator (subcontractor) guaranteeing capacity.

E. Emergency Services

In the event of major accidents, disruptions, or natural calamities, the SBWMA is interested in knowing what plans are in place for (i) the proposed facility(ies) if the facility(ies) is damaged, and (ii) handling disaster materials delivered to the facility(ies) by the SBWMA and surrounding cities.

1. Describe disaster plans if the facility(ies) are damaged.
2. Describe the plan for handling disaster materials if the SBWMA, its Member Agencies, and other surrounding cities deliver disaster materials to the proposed facility(ies).
3. Identify what capabilities, if any, the proposer has to handle disaster materials (including building materials) that would have to be delivered to a Class I disposal facility.

5.6 Rate Proposal

Proposers shall complete the rate proposal form, which is provided in **Attachment A**, to present pricing for disposal services, land leasing services, and other material handling services only if: (i) the proposer has existing capabilities to provide these services; and, (ii) the proposer is able to commit to the providing these services to the SBWMA at the start date of the Agreement.

Pricing for land leasing services and other material handling services should be presented with the assumption that if one or more of these services is selected by the SBWMA, it will be in addition to the solid waste disposal services (and not separately selected and contracted for by the SBWMA).

Additional instructions for the rate proposal are presented in **Attachment A**. Disposal rates shall be proposed based on the terms and conditions of the Future Agreement and shall be binding.

The County of San Mateo has informed the SBWMA that it is considering an amendment to its AB 939 fee policy to expand the scope of its current AB 939 fee of \$9.89/ton to assess the fee on all waste generated in San Mateo County, regardless of the location of disposal site for such materials. If this policy change is adopted by San Mateo County, it will have an impact on proposers offering disposal services at landfill sites outside of the County. To consider the potential impact of the County's AB 939 fee, proposers are requested to reflect the AB 939 fee in the rate proposal forms pursuant to instructions provided in the footnotes of the form.

5.7 Key Terms and Conditions of the Future Agreement

To provide the proposer with a clear understanding of the roles, responsibilities, rights, and obligations of the contractor and the SBWMA, the Future Agreement has been prepared and is included as **Attachment B**. Proposer is required to review the Future Agreement prior to submittal of its proposal to the SBWMA. The SBWMA expects the Future Agreement will be executed by the selected contractor in substantially

the same form as presented in **Attachment B**. This review process allows the proposer to prepare the proposal and costs for services with full consideration of its rights and obligations.

Proposer must describe in detail any proposed exceptions to the RFP and Future Agreement. For each RFP exception, proposer shall identify the exception, explain its concern, and provide alternative language for consideration by the SBWMA. To document the proposer's exceptions to the Future Agreement and proposed alternative language, proposer shall record its exceptions and proposed alternative language directly in an electronic version of the Future Agreement, using "track changes" mode, and include a hard-copy in its proposal clearly displaying any redline/strikeout changes. Proposer shall also complete any information in the Future Agreement that needs to be tailored to the company's proposal such as, but not limited to, the contractor's name, guarantor's name, and the proposed disposal site. Each location in the Future Agreement where proposer-specific information is to be inserted is identified with a note to proposer that provides instructions.

The SBWMA shall reserve the right to determine if the exceptions are acceptable based both on the number and nature of exceptions taken. The exceptions to the Future Agreement will be given significant consideration in the evaluation process. In its sole discretion, the SBWMA may determine whether to negotiate some or all of the proposed exceptions with one or more proposers prior to the final evaluation of the proposals, short-listing, or selection of proposer(s).

Proposer will be deemed to have accepted and agreed to any provisions of the RFP and/or proposed terms and conditions of the Future Agreement that have not been noted as exceptions in the proposal. If the SBWMA chooses to enter into negotiations with a proposer, the noted comments and recommended alternative Future Agreement language will serve as a starting point for discussion. The proposer or selected contractor may not initiate discussion related to Future Agreement language for which no exceptions were noted. The SBWMA may request the proposer to sign the Future Agreement (subject to negotiations) before the SBWMA Board makes the final contractor selection.

The Future Agreement as currently drafted addresses disposal services only. If the SBWMA selects one or more enhanced material handling services and/or land leasing services, the parties will negotiate the terms and conditions of the additional services and compensation arrangements for inclusion in the Future Agreement.

5.8 Other Proposal Forms

Proposers shall follow the instructions below for the following forms.

1. Secretary's Certificate. Each proposer shall complete and submit the Secretary's Certificate, which is provided in **Attachment A**, documenting the designated representative authorized to bind the proposing company.
2. Non-Collusion Affidavit. Each proposer shall review the Non-Collusion Affidavit, which is provided in **Attachment A**. Proposer's signature of its proposal shall also constitute signature of this Non-Collusion Affidavit.
3. Iran Contracting Act Certification. Each proposer shall complete and submit the Iran Contracting Act Certification, which is provided in **Attachment A**. The Iran Contracting Act Certification shall be signed by the representative identified by the Secretary's Certificate.

5.9 Additional Information (Optional)

Additional information or data relevant to the proposal is optional and may be included by a proposer as an attachment(s) to the proposal.

SECTION 6 - PROPOSAL EVALUATION CRITERIA

This Section presents evaluation criteria that the SBWMA, its consultants, the evaluation/selection committee, and/or the Board may use to evaluate and select one or more proposers for contract award. Note that the process for proposal evaluation, negotiations, and contractor selection process is described in Section 4.3. The SBWMA reserves the right to modify this process and the evaluation criteria in any way and at any time during the proposal and contractor selection process.

The SBWMA's objective in evaluating proposals will be determining the proposal(s) that offer the best overall value to the SBWMA, its Member Agencies, and its residents and businesses. For the purpose of determining a short-list of proposers, an initial evaluation of the proposals will be performed with a focus on the proposed disposal rates along with SBWMA's estimated cost of transporting materials from Shoreway transfer station to the disposal sites. It may also include consideration of the proposed range of other material handling services and land leasing services.

Additional evaluation of the short-listed proposals will be conducted. The potential factors that may be considered when evaluating the disposal services, other material handling services, and land leasing proposal include, but are not limited to, the items below. Some or all of these factors may be considered by the SBWMA, its consultants, and/or evaluation/selection committee, and other factors not listed below may also be considered.

- Responsiveness to the RFP
- Company qualifications including, but not limited to:
 - Extent of relevant experience.
 - Financial strength.
 - Reference checks.
 - Past performance record (e.g., litigation history, payment of liquidated damages, etc.).
 - Experience modification factors.
- Disposal site considerations such as, but not limited to:
 - Facility Location and Accessibility - Reasonableness of site location and accessibility for SBWMA transfer vehicles and related cost impacts.
 - Technical Approach – Reasonableness of the approach, equipment, and technology used for disposal services.
 - New Facility Development, Expansion Plans, or Permit Modifications (if applicable) – Reasonableness of any new facility plans, expansion plans, and/or permit modification process and implementation plan. Impact on acceptance of tonnage and costs if the process is delayed.
 - Permitted Capacity – Adequacy of the permitted capacity for the length of the contract, including review of the Solid Waste Facility Permit, Remaining Life Assessment Report, and annual waste acceptance data reported to State or County.
 - Closure/Post-Closure - Adequacy of financial means to responsibly manage and perform closure and 30-year post-closure care requirements.

- Regulatory Compliance and Notice of Violations – Reasonableness of proposer’s regulatory compliance track record and violations for a minimum of the last five years including, but not limited to, compliance with the following:
 - California Code of Regulations Title 27 (CCR Title 27).
 - Surface emissions regulations established through the New Source Performance Standards (NSPS – federal guidelines), Assembly Bill 32 Landfill Methane Rule (if applicable), other State regulations, and local-level requirements.
 - Gas Collection and Control Systems (GCCS) requirements.
 - Groundwater Monitoring Standards.
 - Storm Water Standards.
- Other material handling and enhanced services considerations will include considerations similar to those listed above for the disposal site.
- Proposed disposal rates and rates for handling other materials factoring in SBWMA’s estimated cost of transporting materials from Shoreway transfer station to the proposed facility(ies); proposed land lease rates.
- Acceptance of key terms of the Future Agreement.

Please note that for the purposes of evaluating the proposed rates for disposal services, other material handling services, and land leasing, the SBWMA may develop its own estimation of the future tonnage levels and use its assumptions to compare each proposer’s rate proposal to the others by examining estimated annual costs. In addition, the SBWMA will develop its own estimation of the cost of transporting materials from the Shoreway transfer station to the proposed facility(ies) and factor the estimated transportation cost into its analysis of the overall cost of solid waste disposal.

Attachment A Proposal Forms



ATTACHMENT A: PROPOSAL FORMS

RATE PROPOSAL FORM

A rate proposal form is provided in this attachment for disposal services, other material handling services, and land leasing services. The following considerations shall be reviewed by the proposer and reflected in the proposed rates.

1. **Contractor Component.** When completing the rate proposal form, the “contractor component” shall cover all costs associated with owning, operating, and maintaining the facility. It shall include all costs for day-to-day operations; maintenance; environmental and regulatory monitoring and compliance; and, for landfills, closure and post-closure maintenance, etc.
2. **Government Component.** The “government component” shall reflect all per-ton rates/fees assessed by various governmental or regulatory agencies including the State, local enforcement agency, County, etc. Proposer shall use Section E of the rate proposal form to itemize each of the fees included in the government component of each rate.

As described in Section 5.6, San Mateo County in considering an amendment to its AB 939 fee policy that may result in assessment of the fee on all solid waste tonnage generated in the County and disposed at any landfill site in or outside of the County. To consider the impact of this potential policy change, all proposers are required to include the AB 939 fee in its Rate Proposal Form in accordance with the instructions provided in the notes on the Rate Proposal Form.

3. **Disposal Rate.** When completing the proposed landfill disposal rates, proposer shall complete Section A of the rate proposal form. Proposer shall present a “stand-alone” disposal rate reflecting the pricing if the SBWMA selected the proposer to provide only disposal service and not any other enhanced services. Proposer shall present four disposal rates – (i) a rate that reflects an initial 7-year term with up to two-three year extensions, (ii) a rate that reflects an initial 10-year term with up to two-three year extensions, (iii) a rate that reflects disposal of compacted solid waste with an initial 7-year term with up to two-three year extensions, and, (iv) a rate that reflects disposal of compacted solid waste with an initial 10-year term with up to two-three year extensions,. The SBWMA will use these proposed rates to inform its decision about the duration of the Future Agreement.
4. **Rates for Other Material Handling Services (Optional).** At the proposer’s option, proposer may propose rates for land lease and/or other material handling services for which they have existing capabilities to provide to the SBWMA and can commit to providing to the SBWMA at the start of the Future Agreement. In such case, proposer shall complete Section B of the rate proposal form listing each type of material it proposes to handle and service it will provide along with the proposed per-ton rate (e.g., C&D processing). Proposer shall present rates assuming these other material handling services will be in addition to the SBWMA contracting with the proposer for disposal services. The proposed rates shall reflect any residue disposal costs associated with handling the other materials If a proposer is planning to develop the capabilities to provide land leasing services or other material handling services in the future, proposers, if short listed, will be able to provide detail on the development of these services in Phase 2 of the RFP process.
5. **Land Leasing Services (Optional).** At proposer’s option, proposer may present a square foot price for leasing land at the disposal site and may include a minimum and maximum amount of land available for lease using Section C of the rate proposal form. The pricing shall be based on the

ATTACHMENT A: PROPOSAL FORMS (Cont.)

assumption that the land leasing services will be part of the SBWMA contract for disposal services.

6. **Vehicle Turnaround Time.** In Section D of the rate proposal form, proposer is required to present the average vehicle turnaround time and the maximum vehicle turnaround time at the facility (which is the time measured from the time a vehicle enters the landfill property until it exits that landfill property).

ATTACHMENT A: PROPOSAL FORMS (CONT.)

Rate Proposal (Valid January 1, 2020 through December 31, 2020)

Material	Contractor Component	Government Component (a)	Total Rate	Total Rate with County AB 939 Fees (b)	Maximum Vehicle Turnaround Time (min)	Notes (Optional)
A. Landfill Disposal Rates (\$/ton)						
Solid waste, 7-year initial term	\$0.00	\$0.00	\$0.00	\$0.00	0	
Solid waste, 10-year initial term	\$0.00	\$0.00	\$0.00	\$0.00	0	
Compacted solid waste, 7-year initial	\$0.00	\$0.00	\$0.00	\$0.00	0	
Compacted solid waste, 10-year initial	\$0.00	\$0.00	\$0.00	\$0.00	0	
B. Rates for Other Material Handling Services (\$/ton) (c)						
Specify material/service	Optional	Optional	Optional	Optional	Optional	
Specify material/service	\$0.00	\$0.00	\$0.00	\$0.00	0	
Specify material/service	\$0.00	\$0.00	\$0.00	\$0.00	0	
Specify material/service	\$0.00	\$0.00	\$0.00	\$0.00	0	
Specify material/service	\$0.00	\$0.00	\$0.00	\$0.00	0	
Specify material/service	\$0.00	\$0.00	\$0.00	\$0.00	0	
C. Land Leasing Services			Optional			
Land lease rate (\$/SF)			\$0.00			
Minimum square footage proposed			0			
Maximum square footage proposed			0			
D. Vehicle Turnaround Time			Solid Waste	Compacted Solid Waste	Other Materials (Optional)	
Average vehicle turnaround time (minutes)			0	0	0	
Maximum vehicle turnaround time (minutes)			0	0	0	

(a) For landfills located in San Mateo County, the "Government Component" shall include the San Mateo County AB 939 fee. For landfills outside San Mateo County, the County AB 939 fee shall not be included in the Government Component.

(b) For landfills located in San Mateo County, the "Total Rate with County AB 939 Fees" shall equal the "Total Rate" since the AB 939 fee is included in the Government Component. For landfills located outside San Mateo County, the San Mateo AB 939 fee shall be included in the "Total Rate with County AB 939 fee" column, by adding \$9.89 per ton.

(c) Rates for other material handling services shall only be provided if (i) the proposer has existing capabilities to provide these services; and, (ii) the proposer is able to commit to the providing these services to the SBWMA at the start date of the agreement.

*Excel version of this form is available upon request.

SECRETARY'S CERTIFICATE

**REQUEST FOR PROPOSALS FOR
SOLID WASTE DISPOSAL SERVICES AND OTHER MATERIAL HANDLING SERVICES FOR
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**

I, _____, certify that I am the secretary
(Name of Secretary)
of the corporation named herein; that _____ who signed this
(Name of Person Signing Proposal)
Proposal on behalf of the corporation, was then _____ of
(Title of Person Signing Proposal)
said corporation; that said Proposal is within the scope of its corporate powers and was duly signed for
and on behalf of said corporation by authority of its governing body, as evidenced by the attached true
and correct copy of the _____.
(Name of Corporate Document)

By: _____ (signature)
Name: _____ (printed name)
Title: Secretary
Date: _____

NON-COLLUSION AFFIDAVIT

FOR STATEMENT OF INTEREST FOR
SOLID WASTE DISPOSAL AND OTHER MATERIAL HANDLING SERVICES
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

Proposer's Name _____

Proposer declares under penalty of perjury under the laws of the State of California that this proposal (proposal) is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusive or sham; that said Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from submitting a proposal; that said Proposer has not in any manner directly or indirectly sought by agreement, communication, or conference with anyone to fix the proposal price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost or rate element of such proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in such proposal are true, and further, that said Proposer has not directly or indirectly submitted his proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, or to any other individual except to any person or persons as have a partnership or other financial interest with said Proposer in this general business.

The above Non-Collusion Affidavit is part of the proposal. Signing this proposal on the signature page thereof shall also constitute signature of this Non-Collusion Affidavit.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

CONTRACTOR'S IRAN CONTRACTING CERTIFICATION

Pursuant to Public Contract Code Section 2200 et seq., ("Iran Contracting Act of 2010"), Contractor certifies that:

- (1) Contractor is not identified on the list created by the California Department of General Services ("DGS") pursuant to California Public Contract Code Section 2203(b) as a Person engaging in investment activities in Iran; and
- (2) Contractor is not a financial institution that extends twenty million dollars (\$20,000,000.00) or more in credit to another Person, for 45 days or more, if that Person will use the credit to provide goods or services in the energy sector in Iran and is identified on the DGS list made pursuant to Section 2203(b).

As used herein, "Person" shall mean a "Person" as defined in Public Contract Code Section 2202(e).

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Contractor to this Certification, which is made under the laws of the State of California.

_____ (Company Name)

By: _____ (Signature)

Name: _____ (Printed Name)

Title: _____

Date: _____

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Attachment B Future Disposal Agreement



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AGREEMENT

between the

**SOUTH BAYSIDE WASTE MANAGEMENT
AUTHORITY**

and

[INSERT CONTRACTOR NAME]

for

SOLID WASTE DISPOSAL SERVICES

August 10, 2018

[Note to proposers: The scope of the Agreement addresses disposal services only. If the SBWMA selects one or more enhanced services, parties will negotiate the terms and conditions of the additional services and compensation arrangements for inclusion in the Agreement.]

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137 **AGREEMENT**
138 **BETWEEN THE**
139 **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**
140 **AND**
141 **[INSERT CONTRACTOR NAME]**
142 **FOR**
143 **SOLID WASTE DISPOSAL SERVICES**
144

145 This Agreement is entered into by and between the SOUTH BAYSIDE WASTE MANAGEMENT
146 AUTHORITY (“**Authority**”) and [INSERT CONTRACTOR NAME] (“**Contractor**”) (together, the
147 “**Parties**”) on the Effective Date.

148

149 **RECITALS, DETERMINATIONS, AND FINDINGS**

150
151 This Agreement is entered into with reference to the following facts, circumstances, determinations, and
152 findings made by the Authority Board of Directors:

153
154 **Whereas;** the Member Agencies are responsible for protection of public health and the environment. The
155 Member Agencies are not only authorized but required to provide Solid Waste handling services to their
156 citizens under the provisions of the California Integrated Waste Management Act of 1989 (the "**Act**"),
157 which is set forth in the California Public Resources Code at Section 40000, *et seq.*, including source
158 reduction, recycling, composting activities and the collection, transfer and disposal of solid waste within
159 the Member Agencies’ boundaries subject to solid waste handling jurisdiction, as provided in Section 40057
160 of the Act.

161
162 **Whereas;** the Member Agencies find it in their mutual economic interest to address Solid Waste and
163 recycling issues on a regional level. The Member Agencies use certain regional facilities for Solid Waste
164 transfer and Recyclable Materials processing located in the City of San Carlos, which are part of the San
165 Mateo County Integrated Waste Management Plan, as approved by the California Integrated Waste
166 Management Board. For this purpose, the Member Agencies established the Authority for the purpose of
167 owning, financing, administering, and operating such regional facilities. The Authority was created to
168 provide for the exercise of powers common to the Member Agencies as described in the Joint Exercise of
169 Powers Agreement South Bayside Waste Management Authority.

170
171 **Whereas;** through the Authority and pursuant to the provisions of this Agreement, Authority meets its
172 Member Agencies’ obligations in part by requiring Contractor to provide for Disposal of Solid Waste in
173 accordance with the Act.

174
175 **Whereas;** municipalities like the Member Agencies have generally been held liable under federal superfund
176 laws for costs of cleaning up of hazardous waste sites that accepted Solid Waste generated within
177 municipalities’ jurisdictions. Therefore the Authority is prudent to provide, on behalf of its Member
178 Agencies, for terms and conditions of its Solid Waste Disposal in accordance with this Agreement.
179

180 **Whereas;** pursuant to its police powers, obtaining a long-term commitment for Disposal of Solid Waste
181 generated in the Authority Service Area in accordance with this Agreement is in the best interests of the
182 public health, safety, and well-being of the citizens of the Member Agencies and is fiscally prudent.
183

184 **Whereas;** through enactment of the Act, the State of California also recognizes the important health and
185 safety consideration to long-term planning for local governments adequate Disposal needs. The State
186 requires local governments to make adequate provision for at least 15 years of Solid Waste Disposal
187 capacity to preserve the health, safety, and well-being of the public. The Act also authorizes local
188 governments to enter into exclusive franchise contracts to provide Solid Waste handling services for the
189 health, safety, and well-being of its citizens (California Public Resources Code Section 40059).
190

191 **Whereas;** this Agreement also advances the objectives of the federal government to encourage
192 environmentally sound Solid Waste management (Resource Conservation and Recovery Act of 1976
193 (RCRA), 42, U.S.C. Section 6941 *et. seq.*).
194

195 **Whereas;** the [Insert Disposal Site to Be Used by Contractor] is intended to be the principal Landfill for
196 Solid Waste generated in the Authority Service Area.
197

198 **Whereas;** this Agreement helps the Authority achieve the following goals:
199

200 (1) Reducing rates, securing rate stability over the long term and financial protection from
201 environmental liabilities;
202

203 (2) Establishing service and performance standards to help assure that the Authority meets its
204 obligations, and those of its Member Agencies, under law and protects and preserves the health,
205 safety, and financial assets of its citizens; and,
206

207 (3) Giving Authority tools to monitor Contractor's compliance with service terms, administer Solid
208 Waste management programs, and enforce Authority rights.
209

210 **NOW, THEREFORE,** in consideration of the mutual promises, covenants, guaranties, and conditions
211 contained in this Agreement and for other good and valuable consideration, the Parties agree as follows.
212

213 **ARTICLE 1.** 214 **DEFINITIONS**

215
216 In this Agreement, capitalized words and certain lower case words have the meanings defined in Exhibit
217 1.01, which control in the event of any conflict with the definitions used in the recitals above.
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ARTICLE 2.
TERMS OF AGREEMENT; CONDITION TO EFFECTIVENESS

2.01 EFFECTIVE DATE

This Agreement becomes effective on the Effective Date and the satisfaction of all conditions described in Section 2.04.

2.02 TERM AND EXTENSIONS

The Term of this Agreement commences on January 1, 2020, and expires on December 31, 2026 [or December 31, 2029], unless the Agreement is extended in accordance with this Section or terminated pursuant to Article 7. [Note to proposers: The SBWMA is interested in contracting with a company that can provide landfill disposal services over a 7- or 10-year term. The duration of the term will be determined based on evaluation of proposals and negotiations.]

At the Authority’s sole discretion, the Term of this Agreement may be extended, for up to a total of six (6) years after December 31, [] (i.e., until December 31, []), in one or two three-year (3-year) periods specified by the Authority. If the Authority elects to exercise this option to extend the Term, it shall give written notice of its election to the Contractor, specifying the number of years by which it wishes to extend the Term, one hundred eighty (180) calendar days prior to the expiration date then-existing under this Agreement.

Between the Effective Date and Service Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing services required by this Agreement on the Service Commencement Date.

2.03 SURVIVAL OF CERTAIN PROVISIONS

The following provisions will survive the expiration or termination of this Agreement:

- (1) all representations and warranties;
- (2) all Indemnities;
- (3) obligations to pay any due and payable monetary amounts, or claims for those amounts, including damages, any Authority’s Reimbursement Costs, any Disposal Rates, and payment of any amounts accrued and payable upon termination of the Agreement in accordance with Section 7.02;
- (4) obligations to submit Records and any reports for periods (or portions thereof) concluded prior to the expiration or termination of this Agreement;
- (5) any other rights and obligations of the Parties stated to survive the expiration or termination of this Agreement.

258
259

ARTICLE 3. OBLIGATIONS OF AUTHORITY

260 **3.01 LANDFILL DESIGNATION**

261 **A. Solid Waste.** The Operating Agreement will require that Transfer Company deliver all Solid Waste it
262 transfers and residue remaining after the processing of Recyclable Materials, Plant Materials, or Organic
263 Materials at the Authority's Transfer Station and recycling facility in accordance with the terms of the
264 Operating Agreement to the Landfill and that Transfer Company pay Contractor the Disposal Rates.
265 Transfer Company's compensation under the Operating Agreement will include amounts necessary to pay
266 Disposal Rates.

267
268 **B. Authority.** In accordance with Section 6.1 of the Joint Exercise of Powers Agreement South Bayside
269 Waste Management Authority, each Member Agency will at all times direct the flow of Solid Waste
270 generated in the Member's jurisdiction to those facilities specified by the Authority. Neither Authority nor
271 its Member Agencies are obligated to physically deliver any Solid Waste to the Landfill or pay Contractor
272 any Disposal Rates, except as provided for herein.

273 **3.02 HAZARDOUS MATERIAL PROGRAMS**

274 The Operating Agreement will require that Transfer Company develop and implement a Hazardous Waste
275 screening, identification, and prevention protocol. It will further require that Transfer Company not
276 knowingly deliver Hazardous Waste to the Landfill.

277 **3.03 NO TONNAGE OBLIGATION OR LIMIT ON WASTE PREVENTION**

278 Neither Authority nor the Transfer Company is obligated to deliver any specified quantity of Solid Waste
279 to the Landfill. In order to reduce the amount of Solid Waste delivered to the Landfill, the Authority
280 currently: 1) implements and/or sponsors waste reduction programs; 2) receives at the Transfer Station
281 Recyclable Materials and materials which can be Diverted from Disposal including but not limited to
282 Construction and Demolitions Materials, Organics, mattresses and carpet/padding) and directs these to third
283 parties for processing; and, 3) separates Recyclable Materials and materials which can be Diverted from
284 landfill Disposal from the Solid Waste Delivered to the Transfer Station and directs these materials to third
285 parties for processing. Nothing in this Agreement shall prevent, penalize, or impede in any manner the
286 Authority from continuing and expanding these programs or developing new programs having the goal of
287 reducing the amount of Solid Waste Disposed.

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ARTICLE 4. OBLIGATIONS OF CONTRACTOR

4.01 SCOPE OF DISPOSAL SERVICES

Contractor will receive, accept, and safely and lawfully Dispose of Authority’s Solid Waste at the Landfill in lined cells meeting requirements of Subtitle D of RCRA, if such cells are required in accordance with Applicable Law.

4.02 PERMITS

A. Securing Permits. Contractor will obtain and maintain at Contractor’s sole cost all Permits required under Applicable Law to perform Services and will provide Services in compliance with Permits. Contractor will show Authority proof of Permits and will demonstrate compliance with the terms and conditions of Permits promptly upon request of Authority. In its Annual Report or more frequently, as necessary, Contractor will inform Authority of Contractor’s status of securing the issuance, revision, modification, extension, or renewal of Permits, including the costs of securing them or complying with their terms. Promptly upon Authority direction, Contractor will provide the Authority with copies of Permits and any applications or other correspondence that the Contractor submits in connection with securing Permits.

B. Complying with Permits. Contractor will comply with all Permits, including any mitigation measures related to the operation and maintenance of the Landfill. Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

4.03 LANDFILL DISPOSAL SPECIFICATIONS

Contractor will provide Disposal Services at the Landfill in accordance with the Service standards described in Section 4.19 and the following Service specifications:

- (1) Operating, managing, and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement, and compaction (if necessary) of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;
- (2) Providing, operating, and maintaining of a landfill tipper for the unloading of Solid Waste or other materials delivered to the Landfill by the Transfer Company.
- (3) Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, closure, post-closure, and environmental monitoring;
- (4) Operating, maintaining, and managing leachate and landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements;
- (5) Accepting delivery of Authority’s Solid Waste, subject to the limitations of Section 4.05;

- 330 (6) Operating and maintaining the scale house and scale system and weighing Authority's Solid Waste in
331 accordance with Section 4.9;
332
333 (7) Directing on-site traffic to appropriate unloading areas in accordance with Section 4.08 and providing
334 a safe working environment for Landfill users, visitors and employees, including in accordance with
335 Sections 4.10 and 4.11; and,
336
337 (8) Safely managing the Solid Waste accepted at the Landfill, including in accordance with Section 4.11.

338 **4.04 OWNERSHIP OF AUTHORITY'S SOLID WASTE**

339 A. **General.** Once Authority's Solid Waste is delivered to the Landfill and received and accepted by
340 Contractor, ownership and the right to possession of Authority's Solid Waste will transfer directly from the
341 Person delivering Authority's Solid Waste to Contractor. Contractor may retain, recycle, process, dispose
342 of, and otherwise use Authority's Solid Waste in any lawful fashion or for any lawful purpose. Both
343 benefits and liabilities resulting from ownership and possession will accrue to Contractor with the exception
344 of carbon offset credits pursuant to Section 4.04.B.
345

346 Throughout the Term, the Member Agencies shall direct their Solid Waste to the Transfer Station and the
347 Authority will name [Insert Disposal Site to Be Used by Contractor] to be the defined "Landfill" where
348 Transfer Company must deliver that Solid Waste it transfers and transports in accordance with the terms of
349 the Authority's agreement with Transfer Company, thereby designating the Landfill as the facility to be
350 utilized for disposal of that Solid Waste. Authority may obtain ownership or possession of Authority's Solid
351 Waste only in the event of a default of this Agreement as described in Section 7.01 upon Notice of its intent
352 to do so; however, nothing in this Agreement will be construed as giving rise to any inference that Authority
353 ownership modifies Authority's obligations in Section 3.01.A or that Authority has ownership or possession
354 of that Solid Waste unless Authority has given that Notice to Contractor.
355

356 B. **Carbon Offset Credit.** For purposes of this Section, "Environmental Benefits" are carbon offset credits,
357 Renewable Energy Certificates (RECS), Renewable Identification Numbers (RINs), greenhouse gas
358 emission reduction credits, and other government-issued environmental, energy, or transportation related
359 credits. Environmental Benefits do not include byproducts of waste material, such as landfill gas, processed
360 landfill gas, fuel, electricity, compost, or recyclable material if Contractor is benefiting from such processes
361 prior to the Effective Date.
362

363 "Applicable Environmental Benefits" are defined for purposes of this Section as Environmental Benefits
364 that:

- 365 1. Directly and exclusively result from Contractor investments planned and made after the Effective
366 Date of this Agreement;
- 367 2. Are not related to the use of transportation fuel or vehicles using the fuel;
- 368 3. Are received by Contractor during the Term of this Agreement; and
- 369 4. Are based on (i) the relative convertible Tonnage of Authority's Solid Waste Delivered to the
370 Landfill in relation to all other convertible Tons received at the Landfill, and (ii) residency period
371 of Authority's Solid Waste within the Landfill required before such material results in
372 Environmental Benefits.
373

374 Contractor shall notify Authority within ninety (90) calendar days of learning that it has or will receive
375 Applicable Environmental Benefits. The Parties shall meet and confer to determine a fair Authority share
376 of profits generated solely from the Applicable Environmental Benefits after Contractor is paid its margins
377 and return on capital investment.

378 **4.05 REJECTION OF UNPERMITTED WASTE**

379 **A. Inspection.** Contractor will use Standard Industry Practices to detect and reject Unpermitted Waste in
380 a uniform and non-discriminatory manner and will not knowingly accept Unpermitted Waste at the Landfill.
381 Contractor will comply with the inspection procedure contained in its Permit requirements. Contractor will
382 promptly modify that procedure to reflect any changes in Permits or Applicable Law.

383
384 **B. Unpermitted Wastes Handling and Costs.** Contractor will arrange for or provide handling,
385 transportation, and delivery to a recycling, incineration, or a disposal facility permitted in accordance with
386 Applicable Law of all Unpermitted Wastes detected at the Landfill. Contractor is solely responsible for
387 making those arrangements or provisions and all costs thereof.

388
389 **C. Remedies for Rejected Materials.** If Unpermitted Waste is delivered to the Landfill, Contractor will
390 be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that Unpermitted
391 Waste to the Landfill. If Contractor identifies Unpermitted Waste delivered by Transfer Company, the
392 Authority's agreement with the Transfer Company will require the Transfer Company to collect, transport,
393 and dispose of that Unpermitted Waste and/or remediate any contamination resulting there from at Transfer
394 Company's expense, but Contractor may not require the Authority to take those actions or pay those costs.
395 Nothing in this Agreement will excuse the Contractor from the responsibility of handling Unpermitted
396 Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that
397 Unpermitted Waste in accordance with Applicable Law.

398
399 **D. Notification.** If the Contractor rejects Unpermitted Waste delivered by the Transfer Company,
400 Contractor will immediately notify the Authority verbally and then follow verbal notifications with Notice
401 identifying the date and time of occurrence; material type; material weight or volume; characterization of
402 material; the Contractor's reason for rejection of the delivered material; and the vehicle that delivered the
403 material.

404 **4.06 DAYS AND HOURS OF OPERATION**

405 Contractor will operate the Landfill for the receipt of Authority's Solid Waste in accordance with the days
406 and hours of operation set forth in Permits. As of the Effective Date, permitted hours of the Landfill allow
407 for the Transfer Company to deliver Solid Waste Monday through Saturday. At a minimum, Contractor
408 will accept at the Landfill all Authority's Solid Waste Monday through Friday from 4:00 a.m. to 4:00 p.m.
409 and Saturday from 4:00 a.m. to 1:30 p.m., except for Holidays when the Landfill does not need to accept
410 Authority's Solid Waste. If a Holiday occurs on a weekday (e.g., Monday through Friday), Contractor shall
411 operate the Landfill to receive Authority's Solid Waste from 4:00 a.m. to 4:00 p.m. on the Saturday
412 immediately following the Holiday. While Contractor may increase these hours, Contractor may not reduce
413 the hours or total number of hours for acceptance of Authority's Solid Waste without the concurrence of
414 the Authority and Transfer Company unless reductions are required by a change in a Permit subsequent to
415 the Effective Date.

416 **4.07 EQUIPMENT AND SUPPLIES**

417 Contractor will provide landfill tipper, rolling stock, stationary equipment, material storage containers,
418 spare parts, maintenance supplies, and other consumables as appropriate and necessary to operate the
419 Landfill and provide Services. Contractor will properly protect the equipment and place it in the charge of
420 competent operators. Contractor will repair and maintain all equipment at its own cost and expense.

421

422 The Transfer Company will deliver Solid Waste in transfer trailers that require a mechanical landfill tipper
423 to empty the contents at the Landfill receiving area. Contractor will provide, operate, and maintain one or
424 more landfill tippers that are capable of receiving and unloading all of the Authority’s Solid Waste on a
425 daily basis.

426 **4.08 TRAFFIC CONTROL AND DIRECTION**

427 Contractor will construct and maintain all roads required to transport Authority’s Solid Waste from the
428 Landfill site entrance to scale house and to the actual point of unloading at the Landfill. Contractor will
429 direct on-site traffic to appropriate unloading areas and provide a safe working environment for Landfill
430 users, visitors, and employees. Contractor will provide necessary signs and personnel to assist drivers to
431 proper unloading areas. Contractor will maintain all signs at the Landfill in a clean and readable condition.
432 The Contractor will provide and maintain signs for the convenience of vehicles using the Landfill and to
433 facilitate safe and efficient traffic flow at the Landfill.

434
435 Contractor will operate the Landfill so that all Transfer Company vehicles are processed, unloaded, and
436 exited from the facility within the Maximum Vehicle Turnaround Time. If a Transfer Company delivery
437 vehicle spend more than 10 minutes unloading, Contractor may add one minute for every minute in excess
438 of the 10 minutes to the Maximum Vehicle Turnaround Time for that individual event, evidenced to
439 satisfaction of Authority. If Contractor fails to meet the Maximum Vehicle Turnaround Time within the
440 constraints of the Landfill’s Permit related to vehicles exiting landfill, it will pay liquidated damages in
441 accordance with Section 8.20 equal to base amount of \$100.00 in Rate Period One (2020) for each Transfer
442 Company vehicle that is unable to depart from the Landfill within the Maximum Vehicle Turnaround Time
443 plus \$3.00 in Rate Period One (2020) for every minute in excess of the Maximum Vehicle Turnaround
444 Time. The base amount of the liquidated damage shall increase by \$5.00 per year (e.g., the amount will be
445 \$105.00 for Rate Period Two (2021), \$110.00 for Rate Period Three (2022), etc.) and the additional per-
446 minute amount shall increase by \$0.15 per minute (e.g., the amount will be \$3.15 for Rate Period Two
447 (2021), \$3.30 for Rate Period Three (2022), etc.).

448 **4.09 SCALE OPERATION**

449 **A. Maintenance and Operation.** Contractor will maintain at least two (2) State-certified motor vehicle
450 scales at the Landfill in accordance with Applicable Law. Contractor will link all scales to a centralized
451 computer recording and billing system that will be compatible with Contractor’s systems and account for
452 tracking all incoming and outgoing materials. Contractor will operate those scales during Landfill receiving
453 hours established in Section 4.06. Contractor will provide Authority with access to weighing information
454 at all times and copies thereof on the next Working Day following Authority’s request therefore.

455
456 **B. Vehicle Tare Weights.** When Transfer Company places new vehicles into service, Contractor will
457 promptly weigh the new vehicle and determine its unloaded (“tare”) weight(s). Contractor will record tare
458 weight, hauler name, and vehicle identification number. Within 10 Working Days of weighing, Contractor
459 will provide the Authority and Transfer Company with a report listing vehicle tare weight information.
460 Contractor will have the right to request re-determination of tare weights of vehicles twice each Calendar
461 Year. If there is reasonable suspicion or evidence that tare weights are not accurate, Transfer Company
462 may request re-determination of tare weights, in which case Contractor will promptly re-determine tare
463 weights for requested vehicles up to 4 times per Calendar Year. Contractor may update tare weights (at its
464 own initiative) more frequently.

465
466 **C. Substitute Scales.** If any scales are inoperable, being tested, or otherwise unavailable, Contractor will
467 use Reasonable Business Efforts to weigh vehicles on the remaining operating scales. To the extent that

468 all the scales are inoperable, being tested, or otherwise unavailable, Contractor will substitute portable
469 scales until the permanent scales are replaced or repaired. Contractor will arrange for any inoperable scale
470 to be repaired as soon as possible and, in any event, within 72 hours (excluding Holidays) of the failure of
471 the permanent scale. If repairs to the permanent scale are projected to take more than 12 hours, Contractor
472 will immediately obtain a temporary substitute scales(s).

473
474 **D. Estimates.** Pending substitution of portable scales or during power outages, Contractor will estimate
475 the Tonnage of Authority's Solid Waste delivered to the Landfill by utilizing the arithmetic average of each
476 vehicle's recorded Tons of Solid Waste delivered on its preceding three (3) deliveries, on the same day of
477 the week, to the Landfill.

478
479 All information required by Section 4.09.G will continue to be recorded for each delivery of Solid Waste
480 to the Landfill and each Transported load of Solid Waste during any period the scales are out of service.

481
482 **E. Testing.** Contractor will test and calibrate all scales in accordance with Applicable Law, but at least
483 every 12 months. Upon Authority request, Contractor will promptly provide the Authority with copies of
484 test results. Contractor will further test and calibrate any or all scales within three (3) Working Days of
485 Authority direction. If test results indicate that the scale or scales complied with Applicable Law, the
486 Authority will reimburse Contractor the Direct Costs of the tests. If the test results indicate that the scale
487 or scales did not comply with Applicable Law, Contractor will bear the costs thereof and Contractor will at
488 its own cost adjust and correct, consistent with the results of that test, all weight measurements recorded
489 and Disposal Rates calculated, charged and paid, as the case may be, from the date of Authority's direction.

490
491 **F. Weighing Standards and Procedures.** Contractor will use the Landfill's entry scale house(s) to weigh
492 vehicles and charge Disposal Rates. Contractor scale house personnel will be responsible for inspecting
493 the Solid Waste delivered to the Landfill. Contractor will charge Transfer Company the Disposal Rates
494 based on the Tonnage of Authority's Solid Waste the Transfer Company delivers to the Landfill. Contractor
495 will weigh and record inbound weights of all Transfer Company's vehicles when the vehicles arrive at the
496 Landfill and weigh and record outbound weights of vehicles for which Contractor does not maintain tare
497 weight information. Contractor will provide each driver a receipt showing the date, time, and quantity of
498 Authority's Solid Waste that the vehicle delivered to the Landfill and the Disposal Rate charged therefore.

499
500 **G. Records.** Contractor will maintain scale records and reports that provide information including date of
501 receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number,
502 jurisdiction of origin of materials received, type of material, hauler identification and/or classification, type,
503 weight, and destination of material (such as, with respect to a transfer station, to a landfill or material
504 recovery facility operations).

505 **4.10 PERSONNEL**

506 Contractor will engage and train qualified and competent employees, including managerial, supervisory,
507 clerical, maintenance, and operating personnel, in numbers necessary and sufficient for operation of the
508 Landfill and to perform Services.

509 **4.11 SAFETY**

510 The Contractor will conduct operations of Landfill in a safe manner, in accordance with Applicable Law
511 and insurance requirements provided in Article 6.

512 **4.12 ALTERNATIVE LANDFILL**

513 **A. Alternative Landfill for Reasons other than Uncontrollable Circumstances.** If Contractor does not
514 Dispose of Authority's Solid Waste at the Landfill for reasons other than Uncontrollable Circumstances,
515 then following Authority approval given in Authority's sole discretion, Contractor will (i) accept and
516 Dispose of Authority's Solid Waste at another landfill owned by it or an Affiliate at a price not to exceed
517 the Disposal Rate, including any additional transportation costs incurred by Transfer Company in delivering
518 Authority's Solid Waste to the other landfill, or (ii) will arrange for Authority's Solid Waste to be Disposed
519 of at another landfill not Owned by it or an Affiliate, in which case Contractor will pay any difference in
520 the fees charged at that Disposal location plus any additional transportation costs incurred by Transfer
521 Company in delivering Solid Waste to the other Transfer or Landfill, and the disposal fee thereat.

522
523 **B. Alternative Landfill for Uncontrollable Circumstances.** If Contractor does not Dispose of Authority's
524 Solid Waste at the Landfill due to Uncontrollable Circumstances, then promptly upon Authority direction
525 Contractor will, to the extent it is legally able to do so in accordance with Applicable Law, accept and
526 Dispose of Solid Waste at another landfill owned by it or an Affiliate at a price not to exceed the Disposal
527 Rate in effect under this Agreement. Contractor is not obligated to deduct from the Disposal Rate any
528 additional transportation costs incurred by Transfer Company in delivering Authority's Solid Waste to the
529 other landfill. If Authority does not so direct Contractor, Authority may in its sole discretion terminate this
530 Agreement as provided in accordance with Section 7.02.

531 **4.13 INVOICING AND MONTHLY TONNAGE REPORT**

532 On or before the 15th of each month, Contractor will invoice or otherwise charge the Authority in amounts
533 equal to the then-current Disposal Rate pursuant to Sections 5.02 and 5.04 multiplied by Tonnages of
534 Authority's Solid Waste delivered by the Transfer Company to the Landfill during the previous month.
535 Contractor will simultaneously provide the Transfer Company with a copy of that invoice. Invoices will
536 be in a form satisfactory to Authority. All undisputed amounts shall be payable by the Authority within 30
537 days of receipt of the invoice. For example, for Disposal Services provided in July, Contractor will invoice
538 the Authority on or before August 15 and payment will be due and payable by the Authority on or before
539 September 15. The Authority shall, within fifteen (15) days of receipt of invoice, identify any disputed
540 charges and communicate these to Contractor and Transfer Company. Contractor may deliver to Authority,
541 with a copy to Transfer Company, a notice of late payment for a given monthly invoice thirty-five (35)
542 calendar days after the date of generation of the invoice. Contractor's invoices shall be deemed delinquent
543 if not paid within five (5) calendar days of the date of the notice of late payment. Thereafter, the delinquent
544 invoice shall bear interest on the unpaid balance at a rate not to exceed one and one-third percent (1 1/3%)
545 per month.

546
547 Along with its invoice, Contractor shall provide a monthly report to the Authority presenting daily tonnage
548 received from Transfer Company by material type.

549
550 Contractor shall separately invoice Member Agencies for payment of any Solid Waste delivered to the
551 Landfill by employees of the Member Agencies.

552 **4.14 ANNUAL REPORT OF LANDFILL ACTIVITY**

553 **A. General.** Contractor will submit an Annual Report of Landfill Activity described in this Section no later
554 than forty-five (45) calendar days after the end of each Rate Period. Authority shall have the right to
555 inspect all documents upon which the representations contained in said report are based. If Contractor does
556 not submit the Annual Report on the due date, it will pay to the Authority liquidated damages equal to

557 \$500.00 in Rate Period One (2020) for each day it is late in accordance with Section 8.20. The amount of
558 the liquidated damage shall increase by \$25.00 per year (e.g., the amount will be \$525.00 in Rate Period
559 Two (2021), \$550.00 for Rate Period Three (2022), etc.).
560

561 **B. Report Format.** Contractor shall propose report formats for review and approval by the Authority.
562 Authority's approval shall not be unreasonably withheld. The Authority's Contract Manager may, from
563 time to time during the Term, review and request changes to Contractor's report formats and content, and
564 Contractor shall not unreasonably deny such requests.
565

566 Contractor shall submit (via mail and/or e-mail at the Authority's option) all reports to the Authority's
567 Contract Manager.
568

569 The Authority reserves the right to require Contractor to provide additional reports or documents as
570 Authority Contract Manager reasonably determines to be required for the administration of this Agreement
571 or compliance with Applicable Law.
572

573 **C. Report Content.** Annual reports shall, at a minimum, include the following:
574

- 575 A. Total number of vehicle loads Delivered by Transfer Company and Member Agency vehicles to
576 the Landfill listed separated for Transfer Company and Member Agency for each month in the
577 Rate Period and in total for the most-recently-completed Rate Period.
- 578 B. Totals Tons for all vehicle loads Delivered by Delivered by Transfer Company and Member
579 Agency vehicles to the Landfill listed separated for Transfer Company and Member Agency for
580 each month in the Rate Period and in total for the most-recently-completed Rate Period.
- 581 C. Average Tons per vehicle load Delivered by Transfer Company to the Landfill for the most-
582 recently-completed Rate Period.
- 583 D. Date, time, route number, Transfer Company and Member Agency truck number, and reason for
584 Contractor rejection of any Delivered vehicle loads for each month in the Rate Period and in total
585 for the Rate Period.
- 586 E. Annual tonnage of Solid Waste Disposed by person delivery Solid Waste that is not generated in
587 the Authority Service Area.
- 588 F. Proof Contractor paid all governmental fees and taxes in accordance with Sections 5.06 and 5.07.
- 589 G. List of any Violations received during the Rate Period.
- 590 H. Other relevant information including, but not limited to, a description of any advances in
591 environmental mitigation measures, any advanced technologies utilized in the course of business,
592 any pilot programs which test advanced technologies; report on any recent, pending, or planned
593 changes in Landfill permits..

594 **4.15 DUE DILIGENCE**

595 Contractor acknowledges that waste management is a public health and safety concern. It agrees that it will
596 exercise due diligence in performing Service.

597 **4.16 CLOSURE AND POST-CLOSURE OF LANDFILL**

598 Contractor will safely operate, maintain, and manage the Landfill in compliance with Applicable Law not
599 only during the Term, but also thereafter until and during the Landfill Closure and Post-Closure period(s)
600 (including fulfillment of State funding requirements). Contractor's compliance obligations include
601 compliance with the Closure/Post-Closure requirements of California's Department of Resources Recycling
602 and Recovery (CalRecycle) throughout the term of this Agreement and through the required federal, State,

603 or local Post-Closure period. Contractor is solely responsible, operationally and financially, for: (i) the
604 appropriate Closure and Post-Closure activities of the Landfill; and, (ii) the establishment and funding of
605 any reserve funds required by Applicable Law for the purposes of providing funds for the payment of costs
606 of Closure of the Landfill (or any cell within the Landfill) or Post-Closure activities relating to the Landfill.
607 Contractor will not hold the Authority, the Member Agencies, or the Transfer Company responsible for
608 paying any deficiencies in required reserves. In addition, Contractor will not hold the Authority, Member
609 Agencies, or the Transfer Company responsible for making any payments if actual Closure and Post-
610 Closure costs relating to the Landfill exceed the amounts reserved by the Contractor for that purposes. This
611 obligation survives expiration or termination of the Agreement.

612 **4.17 RIGHT TO ENTER FACILITY AND OBSERVE OPERATIONS**

613 The Authority and its designated representative(s) may enter, observe, and inspect the Landfill at any time
614 during Landfill operations; conduct studies or surveys of the Landfill; and meet with the Landfill
615 manager(s) or his or her representatives at any time, provided that the Authority and its representatives
616 comply with Contractor's reasonable safety and security rules and do not interfere with the work of the
617 Contractor or its subcontractors. However, if the Contractor Representative named in Exhibit 8.10 or
618 Landfill manager is not at the Landfill when the Authority or its designated representative(s) visit without
619 prior announcement, Contractor may limit the visit of the Authority or its designated representative to
620 portions of the Landfill that are open for the public and others delivering materials to the Landfill. In that
621 event, Contractor will arrange for Authority or its designated representative(s) to return for a visit of the
622 complete Landfill within 24 hours of the Authority's visit. Upon Authority direction, Contractor will make
623 personnel available to accompany Authority or its designated representative(s) employees on inspections.
624 Contractor will ensure that its employees cooperate with the Authority and respond to the Authority's
625 reasonable inquiries.

626 **4.18 PROVISION OF EMERGENCY SERVICES**

627 Subject to permit restrictions, Contractor will provide emergency services, as set forth in this Section, at
628 the Authority's request in the event of major accidents, disruptions, or natural calamities. Contractor will
629 provide emergency services within 24 hours of Authority oral notice followed by Notice or as soon
630 thereafter as is reasonably practical in light of the circumstances. Emergency services that exceed the
631 Contractor's obligations under this Agreement include extending facility receiving hours and increasing the
632 types and quantities of permitted materials accepted at the Landfill. Authority shall pay Contractor for
633 emergency services at the Disposal Rates unless the type(s) of emergency services are different than the
634 services covered by the Disposal Rates. In such case, the Contractor will be paid its Direct Costs excluding
635 indirect costs (which include, but are not limited to, general and administrative costs, regional and corporate
636 charges, allocated costs) of providing emergency services following submission of an invoice therefore in
637 form and content sufficient to determine and corroborate those Direct Costs. Authority shall review and
638 approve the Direct Costs in accordance with Section 4.20.C. As noted in said Section, the Authority may
639 request the assistance of an independent third party to review the Direct Costs. Contractor will promptly
640 provide operating and business records requested by the Authority that are reasonably required to verify
641 the reasonableness and accuracy of the impacts associated with provision of the emergency services.
642 Contractor will fully cooperate with the Authority's request and provide Authority and its agent(s) copies
643 of or access to Contractor's records.

644 **4.19 SERVICE STANDARDS**

645 Contractor will perform Services in accordance with Applicable Law, Standard Industry Practice, and
646 specification and other requirements of this Agreement.

647 **4.20 MODIFICATIONS TO SCOPE OF SERVICE**

648 **A. General.** Authority may direct Contractor to perform additional services (including, but not limited to,
649 the performance of additional material Recovery activities) or the Contractor may propose additional
650 services. Disposal Rates will be increased or decreased, in accordance with this Section, to give effect to
651 these adjustments.

652
653 **B. Proposal for Modification of Services.** Within 60 days of Authority request for a proposal or at any
654 time Contractor chooses to propose additional services, Contractor will present its proposal to modify
655 existing services. At a minimum, the proposal will contain a completed description of the following:

- 656
657 (1) Methodology to be employed (changes to equipment, manpower, staffing, etc.).
658 (2) Equipment to be utilized (equipment number, types, capacity, age, etc.)
659 (3) Labor requirements (changes in number of employees by classification).
660 (4) Provision for program publicity/education/marketing (if appropriate).
661 (5) Estimate of the impact of the service modification (increased Diversion tonnage, reduced costs,
662 increased public service, etc.).
663 (6) 5-year projection of the financial results of the program's operations in a balance sheet and
664 operating statement format including documentation of the key assumption underlying the
665 projections and the support for those assumptions, giving full effect to the savings or costs to
666 existing services.

667
668 **C. Authority's Review.** If the Authority does not review and comment on, and approve or disapprove of
669 the modification to the scope of services within 90 calendar days of receiving the Contractor's proposal,
670 the proposal will be deemed disapproved. The Authority and Contractor may mutually agree to extend the
671 time period for review due to the complexity of the scope of service modification under consideration, the
672 time needed for the review or approval, or for other reasonable reasons.

673
674 The Authority may request the assistance of an independent third party to review the proposal. Contractor
675 will pay the reasonable costs of that review if the modification to the scope of services is initiated by the
676 Contractor. Authority will pay those costs if the modification to the scope of services is initiated by the
677 Authority. The cost of that review will be estimated in advance of the work, and provided to the Contractor
678 for comment and agreement to pay. Contractor's refusal to pay the reasonable cost of review of a
679 Contractor-initiated proposal will be grounds for Authority rejection of that proposal.

680
681 Contractor will promptly provide operating and business records requested by the Authority that are
682 reasonably required to verify the reasonableness and accuracy of the impacts associated with a modification
683 to the scope of services. Contractor will fully cooperate with the Authority's request and provide Authority
684 and its agent(s) copies of or access to Contractor's records.

685
686 If Contractor and Authority cannot agree on terms and conditions of services within 30 days of the end of
687 the Authority's review period described in this subsection, the Authority may permit Persons other than
688 Contractor to provide those services at a location other than the Landfill.

689
690 **D. Approval of Modification to Scope of Services.** Upon Authority approval or determination, Authority
691 will issue a notice approving the modification to the scope of service and documenting any change to the
692 Disposal Rates, and approved change to Contractor's obligations hereunder. The Parties will prepare a
693 written amendment to the Agreement documenting any and all changes resulting from the modification to
694 the scope of services. No adjustment in Disposal Rates, change in Contractor's obligations, or change in
695 scope of Services will become effective absent that Authority approval or determination.

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ARTICLE 5. CONTRACTOR COMPENSATION

700 5.01 GENERAL

701 The Contractor will perform all of its Services, obligations, responsibilities, and duties under this
702 Agreement, including paying costs associated with obtaining and complying with all Permits; operating the
703 Landfill in full compliance with Applicable Law; constructing the Landfill and its cells, closing the Landfill
704 and performing Post-Closure maintenance of the Landfill after its closure, monitoring for environmental
705 impacts, and remedying environmental damage. In consideration of its performance of these duties, the
706 Contractor may charge and collect the Disposal Rates from the Authority (or Transfer Company if directed
707 by the Authority) for each Ton of Authority’s Solid Waste that Transfer Company delivers to the Landfill,
708 and may charge and collect from the Member Agencies for each Ton of Member Agency Solid Waste
709 delivered to the Landfill by employees of Member Agency. Contractor does not look to the Authority or
710 Member Agencies, but only to the Transfer Company for payment of any and all sums due under this
711 Agreement or otherwise with the exception that Contractor may look to Member Agencies for payment of
712 any Solid Waste delivered to the Landfill by employees of the Member Agencies and in the provision of
713 emergency services pursuant to Section 4.18.

714

715 Contractor's Compensation provided for in this Article shall be the full, entire, and complete compensation
716 due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes,
717 insurance, bonds, overhead, operations, profit, government fees, and all expenses Contractor deems
718 necessary to perform all the Services required by this Agreement in the manner and at the times prescribed.
719 Nothing herein shall obligate Authority, Member Agencies, or Transfer Company to provide any
720 compensation to Contractor beyond Disposal Rates.

721

722 If Contractor’s actual costs, including any fees or payments due to others, are more than the Disposal Rate
723 and/or more than gross receipts received under this Agreement, Contractor shall not be compensated for
724 the difference in actual costs and actual Disposal Rates or gross receipts except to the extent the Authority
725 grants an extraordinary Rate adjustment request pursuant to Section 5.04. If Contractor’s actual costs are
726 less than the actual Disposal Rates or actual gross receipts, Contractor shall retain the difference.

727

728 The Disposal Rate approved by the Authority for Rate Year One is presented in Section 5.02. The Parties
729 acknowledge that the Disposal Rates provided for in this Agreement have been determined on the basis of
730 the exclusive and long-term nature of the Authority’s obligations hereunder.

731 5.02 DISPOSAL RATE

732 **A. General.** The Authority shall be responsible for approving the Disposal Rate as described in this
733 Article 5. The Disposal Rate shall have two components: (i) the Contractor component; and (ii) the
734 Governmental Fee Component; the sum of which shall equal the total Disposal Rate. The
735 “Contractor component” of the Rate reflects the Contractor’s compensation for the Services
736 provided under this Agreement. The Governmental Fee Component reflects government fees and
737 taxes assessed on a per-Ton basis in connection with providing the Services required under this
738 Agreement, which are specifically itemized in subsection B below.

739

740 **B. Disposal Rate for Rate Period One.** The Disposal Rate for Rate Period One was determined by
 741 Contractor and Authority based on Contractor’s proposal and was approved by Authority Board of
 742 Directors on or before the execution of the Agreement. The Disposal Rate for Rate Period One will
 743 be effective from the Service Commencement Date of this Agreement (January 1, 2020) through
 744 December 31, 2020. The Disposal Rate for Rate Period One is presented in the following table.

745
 746 **Disposal Rate for Rate Period One**
 747 (Effective January 1, 2020)

748 [Note to proposer: Complete this table with proposed rate.]

	Disposal Rate
Contractor Component	
Total Contractor Component	
Governmental Fee Component	
1. Local Enforcement Agency Fee	
2. CIWMB AB 1220 Fee	
3. State Water Board Fee	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
Total Governmental Fee Component	
Total Disposal Rate	

749 * All government taxes and fees are assessed on a per-Ton basis for
 750 all Tons Delivered unless otherwise noted, and are the fees as of the
 751 Effective Date.

752 **C. Rate for Member-Agency-Hauled Solid Waste.** The Disposal Rate for any Solid Waste delivered
 753 to the Landfill by an employee of a Member Agency will equal the per-Ton Disposal Rate if the
 754 Solid Waste is charged on a per-Ton basis. If the Solid Waste is charged on a per-cubic-yard basis,
 755 the per-cubic-yard Disposal Rate will be equal to the per-Ton Disposal Rate multiplied by 0.25 tons
 756 per cubic yard.

757 **5.03 DISPOSAL RATE ADJUSTMENTS**

758 The Disposal Rate for all Rate Periods following Rate Period One shall be adjusted annually commencing
 759 with the first adjustment that will be effective on January 1, 2021. The Disposal Rate adjustment will be
 760 performed in accordance with this Section.

761 **A. Definitions.** For the purposes of this Section, the following terms shall be defined as follows:

762
 763 **“Annual Percentage Change”** means the Average Index Value of an index for the twelve- (12-)
 764 month period ending August of the then-current Rate Period minus the Average Index Value for
 765 the twelve- (12-) month period ending August of the most-recently completed Rate Period, divided
 766 by the Average Index Value for the twelve- (12-) month period ending August of the most-recently

767 completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth
768 (1,000th).

769 “Average Index Value” means the sum of the monthly index values during the twelve- (12-)
770 month period ending in August divided by twelve (12) (in the case of indices published monthly)
771 or the sum of the bi-monthly index values divided by six (6) (in the case of indices published bi-
772 monthly).

773 For example, if the Contractor is preparing its Rate application for Rate(s) to be effective for Rate
774 Period Two, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI
775 for November 2019 through August 2020) – (Average CPI for November 2018 through August
776 2019)] / (Average CPI for November 2018 through August 2019)].

777 “CPI” means the All Urban Consumers Index (CPI-U) compiled and published by the U.S.
778 Department of Labor, Bureau of Labor Statistics or its successor agency, using the following
779 parameters:

780 Area – San Francisco-Oakland-Hayward Metropolitan Area
781 Item – All Items
782 Base Period – Current 1982-84=100
783 Not seasonally adjusted
784 Periodicity – Bi-monthly
785 Series ID – CUUSS49BSA0
786

787 If said CPI is discontinued, it shall be replaced by the CPI which most closely approximates the
788 original category as determined by the U.S. Bureau of Labor Statistics. Should the Parties fail to
789 agree on a successor index or indices), the Parties shall utilize the Dispute Resolution process in
790 Section 8.17.

791
792 **B. Contractor Component.** The Contractor component of the Disposal Rate will be adjusted on: (i)
793 the basis of one hundred percent (100%) of the Annual Percentage Change in the CPI, or (ii) five
794 percent (5%), whichever is less.
795

796 **C. Governmental Fee Component.** The Governmental Fee Component of the Disposal Rate will be
797 adjusted upward or downward to reflect the actual changes in Government Fees and/or other
798 elements of the Governmental Fee Component, which are outside the control of Contractor and are
799 not a factor in applying the five percent (5%) cap as provided in subsection B. Governmental Fees
800 for Rate Period One are presented in the table in Section 5.02.
801

802 In making adjustments to the Governmental Fee Component, Contractor shall increase or reduce
803 the Governmental Fee Component for any Government Fee that is imposed, increased, or reduced
804 and is undisputed by the Authority. Upon notification of changes in Government Fees, Authority
805 shall have the options of 1) disputing the imposition of such fee, or increase in an existing fee, in a
806 court of competent jurisdiction, or 2) agreeing to pay such fee through an adjustment to the
807 Governmental Fee Component. In the event of disputes with the Contractor, Parties shall utilize the
808 Dispute Resolution process in Section 8.17. In the event the Authority has a dispute with a
809 government body imposing a Government Fee, the Authority shall notify the Contractor of this
810 determination and the governmental body in question and shall resolve the dispute with the
811 government body by exhausting administrative remedies as necessary and proceeding to litigate
812 the matter as necessary. In such case, the Authority shall pay its costs related to such litigation and
813 the Contractor shall pay its costs.

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For governmental charges not assessed on a cubic-yard basis, a conversion of 500 pounds per cubic yard will be used to estimate the equivalent per-Ton charge to be included in the Governmental Fee Component.

In the event of changes to or new Government Fees that are effective at a time that does not coincide with the annual Disposal Rate adjustment, Contractor may notify the Authority of the expected increase to any of the Government Fees relating to the Landfill. Contractor may request such an adjustment if such Government Fees were not in effect on the Effective Date, or, if in effect on the Effective Date, are increased. Contractor shall notify Authority in writing thirty (30) days in advance of any increase in the Governmental Fee Component to any such changes in, or imposition of Government Fees. The Authority may review the Contractor's calculation of the adjusted Governmental Fee Component and resulting adjustment of the Total Disposal Rate for a period of up to thirty (30) days. During this period, Authority may request and the Contractor shall provide supporting documentation which justifies the increase. Should the Parties be in dispute over the adjusted Fees at the end of the thirty- (30-) day period, no adjustment shall be made and the dispute shall be subject to Section 8.17 of this Agreement. Upon resolution of the dispute, and assuming both Parties agree on the adjustment of the Government Fee and the resulting adjustment of the Disposal Rate, the Contractor shall be entitled to the adjusted Disposal Rate payments retroactively to latter of the end of the thirty- (30-) day notice period or the effective date of the imposed Government Fee.

D. Total Adjusted Disposal Rate. The Total Adjusted Disposal Rate will be calculated as the sum of the adjusted Contractor component, as calculated in subsection B above, and the adjusted Governmental Fee Component, as calculated in subsection C above.

E. Adjusted Disposal Rate for Member-Agency-Hauled Solid Waste. The Adjusted Disposal Rate for any Solid Waste delivered to the Landfill by an employee of a Member Agency will equal the per-Ton Adjusted Disposal Rate (determined in accordance with subsection D) if the Solid Waste is charge on a per-Ton basis. If the Solid Waste is charged on a per-cubic-yard basis, the per-cubic-yard Adjusted Disposal Rate will be equal to the per-Ton Adjusted Disposal Rate multiplied by 0.25 tons per cubic yard.

F. Disposal Rate Adjustment Application. Annually on November 15, Contractor will submit to the Authority Representative an application requesting the adjustment of Disposal Rate for the coming Rate Period via email that includes a letter request that summarizes the requested Disposal Rate adjustment and editable Microsoft Excel file that presents all supporting schedules, formulas, and calculations. For example, on November 15, 2020, Contractor will submit its Rate adjustment application for the adjustment of Disposal Rate to be effective January 1, 2021 (i.e., Rate Period Two).

Such application will include the Disposal Rate adjustment calculations in accordance with Section 5.03.A through 5.03.E; and an updated Disposal Rate table.

Authority will evaluate Contractor's application for mathematical accuracy and consistency with the requirements of the Agreement, and shall have the ability to require changes to the application prior to approval on the basis of the application's mathematical inaccuracy or failure to comply with the procedures defined in the Agreement. Upon Authority Representative's agreement that the calculations are consistent with the requirements of this Agreement and are mathematically accurate, the Disposal Rate adjustment (if any) will be approved by Authority Representative.

865 **5.04 EXTRAORDINARY RATE ADJUSTMENTS**

866 It is understood that the Contractor accepts the risk for changes in cost of providing Services and/or
867 quantities and composition of materials Delivered to the Landfill, and therefore the extraordinary
868 adjustments to Disposal Rate shall be limited to a Change in Law, or an Authority-directed change in scope
869 of Services. If a Change in Law or Authority-directed change in scope of Services (pursuant to Section
870 4.20) occurs, the Contractor may petition Authority for an adjustment to the Disposal Rate in excess of the
871 annual adjustment described in Section 5.03.

872
873 Contractor shall prepare an application for the extraordinary Disposal Rate adjustment calculating the net
874 financial effect on its operations (both increases and decreases of costs) resulting from the Change in Law
875 or Authority-directed change in scope of Services, clearly identifying all assumptions related to such
876 calculations and providing the underlying documentation supporting the assumptions. The application shall
877 provide all information requested by Authority Representative specific to the nature of the request being
878 made. Authority Representative shall evaluate the application for reasonableness. As part of that review,
879 the Authority Representative may request access to the financial statements and accounting records required
880 to be maintained by the Contractor (pursuant to Section 8.13.D) in order to determine the reasonableness
881 of the Contractor’s application. Should the Contractor not grant such access, then the Authority may rely
882 on the Contractor’s 2018 proposal and other information available to it as the basis for making reasonable
883 assumptions regarding what those accounting and financial records would have shown and therefore the
884 reasonableness of the Contractor’s application. Contractor shall pay all reasonable costs incurred by the
885 Authority, including the costs of outside accountants, attorneys, and/or consultants, in order to make a
886 determination of the reasonableness of the requested Rate adjustment.

887
888 In the event of such an application for extraordinary Disposal Rate adjustment, it is understood that the
889 Authority or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of
890 the requested adjustment.

891
892 The Contractor may appeal the decision of the Authority Representative to the Authority Board of
893 Directors, which shall then make the final determination as to whether an adjustment to the Disposal Rate
894 will be made, and if a Disposal Rate adjustment is permitted, the amount of the adjustment. With respect
895 to an extraordinary Disposal Rate adjustment requested by the Authority Representative, the Authority
896 Board of Directors shall then make the final determination as to whether an adjustment to the Disposal Rate
897 will be made, and if an adjustment is permitted, the amount of the adjustment.

898
899 If the extraordinary Disposal Rate adjustment review warrants an increase in the applicable rate(s) outlined
900 above to compensate Contractor, the adjustment shall cover only Allowable Costs (defined below) and such
901 Allowable Costs shall be in the proportion of the total volume that Contractor reasonably projects that the
902 Authority will deliver to the Landfill or Designated Processing Facility for the Term of this Agreement
903 compared with all other customers of the Landfill.

904
905 “Allowable Costs” shall include: incremental operating, maintenance, monitoring, reporting, and capital
906 costs, including, but not limited to, the costs of making improvements (including, but not limited to future
907 Landfill cells) or modifications, at the Landfill necessary to perform under this Agreement, but only to the
908 extent brought about by Change in Law that are not otherwise reflected in the calculations used to adjust
909 the Disposal Rate (e.g. Contractor’s component and Governmental Fee Components pursuant to Section
910 5.03). Contractor shall notify Authority in writing sixty (60) days in advance of any request for increase in
911 the Disposal Rate pursuant to this Section.

912
913 The Authority shall have a ninety- (90-) day review period following receipt of Contractor’s application for
914 the requested Disposal Rate adjustment. During this period, the Authority may request and Contractor shall
915 provide supporting documentation that justifies the increase. Should the Parties be in dispute over the

916 adjusted Disposal Rate at the end of the ninety- (90-) day period, no adjustment shall be made and the
917 dispute shall be subject to Section 8.17 of this Agreement. Upon resolution of the dispute and assuming
918 both Parties agree on the adjustment of the Disposal Rate, Contractor shall be entitled to the adjusted
919 Disposal Rate retroactively to latter of the end of the sixty (60) day advance notice period or the effective
920 date of the increased Allowable Costs.

921
922 **G. No Other Adjustments.** As of the Service Commencement Date, the Disposal Rate set forth in Section
923 5.02 and adjusted in accordance with Sections 5.03 and 5.04, will not be increased thereafter to include any
924 of the following costs of providing Services, even if Contractor's projections and estimates thereof prove
925 inaccurate:

- 926
927 (i) Costs incurred due to Contractor's negligence or misconduct;
928 (ii) Costs incurred due to Permit changes of which Contractor did not provide timely Notice;
929 (iii) Any fines or penalties imposed on Contractor or the Landfill;
930 (iv) Cost of remediation and cost recoveries pursuant to Applicable Law, including CERCLA
931 and RCRA;
932 (v) Costs attributable to changing the classification of the Landfill under Applicable Law,
933 unless directed by the Authority in accordance with Section 4.20;
934 (vi) Costs and expenses related to the handling of Unpermitted Waste; and,
935 (vii) Increases in Contractor costs to provide Services including, but not limited to, costs for
936 labor, fuel, equipment, maintenance, monitoring (except as Contractor's costs are adjusted
937 in Sections 5.03 and 5.04).
938

939 **H. Dispute Resolution.** All disputes arising under this Section will be resolved in accordance with Section
940 8.17. If a dispute exists, the Disposal Rate will not be adjusted until the dispute has been resolved.

941 **5.05 MOST-FAVORED CUSTOMER**

942 If, at any time during the Term, the SBWMA delivers the more Solid Waste Tonnage to Landfill for
943 Disposal (measured over any twelve- (12-) month period) than any other entity and Contractor charges any
944 other governmental entity or charges such entities' contracted Solid Waste collection company or transfer
945 company that is delivering Solid Waste to the Landfill for Disposal at a disposal rate (including any credit,
946 rebate, or other consideration) that is less than the Authority's Disposal Rate, the Disposal Rate will be
947 reduced by the Contractor automatically and effective on the date the lower Disposal Rate is charged to the
948 other entity(ies). The Contractor shall also, at that time, inform the Authority of that lower disposal rate.
949 In the event the Contractor fails to charge the Transfer Company or Authority, the lower disposal rate on
950 the date the lower rate became effective, then, Contractor will reimburse the Authority for any and all
951 portions of the Disposal Rate paid to the Contractor that were in excess of any such lower rate on and after
952 the date that the lower rate became effective.

953
954 Should a disagreement arise regarding the classification of Solid Waste the application of this Section 5.03
955 of this Agreement, then both Parties will meet and make a good faith effort at determining a classification
956 and the applicability of this Section to the material in question after a reasonable investigation of the facts.
957 In the event the two Parties are unable to come to an agreement on the classification of a certain material
958 or the applicability of this Section of the Agreement, the dispute shall be resolved pursuant to Section 8.17,
959 Dispute Resolution.

960 **5.06 PAYMENT OF GOVERNMENT FEES**

961 Contractor will timely pay any and all Governmental Fees to the appropriate federal, State, regional, or
962 local governmental entities that levied the Governmental Fees and will provide the Authority with proof of
963 payments promptly upon direction.

964 **5.07 PAYMENT OF TAXES**

965 Contractor will timely pay all Governmental Fees, assessments, or taxes incurred as a result of the
966 Contractor's provision of Services, including estimated taxes. Contractor will provide the Authority with
967 proof of payments promptly upon Authority direction.
968
969

970 **ARTICLE 6.**
971 **INDEMNITY AND INSURANCE**

972 **6.01 DEFENSE AND INDEMNIFICATION**

973 **A. Agreement Defense.**

974 Contractor will defend at its sole cost and expense with counsel approved by the Authority, the Authority
975 (including the Persons described in the definition of "Authority" in Exhibit 1.01) and the Transfer Company
976 in any Actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted
977 against, the Authority (including the Persons described in the definition of "Authority" in Exhibit 1.01) and
978 the Transfer Company that result or are claimed to have resulted directly or indirectly by Contractor's
979 performance or non-performance of this Agreement, including the following:
980

- 981 (1) **Contractor negligence or misconduct:** the wrongful, willful or negligent act, error or omission, or
982 the misconduct of the Contractor (including the Persons described in the definition of "Contractor"
983 in Exhibit 1.01);
- 984 (2) **Failure to comply with Applicable Law:** Contractor's failure or alleged failure to comply with
985 Applicable Law and any Violation thereof, including any Actions in connection with its Permits;
- 986 (3) **Breach of representation:** Contractor's breach of any representation, warranty or covenant made
987 in this Agreement;
- 988 (4) **Challenges to Agreement:** legal challenge regarding whether or not the Authority is entitled to
989 enter into this Agreement or to contract out Services, regardless of the legal theory advanced or
990 relied upon by any interested third party, including any appeals necessary to validate that authority
991 or the Agreement; or
992

993 Authority reserves the right to retain at its own cost and expense co-counsel and Contractor will direct
994 Contractor's counsel to assist and cooperate with such co-counsel with respect to Authority's defense.
995

996 **B. Agreement Indemnification.** Contractor shall, at its sole cost and expense, indemnify, defend, and hold
997 Authority harmless (including the Persons described in the definition of "Authority" in Exhibit 1.01) and
998 Transfer Company from and against all Liabilities paid, incurred or suffered by, imposed upon or asserted
999 against, the Authority (including the Persons described in the definition of "Authority" in Exhibit 1.01) that
1000 result or are claimed to have resulted directly or indirectly from Contractor's performance or non-

1001 performance of this Agreement, including the items listed in preceding subsection A, whether or not those
1002 Liabilities are litigated, settled or reduced to judgment and whether or not those Liabilities are caused in
1003 part by any wrongful or negligent act, error or omission of any Person indemnified under this Agreement.
1004 However, if a final resolution of any Action approved by the Authority (including the Persons described in
1005 the definition of "Authority" in Exhibit 1.01) allocates Liability by determining that any portion of Liability
1006 is attributable to a wrongful or negligent act, error, or omission of the Authority, the Authority will pay that
1007 portion of Liabilities and of defense costs.

1008
1009 **C. Unpermitted Waste Defense and Indemnification.**

1010 Contractor will defend, indemnify and hold harmless at its sole cost and expense with counsel approved by
1011 the Authority, the Authority (including the Persons described in the definition of "Authority" in Exhibit
1012 1.01) and the Transfer Company in any Actions that assert or allege Liabilities paid, incurred or suffered
1013 by, imposed upon or asserted against, the Authority or Transfer Company that result or are claimed to have
1014 resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge,
1015 release or emission of Unpermitted Waste or petroleum to, in, on, at or under the Landfill, whether:

- 1016
1017 (1) in one or more instance,
1018 (2) threatened or transpired,
1019 (3) Contractor is negligent or otherwise culpable, or
1020 (4) those Liabilities are litigated, settled, or reduced to judgment.

1021
1022 The foregoing indemnity in favor of the Transfer Company or franchised haulers of the Member Agencies
1023 shall not apply to the extent that the Transfer Company or haulers failed to follow standard industry
1024 practices and protocols in screening for Unpermitted Waste during the collection of Solid Waste or at the
1025 Transfer Station or to the extent the delivery of such Unpermitted Waste is the result of Transfer Company's
1026 negligent or willful misconduct.

1027
1028 For purposes of this Indemnity, "**Liabilities**" includes Liabilities arising from or attributable to any
1029 operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial,
1030 response, closure, post-closure or other plan, regardless of whether undertaken due to government directive
1031 or action, such as remediation of surface or ground water contamination and replacement or restoration of
1032 natural resources.

1033
1034 Authority reserves the right to retain at its own cost and expense co-counsel and Contractor will direct
1035 Contractor's counsel to assist and cooperate with such co-counsel with respect to Authority's defense.

1036
1037 The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and
1038 California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the
1039 Authority from liability in accordance with this Section.

1040 **6.02 INSURANCE**

1041 **A. Policies**

1042
1043 **(1) Types and Amounts; Deductibles and Self-Insured Retentions.** As of the Effective Date, Contractor
1044 will secure and maintain, and enter into agreements to cause its Subcontractors, if any, to secure and
1045 maintain or provide that Subcontractors are insureds under Contractor's policies, in full force and effect the
1046 types and amounts of insurance coverage, together with related specified deductibles and endorsements,
1047 listed in Exhibit 6.02 or required by Applicable Law, whichever is greater, in form acceptable to Authority.
1048

1049 The Contractor must declare to Authority any self-insured retentions. Authority in its sole discretion may
1050 (i) approve them or (ii) require Contractor to reduce or eliminate them as respects the Authority, its officials
1051 and employees; or to procure a bond or letter of credit guaranteeing payment of losses and related
1052 investigations, claim administration and defense expense.

1053
1054 If any third Person makes a claim against Contractor or any Subcontractors exceeding the amount of any
1055 deductibles, self-insured reserves, letters of credit or bonds guaranteeing payment thereof, Contractor will
1056 promptly Notify the insurer, bond surety or letter of credit provider and Authority thereof.

1057
1058 **(2) Required Provisions.**

1059
1060 (i) **Primary.** Policies will always be primary with respect to the Contractor's Services and the
1061 Authority, the Authority's affiliated employees, Board of Directors members, officers, officials, agents,
1062 assigns, and volunteers ("**Authority Insureds**").

1063
1064 (ii) **Additional insureds.** Authority Insureds must be included as additional insureds by
1065 endorsement under the Comprehensive General, Automobile Liability, Environmental Impairment Liability
1066 Policies and any other pollution policies secured by Contractor. A copy of the endorsement or evidence of
1067 blanket or contractual additional insured status must be submitted with the certificate(s) of insurance.

1068
1069 (iii) **Excess, not contributory.** Insurance coverage written specifically for the Authority must be
1070 considered excess and not contributory and any insurance or self-insurance maintained by Authority
1071 Insureds is in excess of Contractor's insurance and will not contribute with it.

1072
1073 (iv) **Separate application.** All insurance must apply separately to each insured against whom a
1074 claim is made or suit is brought, except with respect to the limits of the insurer's liability.

1075
1076 (v) **No special limitations.** Coverage will contain no special limitations on the scope of protection
1077 afforded to Authority Insureds, except in cases of fraud perpetrated by Authority.

1078
1079 (vi) **Reporting provisions.** Any failure to comply with reporting provisions of policies will not
1080 affect coverage provided to Authority Insureds.

1081
1082 (vii) **Waiver of subrogation.** Insurer, including workers compensation and general liability policy
1083 insurers, by endorsement must waive all rights of subrogation against Authority Insureds for losses arising
1084 from performance of Services by Contractor, except for the sole negligence of Authority.

1085
1086 **B. Insurers.** Contractor will procure insurance from insurers approved by Authority Risk Manager, an
1087 admitted company in California and authorized to do business there, having not less than size category VII
1088 and a rating of A or better ("A-VII") by A.M. Best Company, Inc.

1089
1090 **C. Notices to Authority of Cancellation, etc.** Policies must bear endorsements in substantially the form
1091 provided in Exhibit 6.02 providing that coverage will not be suspended, voided, canceled by either party,
1092 reduced in coverage or limits, not renewed, or otherwise changed or modified except after prior written
1093 notice by certified mail, return receipt requested, to Authority 30 days in advance, or if the reason for
1094 cancellation is non-payment of premiums, 10 days in advance. Endorsements will not contain mere "best
1095 effort" modifiers or relieve the insurer from its responsibility to give the Authority notice.

1096
1097 **D. Evidence of Coverage.** As of the Effective Date, Contractor will provide certificates of insurance and
1098 original endorsements required under this Agreement, signed by an authorized representative of the
1099 insurance company and including the signatory's company affiliation and title. Upon Authority request,

1100 Contractor will provide or cause to be provided to Authority documentation acceptable to Authority
1101 verifying that the individual signing those documents are authorized by the insurer to bind coverage on the
1102 insurer’s behalf. At that time and thereafter simultaneously with renewal of the policies, Contractor will
1103 file with the Authority a certificate of insurance and endorsements, in form and substance satisfactory to
1104 Authority (including type and amount of coverage, effective dates and expiration dates) signed or counter-
1105 signed by an authorized officer of the broker, certifying that the coverage has not lapsed and will remain in
1106 effect at all times during the term of the policy. If Contractor fails to procure and maintain any insurance
1107 required under this Agreement, Authority may take out and maintain that insurance at Contractor's expense
1108 and Contractor will pay the Authority the Authority’s Reimbursement Costs therefore. This remedy is in
1109 addition to Authority's right to declare a Contractor Default and terminate the Agreement. Upon request of
1110 the Authority, the Contractor will cause its Subcontractors (if any) to provide proper evidence of insurance
1111 coverage required under this Agreement, satisfactory to the Authority. Contractor will maintain procedures
1112 to assure the Authority it is monitoring all insurance requirements under this Agreement, including those
1113 of its Subcontractors.

1114
1115 **E. Contractor Compliance.** Contractor will comply with all requirements of policies and the insurers.
1116 Carrying insurance will not relieve Contractor from any obligations under this Agreement. Nothing in this
1117 Agreement may be construed as limiting in any way the extent to which the Contractor may be held
1118 responsible for payments of damages to Persons or property resulting from Contractor's or any
1119 Subcontractors’ performance of Services.
1120

1121 **ARTICLE 7.**
1122 **DEFAULT BY CONTRACTOR AND TERMINATION**

1123 **7.01 CONTRACTOR DEFAULT**

1124 Each of the following will constitute an event of default by Contractor (“**Contractor Default**”), under this
1125 Agreement:

1126
1127 **A. Service Defaults.**
1128

1129 (1) **Failure to Dispose of Solid Waste.** Contractor fails to Dispose of Solid Waste for more than 3
1130 consecutive days or more than 6 cumulative days in any Calendar Year.

1131 (2) **Uncured Breach.** Contractor fails or refuses to perform any of its obligations under this
1132 Agreement; the Authority Notifies the Contractor in writing that a specific failure or refusal has
1133 occurred which will, unless corrected, in its opinion, give the Authority a right to terminate this
1134 Agreement; and the Contractor does not correct the breach within 20 days of receiving the Authority's
1135 Notice thereof. However, if the breach is not capable of cure within 20 days, Contractor will promptly
1136 initiate the process to cure the default and provide Authority a Notice explaining why Contractor
1137 believes it needs additional time to effectuate a cure, together with a schedule therefore, and will
1138 diligently proceed to cure the breach within that schedule, whereupon Authority, in its sole discretion,
1139 may (x) accept Contractor's schedule of cure; (y) make a written demand that Contractor cure the
1140 default within an alternative time period set by Authority; or (z) terminate this Agreement at the end
1141 of the 20-day period;

1142
1143 (3) **Repeated Breach.** Contractor fails or refuses to perform any of its obligations under this
1144 Agreement repeatedly or habitually, whether or not specific instance of failure or refusal has been

1145 previously cured.

1146
1147 (4) **Failure to Comply With Law**: Contractor fails to materially comply with Applicable Law
1148 within 20 days' notice of Violation thereof.

1149
1150 (5) **Criminal Activity**: Contractor fails to timely terminate and/or replace any supervisor, manager,
1151 officer, or director of Contractor upon the occurrence of any Criminal Activity.

1152
1153 **B. Performance Assurance Defaults.**

1154
1155 (1) **Failure to Provide Insurance, etc.**: Contractor fails to provide insurance in accordance with
1156 Section 6.02, or Guaranty in accordance with Section 8.21;

1157
1158 (2) **Failure to Provide Assurances of Performance**: Contractor fails to timely provide assurances
1159 of performance in accordance with Section 8.16;

1160
1161 (3) **Failure to Pay Authority**: Contractor fails to timely pay Authority any amounts due and owing
1162 to Authority, including reimbursement of costs for alternative services in accordance with Section 7.03
1163 and liquidated damages in accordance with Section 8.20;

1164
1165 (4) **Transfer, Assignment**: Contractor Assigns this Agreement without Authority approval required
1166 by Section 8.05;

1167
1168 (5) **Seizure, Attachment**: Any asset used to provide Services is seized, attached, or levied upon
1169 (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and
1170 fully perform Services, and which cannot be released, bonded, or otherwise lifted within 48 hours,
1171 excepting weekends and Holidays;

1172
1173 (6) **Insolvency, Bankruptcy, Liquidation**: Contractor files a voluntary claim for debt relief under
1174 any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect,
1175 or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other
1176 than as a part of a transfer of assets no longer used to provide Services or backup Services), trustee
1177 (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator
1178 (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part
1179 of Contractor's property, or will make any general assignment for the benefit of Contractor's creditors,
1180 or will fail generally to pay Contractor's debts as they become due or will take any action in furtherance
1181 of any of the foregoing.

1182
1183 A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any
1184 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or
1185 hereafter in effect, or Contractor consents to or fails to oppose any proceeding, or that court enters a
1186 decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator,
1187 administrator (or similar official) of the Contractor or for any part of the Contractor's operating
1188 equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

1189
1190 **C. Miscellaneous.**

1191
1192 (1) **False Representations; Breach of Representations or Warranties**: Contractor makes a
1193 representation, certification, or warranty in this Agreement or pursuant to this Agreement which
1194 Contractor knows, or in the course of diligently conducting business and providing Services should
1195 have known, is untrue as of the date thereof. Contractor makes a representation or fails to make a

1196 disclosure, whether within this Agreement or otherwise, to the Authority in connection with or as a
1197 material inducement to entering into this Agreement or any future amendment to this Agreement,
1198 which representation or failed disclosure is false or misleading in any material respect when made.
1199

1200 **(2) Default under Guaranty Agreement:** any default occurs under Section 24 of the Guaranty,
1201 which default for failure to pay the Guaranty listed in Subsection 24.a thereof is not timely cured as
1202 provided therein, and which default for breach listed in Subsection 24.c thereof continues for the
1203 period provided therein.

1204 **7.02 RIGHT TO SUSPEND OR TERMINATE AGREEMENT**

1205 **A. Termination Events.** Authority may terminate this Agreement in the following events:
1206

1207 **(1) Contractor Default:** the occurrence of a Contractor Default per Section 7.01, Contractor Default;
1208

1209 **(2) Uncontrollable Circumstances:** the occurrence and continuance of an Uncontrollable
1210 Circumstance in accordance with Section 8.12;
1211

1212 **(3) Upon Authority's Rejection of Alternative Disposal Facility:** the Authority's rejection of an
1213 alternative facility in accordance with Section 4.12.
1214

1215 **(4) Assignment of Guaranty Without Consent:** the Guarantor's assignment of the Guaranty
1216 without consent required by Section 3 of the Guaranty despite Authority Board of Directors action
1217 denying Authority consent, and on or before 15 days thereafter, the Guarantor does not provide
1218 Authority with a substitute Guarantor or alternative financial credit support satisfactory to Authority.
1219

1220 **(5) Upon Need for Solid Waste as Conversion Facility Feedstock:** the Authority's development
1221 of a conversion facility that requires Solid Waste or portions of the Solid Waste stream as a feedstock,
1222 where "conversion" means the processing, through non-combustion thermal means, chemical means,
1223 or biological means, other than composting, of Solid Waste from which Recyclable Materials have
1224 been substantially diverted and/or removed to produce electricity, alternative fuels, chemicals, or
1225 other products that meet quality standards for use in the marketplace.
1226

1227 **(6) Operating Agreement or Collection Agreements Unenforceable:** If any provision of the
1228 Operating Agreement or any provisions of the Member Agencies' franchise agreements with respect
1229 to Authority direction of Solid Waste to the Landfill is (are) ruled unconstitutional, illegal, invalid,
1230 non-binding, or unenforceable by any court of competent jurisdiction, or the Operating Agreement
1231 or franchise agreement(s) is (are) terminated as a result thereof.
1232

1233 **B. Notice.** Notice of termination will be effective:
1234

1235 **(1)** immediately or upon other period stated by Authority with respect to Contractor Defaults
1236 described in item B(1) of Section 7.01 (Failure to Provide Insurance, etc.) and, to the extent permitted
1237 by Applicable Law, item B(6) of Section 7.01 (Insolvency, Bankruptcy, Liquidation), and
1238

1239 **(2)** 2 days after giving Contractor a Notice with respect to a Contractor Default described in item
1240 A(1) of Section 7.01 (Failure to Dispose of Solid Waste);
1241

1242 **(3)** 1 year after giving Contractor a Notice with respect to an event described in item (5) of subsection
1243 A (Upon Need for Solid Waste as a Power Plant or Conversion Facility Feedstock).

1244
1245 (4) 15 days after giving Contractor a Notice with respect to all other Contractor Defaults or
1246 termination events.
1247

1248 **C. Contractor's Obligations Upon Expiration or Termination**
1249

1250 (1) **Pay Outstanding Amounts.** Contractor will pay Authority any amounts, including liquidated
1251 or compensatory damages, then accrued and payable, net of any amounts due from Authority in
1252 accordance with Section 4.13.
1253

1254 (2) **Indemnities.** Meet its obligations under any Indemnities in Article 6, Indemnity and Insurance.

1255 **7.03 RIGHT TO PERFORM**

1256 In the events described in items (1) (Contractor Default) and (4) (Assignment of Guaranty Without Consent)
1257 of Section 7.02, the Authority in its sole discretion may perform and complete, by contract or otherwise,
1258 Services or a portion thereof (other than operating the Landfill) and incur all expenses necessary for full
1259 and timely provision of Services, including Disposal of Solid Waste at alternate Transfer and landfill. If
1260 expenses (including the costs of transportation to an alternative facility and the actual fees charged for
1261 disposal) exceed the Disposal Rates that would have been paid to Contractor under this Agreement if
1262 Contractor had fully and timely performed Services, then Contractor will pay the amount of the excess
1263 expenses to the Authority within 30 calendar days of Contractor's receipt of a claim for Authority's
1264 Reimbursement Costs and evidence of those Costs incurred, from the Authority.

1265 **7.04 ALL OTHER AVAILABLE REMEDIES**

1266 If Authority suspends or terminates this Agreement, it may seek damages and any other available remedies
1267 at law and in equity (including specific performance).
1268

1269 Contractor acknowledges damages for a breach of this Agreement by Contractor in accordance with this
1270 Section may be inadequate for reasons including:

1271
1272 (i) the urgency of timely, continuous, and high-quality Solid Waste management service under this
1273 Agreement, including disposal of putrescible wastes which constitute a threat to public health;
1274

1275 (ii) the long time and significant investment of money and personnel (both Authority staff, elected
1276 Authority officials and private consultants, including procurement consultants, technical consultants,
1277 procurement counsel) required to structure a competitive procurement; draft a request for proposal
1278 and this Agreement; advertise the procurement and solicit proposals; distribute the request for
1279 proposal, respond to proposers questions about the procurement; revise documents based on solicited
1280 proposer comment; evaluate proposals; and finalize and award this Agreement; and,
1281

1282 (iii) the Authority's reliance on Contractor's technical Solid Waste management expertise.
1283

1284 Consequently, Authority is entitled to Liquidated Damages pursuant to Section 8.20 and all available
1285 equitable remedies, including injunctive relief.
1286

1287 Compensatory damages include amounts equal to any Authority's Reimbursement Costs or other money
1288 Contractor has previously paid to the Authority but that are subsequently recovered from the Authority by
1289 a trustee in bankruptcy as preferential payments or otherwise and Authority's Reimbursement Costs of re-

1290 procuring an agreement for services to replace Services if this Agreement is terminated due to Contractor
1291 Default.

1292 **7.05 AUTHORITY'S REMEDIES CUMULATIVE**

1293 The Authority's rights to seek dispute resolution in accordance with Section 8.17, suspend or terminate this
1294 Agreement in accordance with Section 7.02, to perform under Section 7.03 or to seek other available
1295 remedies under Section 7.04 are not mutually exclusive. Exercise of one remedy is not an election of
1296 remedies but is cumulative with any other remedies under this Agreement.

1297 **7.06 WAIVER**

1298 **A. Authority Waiver of Breach.** Authority's waiver of any breach or Contractor Default will not be
1299 deemed to be a waiver of any other breach or Contractor Default including ones with respect to the same
1300 obligations under this Agreement. The Authority's decision not to demand damages will not be deemed a
1301 waiver of any Contractor breach under this Agreement. Authority's subsequent acceptance of any damages
1302 or other money paid by Contractor will not be deemed to be a waiver by Authority of any pre-existing or
1303 concurrent breach or Contractor Default.
1304

1305 **B. Contractor Waiver of Certain Defenses.** Contractor acknowledges that it is solely responsible for
1306 providing Services and by this Agreement irrevocably and unconditionally waives defenses to the payment
1307 and performance of its obligations under this Agreement based upon failure of consideration; contract of
1308 adherence; impossibility or impracticability of performance; commercial frustration of purpose; or the
1309 existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event or
1310 contingency that may be a basic assumption of Contractor with regard to any provision of this Agreement.
1311 However, Contractor does not waive any defenses of Uncontrollable Circumstances.
1312

1313 **ARTICLE 8.**
1314 **OTHER AGREEMENTS OF THE PARTIES**

1315 **8.01 RELATIONSHIP OF PARTIES**

1316 The Parties intend that Contractor will perform the Services required by this Agreement as an independent
1317 contractor engaged by the Authority and not as an officer or employee of the Authority nor as a partner of
1318 or joint venturer with the Authority. No employee or agent of Contractor will be or will be deemed to be
1319 an employee or agent of the Authority. Contractor will have the exclusive control over the manner and
1320 means of conducting Services, and all Persons performing those Services, except for Authority's right to
1321 change the scope of Services in accordance with Section 4.20. Contractor is solely responsible for the acts
1322 and omissions of its officers, employees, subcontractors, and agents, none of whom is deemed an officer,
1323 employee, subcontractor, or agent of the Authority. Neither Contractor nor its officers, employees,
1324 subcontractors, and agents will obtain any rights to retirement benefits, workers' compensation benefits, or
1325 any other benefits that accrue to the Authority employees, and Contractor expressly waives any claim it
1326 may have or acquire to those benefits.

1327 **8.02 COMPLIANCE WITH LAW**

1328 **A. Compliance.** Contractor will perform, and will cause any contractors or subcontractors to perform, all
1329 Services in accordance and compliance with Applicable Law, whether or not referenced specifically in the
1330 text of this Agreement and regardless of whether specified Service obligations may be stated less stringently
1331 than Applicable Law. If any provision of this Agreement is more stringent than Applicable Law, Contractor
1332 must comply with that provision.
1333

1334 The Contractor acknowledges that the Authority, by this Agreement, has stated necessary and reasonable
1335 rules and regulations regarding aspects of Solid Waste handling services covered by this Agreement.
1336 Contractor agrees to comply with any and all of those rules and regulations, subject to clause (vi) of the
1337 definition of "Uncontrollable Circumstances" in Section 8.12 and subject to possible adjustments in the
1338 Disposal Rates for Uncontrollable Circumstances, including Changes in Law.
1339

1340 **B. Referenced Provisions.** Reference in this Agreement to particular provisions or requirements of
1341 Applicable Law will not be construed to limit Contractor's obligation to comply with all provisions of
1342 Applicable Law. They are deemed to include reference to implementing rules and regulations. They are
1343 intended to facilitate Contractor's satisfaction of its performance obligations and Authority's administration
1344 and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply
1345 with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any
1346 Applicable Law specifically referenced or cited in this Agreement is modified, amended, or repealed, that
1347 reference or citation will be deemed to refer to that amendment or modification, or to any re-codified or
1348 substituted Applicable Law.
1349

1350 **C. Permits.** Contractor will obtain and maintain all Permits in accordance with Section 4.02.
1351

1352 **D. Fines and Penalties.** Contractor is responsible for payment of any and all fines and penalties imposed
1353 on Contractor. Contractor will not seek reimbursement from Authority, Member Agencies, Transfer
1354 Company, or Member Agencies' franchise haulers, residents, or businesses for any fines and penalties.

1355 **8.03 GOVERNING LAW**

1356 This Agreement will be governed by, and construed and enforced in accordance with, the Applicable laws
1357 of the State, without giving effect to the State's principles of conflicts of laws.

1358 **8.04 FURTHER ASSURANCES**

1359 Each Party will execute and deliver any instruments and to perform any acts as may be necessary or
1360 reasonably requested by the other in order to give full effect to this Agreement.

1361 **8.05 ASSIGNMENT**

1362 **A. Authority Assignment.** The Authority may Assign this Agreement to a joint power authority, a
1363 sanitation district or other public entity succeeding to the major portion of the Authority's solid waste
1364 management rights and obligations. The Authority may also Assign this Agreement to any other Person
1365 upon Authority's determination that the assignee is financially capable of meeting the Authority's
1366 obligations under this Agreement.
1367

1368 **B. Assignment by Contractor.**
1369

1370 (1) **Permitted Assignments.** Contractor shall have the right to Assign this Agreement to any other
1371 company which is owned and controlled by [Insert Contractor Name], provided that, (i) such
1372 company is qualified to do business in California, and assumes in writing all of Contractor’s
1373 obligations under this Agreement prior to or concurrently with such assignment, and (ii) the Guaranty
1374 Agreement remains in full force and effect. Contractor shall not otherwise Assign its rights nor
1375 delegate or otherwise transfer its obligations under this Agreement to any other Person.
1376

1377 (2) **Assignment Defined.** For the purpose of this Section when used in reference to Contractor,
1378 “assignment” shall be as defined in Section 1.01, Assign (Assignment).
1379

1380 Contractor acknowledges that this Agreement involves rendering a vital service to the Authority’s
1381 residents and businesses, and that the Authority has selected Contractor to perform the services
1382 specified herein based on (i) effective and responsible fashion, at all times in keeping with applicable
1383 Environmental Laws, regulations, and best management practices, and (ii) Contractor’s obligations
1384 to the Authority under this Agreement. The Authority has relied on each of these factors, among
1385 others, in choosing Contractor to perform the services to be rendered by Contractor under this
1386 Agreement.
1387

1388 (3) **Contractor Request for Assignment.** If Contractor requests the Authority’s consideration of
1389 and consent to an Assignment, the Authority may reasonably deny or approve such requests. No
1390 request by Contractor for consent to any Assignment need be considered by Authority unless and
1391 until Contractor has met the following requirements:
1392

- 1393 A. Contractor shall undertake to pay Authority its reasonable expenses for attorney’s fees and
1394 investigation costs necessary to investigate the suitability of any proposed assignee, and to
1395 review and finalize any documentation required as a condition for approving any such
1396 Assignment;
1397
- 1398 B. Contractor shall furnish Authority with audited financial statements of the proposed assignee’s
1399 operations for the immediately preceding three (3) operating years;
1400
- 1401 C. Contractor shall furnish Authority with satisfactory proof: (i) that the proposed assignee has
1402 at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding
1403 the sale of operations conducted by Contractor under this Agreement; (ii) that in the last five
1404 (5) years, the proposed assignee has not suffered any significant citations or other censure
1405 from any federal, state, or local agency having jurisdiction over its Solid Waste management
1406 operations due to any significant failure to comply with state, federal, or local Environmental
1407 Laws and that the assignee has provided Authority with a complete list of such citations and
1408 censures; (iii) that the proposed assignee has at all times conducted its operations in an
1409 environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its
1410 Solid Waste management practices in accordance with sound Solid Waste management
1411 practices in full compliance with all federal, State, and local laws regulating the collection and
1412 Disposal of Solid Waste including Unpermitted Waste; and, (v) of any other information
1413 required by Authority to ensure the proposed assignee can fulfill the terms of this Agreement
1414 in a timely, safe, and effective manner.
1415

1416 Under no circumstances shall Authority be obligated to consider any proposed Assignment by
1417 Authority if Contractor is in default at any time during the period of consideration.

1418 **8.06 BINDING ON SUCCESSORS**

1419 The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted
1420 assigns of the Parties.

1421 **8.07 PARTIES IN INTEREST**

1422 Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any Persons
1423 other than the Parties to it and their representatives, successors and permitted assigns.

1424 **8.08 SERVICES PERFORMED AT CONTRACTOR'S SOLE EXPENSE**

1425 Contractor will perform Services solely for the compensation expressly provided for herein.

1426 **8.09 NOTICES AND COMMUNICATION**

1427 **A. Written.** Parties must present and express all reports, demands, requests, directions, selections, option
1428 exercises, orders, requests, proposals, reviews, comments, acknowledgments, approvals, consents, waivers,
1429 certifications, and other communications made to each other under this Agreement in writing.

1430
1431 **B. Manner.** Parties must provide Notices at the address provided in subsection C, in any of the following
1432 manners:

- 1433
- 1434 (1) personal delivery to a representative of the Parties, with signed receipt,
 - 1435
 - 1436 (2) deposit in the United States mail, first class postage prepaid (certified mail, return receipt
1437 requested), or
 - 1438
 - 1439 (3) deposit with a commercial delivery service providing delivery verification.
 - 1440

1441 **C. Addresses.**

1442
1443 If to Authority:

1444 SBWMA Executive Director
1445 610 Elm Street, Suite 202
1446 San Carlos, CA 94070

1447
1448
1449 If to Contractor:

1450 District Manager
1451 [Insert Contractor Name]
1452 [Insert Contractor's Address]

1453
1454 Parties may change their address upon Notice to the other Party.

1455 **8.10 REPRESENTATIVES OF THE PARTIES**

1456 **A. Authority Representative.** The Authority Representative is the Executive Director or his or her
1457 designee, unless otherwise named in Exhibit 8.10 from time to time upon Notice of Authority

1458 Representative to Contractor. The Authority Representative is authorized to act on behalf of Authority in
1459 the administration of this Agreement, unless another Person is specifically authorized herein. Authority
1460 actions referenced in this Agreement, including reviews and approvals, may be taken by the Authority
1461 Representative, unless provided otherwise.
1462

1463 **B. Contractor Representative.** The Contractor Representative named in Exhibit 8.10, as may be changed
1464 from time to time upon Notice of Contractor Representative to Authority. The Contractor Representative
1465 is authorized to act on behalf of Contractor in the performance of this Agreement.

1466 **8.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE**

1467 In the performance of all work and Services under this Agreement, Contractor will not discriminate against
1468 any person on the basis of that person's race, color, religion (including religious dress and grooming
1469 practices), sex/gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), sex
1470 stereotype, gender identity/gender expression/transgender (including whether or not the person is
1471 transitioning or has transitioned) and sexual orientation, national origin, ancestry, age (40 and above),
1472 physical or mental disability, medical condition, genetic information/characteristics, marital
1473 status/registered domestic partner status, military or veteran status, or any other basis protected by federal,
1474 State, or local law or ordinance or regulation. Contractor will not discriminate based on the perception that
1475 anyone has any of these characteristics, or is associated with a person who has or is perceived as having
1476 any of these characteristics. Contractor will comply with all Applicable Law regarding nondiscrimination,
1477 including those prohibiting discrimination in employment.

1478 **8.12 FORCE MAJEURE**

1479 **A. Performance Excused.** Neither Party is deemed in breach or default of its duties, obligations (other
1480 than a payment obligation at the time due and owing), responsibilities, or commitments under this
1481 Agreement to the extent that the breach or default is due to an Uncontrollable Circumstance, *provided* the
1482 Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of the
1483 Uncontrollable Circumstance.
1484

1485 **Uncontrollable Circumstance(s)** means any act, event, or condition, whether affecting (i) Services or (ii)
1486 either Party, that is beyond the reasonable control of the Party relying thereon and not the result of willful
1487 or negligent action or inaction of that Party (other than the contesting in good faith or the failure in good
1488 faith to contest that action or inaction), which materially and adversely affects the ability of either Party to
1489 perform any obligation under this Agreement, comprised of:
1490

- 1491 (1) an act of nature, including landslide, lightning, earthquake, fire, flood, (other than reasonably
1492 anticipated weather conditions for the geographic area of the Authority), explosion, sabotage,
1493 terrorism, acts of a public enemy, war, blockade or insurrection, riot, or civil disturbance;
1494
- 1495 (2) the failure of any appropriate federal, State, or local public agency or private utility having
1496 operational jurisdiction in the area in which the Landfill is located to provide and maintain
1497 utilities, services, water, sewer, or power transmission lines thereto;
1498
- 1499 (3) a Change in Law other than a Change in Law excluded in items (ii) and (vi) below; and,
1500
- 1501 (4) strikes, work stoppages, or other labor disputes or disturbances of Persons other than Contractor
1502 or any Affiliates performing Services;
1503

1504 “Uncontrollable Circumstances” *excludes*, without limitation:

- 1505
- 1506 (i) either Party's own breach of its obligations under this Agreement;
- 1507
- 1508 (ii) adverse changes in the financial condition of either Party or any Change in Law with respect
- 1509 to any taxes based on or measured by net income, or any unincorporated business, payroll,
- 1510 franchise, or employment taxes;
- 1511
- 1512 (iii) strikes, work stoppages, or other labor disputes or disturbances of Contractor or any Affiliates
- 1513 performing Services, or Contractor's or Affiliates' inability to hire adequate numbers of
- 1514 personnel who are competent and skilled in the work to which they are assigned, or the
- 1515 organization of any Contractor's or any Affiliates' employees under a collective bargaining
- 1516 agreement;
- 1517
- 1518 (iv) the failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for
- 1519 Services;
- 1520
- 1521 (v) as to the Contractor, the failure of any Service assets to perform in accordance with any
- 1522 warranties, unless caused by Uncontrollable Circumstances; and,
- 1523
- 1524 (vi) with respect to the Authority, any Change in Law adopted by the Authority, unless that Change
- 1525 in Law is mandated by State or federal Applicable Law.
- 1526

1527 **B. Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon will give

1528 immediate Notice thereof to the other Party, including describing performance under this Agreement for

1529 which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent Services

1530 may be curtailed; any requests or suggestions to mitigate the adverse effects of the Uncontrollable

1531 Circumstance; or any consequent adjustment of the Disposal Rates in accordance with Section 5.02.

1532

1533 **C. Authority's Rights.** Notwithstanding that Contractor's failure to timely and fully provide Services due

1534 to Uncontrollable Circumstances does not constitute a Contractor Default, following the continuance of the

1535 failure for 24 hours, Authority may, in its sole discretion, secure alternative services. Following the

1536 continuance of that failure for 30 days, Authority may terminate the Agreement in accordance with Section

1537 7.02.A.2.

1538 **8.13 MAINTENANCE OF RECORDS**

1539 **A. Location of Records.** Contractor will maintain Records at the Landfill or elsewhere at offices located

1540 within San Mateo County.

1541

1542 **B. Contractor's Accounting Records.** In order to effectuate the adjustment to the Disposal Rates

1543 contemplated by Section 5.02, Contractor must maintain accurate, detailed financial and operational

1544 information in a consistent format and to make that information available to the Authority in a timely

1545 fashion. This Section is intended to effectuate these requirements. Contractor will maintain accurate and

1546 complete accounting records containing the underlying financial and operating data relating to and showing

1547 the basis for computation of all costs associated with providing Services. The accounting records will be

1548 prepared in accordance with Generally Accepted Accounting Principles (GAAP), which will be consistently

1549 applied. The Parties acknowledge that the Contractor's accounting procedures may not produce accounting

1550 records that separate the financial and operational data related to specific services provided to the Authority,

1551 but rather the accounting records are consolidated financial and operational data for all services provided
1552 by Contractor or at Contractor's Landfill.

1553
1554 **C. Retention of Records.** Contractor will retain all Records required to be maintained by this Agreement
1555 at least throughout the Term.

1556
1557 Contractor will retrieve Records specifically directed to be retained in accordance with this Agreement and
1558 make them available to the Authority within 10 calendar days of Authority's direction.

1559
1560 Contractor will retrieve Records that are material, in the sole opinion of the Authority, to determining the
1561 cost of compliance with changes in governmental fees or regulations; verifying payment of governmental
1562 fees or taxes; determining cost impact related to modifications to scope of Services or new waste
1563 management programs or economic incentives; or determining an adjustment to the Disposal Rate as
1564 provided for in this Agreement, and make them available to the Authority within 10 calendar days of the
1565 Authority's direction. If Contractor is not required to maintain those Records under this Agreement, then
1566 the Authority and Contractor will meet and confer in good faith to reach agreement on reasonable
1567 assumptions that are necessary to make determinations at issue.

1568
1569 **D. Delivery of Financial Statements, Auditors' Reports.** If Contractor requests an extraordinary
1570 adjustment to the Disposal Rates pursuant to Section 5.04, Contractor will deliver to the Authority one copy
1571 of the audited financial statements of Contractor for its preceding fiscal year. These statements will have
1572 been examined by and will be accompanied by the report of an independent certified public accountant
1573 containing that accountant's representation that it has examined the Contractor's financial statements in
1574 accordance with Generally Accepted Auditing Standards (GAAS) and the accountant's unqualified opinion
1575 that that statements have been prepared in accordance with Generally Accepted Accounting Principles
1576 (GAAP) consistently applicable and fairly reflect the results of operations and Contractor's financial
1577 condition.

1578 **8.14 RIGHT TO INSPECT RECORDS**

1579 Upon reasonable notice and without interference with Contractor's operations, the Authority, its auditors,
1580 and other agents selected by the Authority, will have the right, at its sole cost, during regular business hours
1581 as described in Section 4.06, to conduct on-site inspections of Records and to make and retain copies of
1582 any Records that are reasonably necessary to: (1) determine the cost of compliance with changes in
1583 Government Fees or regulations (in accordance with Section 5.02); (2) verify payment of Government Fees
1584 or taxes (in accordance with Sections 5.04 and 5.05); (3) determine cost of modifications to scope of
1585 Services (in accordance with Section 4.20); or (4) determine cost of new programs or economic incentives
1586 (in accordance with Section 4.20). Contractor will cooperate with the Authority, its auditors, and other
1587 agents selected by the Authority, and will make those Records available to the Authority, and Contractor
1588 will provide the Authority copies of those Records (which the Authority may retain) at the Authority's
1589 request. If the Authority so requests, Contractor will make specified personnel available to assist the
1590 Authority representatives in accessing Records.

1591 **8.15 COMPILATION OF INFORMATION FOR STATE LAW PURPOSES**

1592 Contractor will compile information on amounts of Solid Waste delivered to the Landfill and Disposed and
1593 other information, which the Authority may reasonably request in order to meet its obligations under the
1594 Act and other State regulations.

1595 **8.16 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

1596 If Contractor:

- 1597
- 1598 (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or
 - 1599 other concerted job action that affects Contractor's performance under this Agreement;
 - 1600 (ii) appears in the judgment of the Authority to be unable to regularly pay its bills as they become
 - 1601 due; or,
 - 1602 (iii) is the subject of a civil or criminal proceeding brought by a federal, State, regional, or local
 - 1603 agency for Violation of an Applicable Law with respect to Services;

1604

1605 such that the Authority reasonably believes Contractor's ability to perform under this

1606 Agreement is in substantial jeopardy, or

1607

- 1608 (iv) if Authority disagrees with Contractor's estimate of Landfill capacity required to meet
- 1609 Contractor's warranty in accordance with subsection J of Exhibit 9.01 or of remaining capacity,
- 1610 considering Contractor's Disposal obligations to both Authority and other Persons, as
- 1611 contained in the Annual Report or otherwise, then following dispute resolution in accordance
- 1612 with Section 8.17 that concludes either of Contractor's estimates is erroneous, at its option and
- 1613 in addition to all other remedies it may have, the Authority may demand from Contractor
- 1614 written assurances of timely and proper performance of this Agreement. Assurances include
- 1615 reduction or elimination of deductibles or self-insured retention with respect to insurance or
- 1616 procuring a bond or letter of credit guarantying or in size sufficient to cover payment of losses
- 1617 and related investigations, claim administration, and defense expenses. If Contractor fails or
- 1618 refuses to provide reasonable assurances by the date required by the Authority no less than 15
- 1619 days after Notice, that failure or refusal will constitute a Contractor Default in accordance with
- 1620 Section 7.01.

1621 **8.17 DISPUTE RESOLUTION**

1622 Should any dispute between the Parties arise out of this Agreement and should the Parties be unable to

1623 resolve the issue, the Parties shall, at the written request of either Party, meet in mediation and attempt to

1624 reach a resolution with the assistance of a mutually acceptable mediator. Neither Party shall be permitted

1625 to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated

1626 resolution, provided that this limitation shall not apply to a Party if the other Party fails to comply with this

1627 section. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is

1628 reached, neither Party shall be deemed the prevailing Party for purposes of the settlement and each Party

1629 shall bear its own legal costs. The mediation shall be completed within sixty (60) days of the written request

1630 of a Party for mediation unless both Parties agree to extend this timeframe. If litigation is filed regarding

1631 any dispute arising under this Agreement, the action shall be filed in San Mateo County Superior Court and

1632 the court shall award reasonable attorney's fees and costs to the prevailing Party. To the maximum extent

1633 permitted by law, all offers, promises, conduct and statements, whether oral or written, made in the course

1634 of the mediation by any of the Parties, their agents, employees, experts or attorneys, or by the mediator or

1635 any employees of the mediation services, are confidential, privileged and inadmissible for any purpose,

1636 including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence

1637 that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a

1638 result of its use in the mediation. All applicable statutes of limitation and defenses based upon the passage

1639 of time shall be tolled until the end of the sixty (60) calendar day period referred to above. The Parties will

1640 take such action, if any required to effectuate such tolling.

1641 **8.18 CRIMINAL ACTIVITY OF CONTRACTOR**

1642 **A. Notice of Convictions or Pleas.** The Contractor will immediately notify the Authority upon the
1643 occurrence of any Convictions or Pleas with respect to Contractor or any of its Contract Managers defined
1644 in paragraphs (1), (2), and (3) of the definition of “Contract Manager,” and use Reasonable Business Efforts
1645 to immediately notify the Authority with respect to Contractor or any of its Contract Managers defined in
1646 paragraph (4) of “Contract Manager”.

1647
1648 **B. Contractor Cure.** Upon the occurrence of any Convictions or Pleas, the Contractor will do or cause to
1649 be done both of the following:

1650
1651 (1) as soon as permitted under Applicable Law, terminate from employment or remove from office
1652 the offending Contract Manager who is an individual, or, with respect to a Contract Manager that
1653 is the Contractor or an Affiliate, the individual or individuals responsible for the Criminal Activity;
1654 and,

1655
1656 (2) immediately eliminate the participation by that Contract Manager who is an individual or, with
1657 respect to a Contract Manager that is the Contractor or Affiliate the individual or individuals
1658 responsible for the Criminal Activity, in any position of influence.

1659
1660 Should Contractor be unable to terminate the offending Contract Manager, said individual(s) shall be
1661 replaced in their capacity as Contract Manager(s) relative to this Agreement.

1662
1663 **C. Authority Remedies.** The Authority, in its sole discretion, may terminate the Agreement upon 30 days’
1664 Notice to the Contractor, or may impose those other sanctions (which may include financial sanctions,
1665 temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem
1666 proper, if the following events are continuing at the end of those 30 days:

1667
1668 (i) the Contractor or any Affiliate fails to comply with their obligation under subsection B, or

1669
1670 (ii) the Criminal Activity concerns and is related to this Agreement.

1671
1672 Contractor must be given the opportunity to present to Authority Representative evidence in mitigation
1673 during the preceding Notice period and Authority will consider that evidence.

1674
1675 The Contractor will not hire or transfer from any Affiliate of any employee, officer, or director of an
1676 Affiliate who is the subject of any Criminal Activity to a position as a Contract Manager and will not allow
1677 its Affiliates to do so.

1678 **8.19 COOPERATION AND DISPUTES BETWEEN CONTRACTOR AND TRANSFER**
1679 **COMPANY**

1680 Contractor will fully comply with its obligations to provide Service to the Transfer Company and cooperate
1681 to its fullest extent with the Transfer Company and Authority. In the event of disputes between Contractor
1682 and Transfer Company, Contractor will attempt to resolve the dispute directly with the Transfer Company.
1683 As a last resort, Contractor may request assistance from the Authority in resolving the dispute. In the event
1684 of a dispute, Contractor will continue performance of Contractor’s obligations under this Agreement and
1685 will attempt to continue to resolve that dispute in a cooperative manner, including, but not limited to,
1686 negotiating in good faith.

1687 **8.20 LIQUIDATED DAMAGES**

1688 **A. General.** The Parties acknowledge that Authority incurred considerable time and expense procuring
1689 this Agreement in order to secure an improved level of service quality and increased Authority satisfaction.
1690 Therefore consistent and reliable Services are of utmost importance to the Authority, Member Agencies,
1691 Transfer Company, and Member Agencies’ residents, and businesses. Authority has considered and relied
1692 on Contractor’s representations as to its quality of service commitment in entering into this Agreement, and
1693 Contractor’s breach of its Service obligations referenced in this Section above represents a loss of bargain
1694 to the Authority. The Parties further recognize that quantified standards of performance are necessary and
1695 appropriate to ensure quality, consistent, and reliable Disposal service, and if Contractor fails to meet
1696 Service obligations, Authority will suffer damages (including its own and Transfer Company, and Member
1697 Agencies’ franchise haulers’ inconvenience; anxiety, frustration, potential political pressure, criticism, and
1698 complaint by Member Agencies’ franchise haulers, Transfer Company, and residents and businesses; lost
1699 Authority Board of Directors and staff time; deprivation of the benefits of the Agreement and loss of
1700 bargain) in subjective ways and in varying degrees of intensity that are incapable of measurement in precise
1701 monetary terms, and that it is and will be impracticable and extremely difficult to ascertain and determine
1702 the value thereof. In addition, in event of breach or Contractor Default, urgency of protecting public health
1703 and safety may necessitate that Authority enter into emergency or short-term arrangements for services
1704 without competitive procurement at prices substantially greater than hereunder, and the monetary loss
1705 resulting there from is impossible to precisely quantify. Lastly, termination of this Agreement for
1706 Contractor Default and other remedies provided hereunder are, at best, a means of future correction and not
1707 remedies that make the Authority whole for past breaches and Contractor Defaults. Therefore, the Parties
1708 agree that the liquidated damages listed in Sections 4.08 and 4.14 represent a reasonable estimate of the
1709 amount of damages, considering all of the circumstances existing on the date of this Agreement, including
1710 the relationship of the sums to the range of harm to Authority that reasonably could be anticipated and
1711 anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each
1712 Party specifically confirms the accuracy of the statements made above and the fact that each Party had
1713 ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage
1714 provision at the time that this Agreement was made.

1715
1716
1717 Contractor Initial Here: _____ Agency Initial Here: _____
1718
1719

1720 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** Upon failure
1721 to meet standards in Sections 4.08 and 4.14, Contractor will pay (as liquidated damages and not as a penalty)
1722 the amounts set forth in Sections 4.08 and 4.14. Authority may determine the occurrence of events giving
1723 rise to liquidated damages through the observation of its own employees or representative or investigation
1724 of complaints by Transfer Company. Prior to assessing liquidated damages, Authority will give Contractor
1725 Notice of its intention to do so. The Notice will include a brief description of the incident(s) and non-
1726 performance. The Authority may review (and make copies at its own expense) all information in the
1727 possession of Contractor relating to incident(s) and non-performance. Authority may, within ten (10)
1728 calendar days after issuing the Notice, request a meeting with Contractor. Authority may present evidence
1729 of non-performance in writing and through testimony of its employees and others relevant to the incident(s)
1730 and non-performance. Authority will provide Contractor with a written explanation of his or her
1731 determination on each incident(s) and non-performance prior to authorizing the assessment of liquidated
1732 damages. The decision of Authority will be final, and Contractor will not be subject to, or required to
1733 exhaust, any further administrative remedies.
1734

1735 **C. Amount.** Authority may assess liquidated damages for each day or event, as appropriate, that
1736 Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Sections
1737 4.08 and 4.14.

1738
1739 **D. Payment of Liquidated Damages.** Contractor will pay any liquidated damages assessed by Authority
1740 within ten (10) calendar days after they are assessed. If they are not paid within that period, Authority may
1741 proceed against the Guaranty Agreement.

1742 **8.21 GUARANTY OF CONTRACTOR'S PERFORMANCE**

1743 The Guarantor has agreed to guaranty Contractor's performance of this Agreement including Contractor's
1744 indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached
1745 as Exhibit 8.21. The Guaranty Agreement is being provided concurrently with Contractor's execution of
1746 this Agreement.

1747 **8.22 JURISDICTION, VENUE**

1748 Jurisdiction and venue shall be governed by Section 8.17, Dispute Resolution.
1749
1750
1751

1752 **ARTICLE 9.**
1753 **REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

1754 **9.01 MADE BY CONTRACTOR**

1755 Contractor's representatives and warranties, as stated in Exhibit 9.01 are in full force and effect from the
1756 Effective Date of this Agreement.
1757

1758 **ARTICLE 10.**
1759 **MISCELLANEOUS PROVISIONS**

1760 **10.01 EXHIBITS**

1761 If any provisions contained in the text of Articles 1 through 10 are inconsistent or conflict with any Exhibits
1762 to this Agreement, then the provisions of the text will govern.

1763 **10.02 INTEGRATION**

1764 This Agreement contains the entire agreement between the Parties with respect to the rights and
1765 responsibilities of the Parties under this Agreement, including the enforcement and administration of this
1766 Agreement. This Agreement completely and fully supersedes all prior understandings and agreements
1767 between the Parties with respect to those rights and responsibilities.

1768 **10.03 SECTION HEADINGS**

1769 Any captions or headings following the Exhibit, Section, subsection, paragraph, and Article numbers and
1770 preceding the operative text of this Agreement is for convenience of reference only and do not control or
1771 affect the scope, intent, meaning, construction, interpretation, or effect of this Agreement.

1772 **10.04 INTERPRETATION AND CONSTRUCTION**

1773 **A. Drafting.** This Agreement must be interpreted and construed reasonably and neither for nor against
1774 either Party, regardless of the degree to which either Party participated in its drafting. Contractor
1775 acknowledges that it determined to participate in the procurement of this Agreement upon its own choice
1776 and initiative and, during the course of that procurement, Authority solicited Contractor’s comments,
1777 exceptions, and proposals with respect to provisions in the Agreement. The Parties have negotiated this
1778 Agreement at arm’s length and with advice of their respective attorneys, and no provision herein is
1779 construed against the Authority solely because it prepared this Agreement in its executed form.

1780
1781 **B. Gender and Plurality.** Words of the masculine gender include correlative words of the feminine and
1782 neuter genders, and vice versa. Words importing the singular number mean and include the plural number,
1783 and vice versa, unless the context demands otherwise.

1784
1785 **C. Font.** Any underlined, italicized, bold-faced, upper captioned, or other font style are for ease of reading
1786 and contract administration only and do not imply relative importance or unimportance of any provision of
1787 this Agreement.

1788
1789 **D. References to Parts.** References to Sections and Articles refer to Sections and Articles of this
1790 Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement.
1791 Reference to “subsections” refers to the subsection contained in the same Section in which the reference
1792 occurs, unless otherwise provided.

1793
1794 **E. Examples.** Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent
1795 or conflicts with the text that it illustrates, the text governs.

1796
1797 **F. Specifics No Limitation on Generalities.** The mention of any specific duty or liability imposed upon
1798 the Contractor may not be construed as a limitation or restriction of any general liability or duty imposed
1799 upon the Contractor by this Agreement or Applicable Law.

1800 **10.05 AMENDMENT**

1801 The Parties may change, modify, supplement, or amend this Agreement only upon written agreement duly
1802 authorized and executed by both Parties. However, wherever reports, forms, or other documents are
1803 attached to this Agreement in substantially the form provided in the Exhibits, the Authority Representative
1804 and Contractor Representative may edit and revise them upon their agreement or otherwise provided in the
1805 related Sections of this Agreement, evidenced in writing *unless* this Agreement or Applicable Law
1806 specifically requires approval by Authority Board of Directors pursuant to resolution or otherwise.

1807 **10.06 SEVERABILITY**

1808 If any clause, sentence, provision, subsection, Section, or Article of this Agreement or Exhibit to this
1809 Agreement (an “**Agreement Provision**”) is ruled unconstitutional, illegal, invalid, non-binding, or
1810 unenforceable by any court of competent jurisdiction, then the Parties will:

1811
1812 (1) promptly meet and negotiate a substitute for those Agreement Provision and any related
1813 amendments, deletions or additions to other provisions of this Agreement which together effect the
1814 Parties' original intent to the greatest extent allowable under Applicable Law; and

1815
1816 (2) if necessary or desirable to accomplish preceding item (1), apply to the court that made that ruling
1817 for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or
1818 additions to this Agreement. Contractor will pay Authority half of the Direct Costs of that application
1819 within 20 days of Authority's request if Contractor or a third Person other than the Authority
1820 instituted proceedings resulting in the ruling.

1821
1822 The unconstitutionality, illegality, invalidity, non-binding nature, or unenforceability of any Agreement
1823 Provision will not affect any of the remaining provisions of this Agreement. This Agreement will be
1824 construed and enforced as if that Agreement Provision did not exist.

1825 **10.07 COSTS OF ENFORCING AGREEMENT**

1826 Contractor will pay to the Authority the Authority's Costs, including attorneys' fees, reasonably incurred
1827 by or on behalf of the Authority enforcing payment or performance of Contractor's obligations under this
1828 Agreement if non-payment or non-performance results in a Contractor Default.

1829 **10.08 AUTHORITY**

1830 Authority warrants that the officers listed below have been duly authorized by the Authority to execute this
1831 Agreement on behalf of the Authority. Contractor warrants that the individuals listed below have been duly
1832 authorized by the Contractor to execute this Agreement on behalf of the Contractor.

1833 **10.09 COUNTERPARTS**

1834 This Agreement, including dated signatures on amended Exhibits and attachments to those Exhibits, may
1835 be executed in counterparts, each of which will be deemed to be an original.
1836
1837

1838 IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the latter of the date
1839 written below.

1840
1841
1842

1843 [INSERT CONTRACTOR NAME]

**SOUTH BAYSIDE
WASTE MANAGEMENT AUTHORITY**

1844
1845
1846
1847
1848

By:
Date:

By: Joe La Mariana, Executive Director
Date:

1851
1852
1853

1854 ATTEST:

ATTEST:

1855
1856
1857
1858

By: Corporate Officer

By: Jean Savaree
Authority Attorney

1860
1861
1862
1863
1864

EXHIBIT 1.01: Definitions

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Act means the California Integrated Waste Management Act of 1989 set forth in PRC Section 40000, *et seq.*

Actions means all actions including claims, demands, causes of action, suits, mediation, arbitration, hearings, investigations, inquiries, and proceedings, whether legal, judicial, quasi-judicial, governmental, or administrative in nature and whether threatened, brought, instituted, or settled.

Affiliate means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor, and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

Agreement means this Agreement between the Authority and Contractor, including all exhibits, schedules and attachments, which are incorporated in this Agreement by reference, as this Agreement may be amended and supplemented.

Annual Report is described in Section 4.15.

Applicable Law means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, approvals, or requirements of the United States, State, regional, or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Services or the performance of the Parties’ respective obligations under this Agreement, *including* any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation conditions and monitoring plans in accordance with environmental impact statements, conditional use permits, building codes, zoning, non-discrimination, and the Transfer or disposition of Solid Waste, Recyclable Materials and Plant Materials, and,

- (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. Section 9601 *et seq.*);
- (2) the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 *et seq.*);
- (3) the Clean Air Act, (42 U.S.C. Section 1351 *et seq.*, 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 *et seq.* and Health and Safety Code Sections 39000 *et seq.*);
- (4) the Emergency Planning and Community Right to Know Act, (42 U.S.C. Section 11001 *et seq.*)
- (5) the Occupational Safety and Health Act, (29 U.S.C. Section 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257

- 1914 and 258); and the California Occupational Safety and Health Act (California Labor Code, Division
 1915 5, Parts 1-10, Section 6300 *et seq.*);
- 1916 (6) the California Hazardous Waste Control Act, (California Health & Safety Code, Section 25100 *et*
 1917 *seq.*);
- 1918 (7) California Hazardous Materials Release Response Plan and Inventory Act (California Health &
 1919 Safety Code, Division 20, Chapter 6.95, Section 25500 *et seq.*);
- 1920 (8) the Carpenter-Presley-Tanner Hazardous Substance Account Act, (California Health & Safety
 1921 Code Section 25300 *et seq.*);
- 1922 (9) California Underground Storage Tank Act, (California Health & Safety Code, Section 25280 *et*
 1923 *seq.*);
- 1924 (10) the Porter-Cologne Water Quality Control Act, (California Water Code Section 13000 *et seq.*);
- 1925 (11) the Safe Drinking Water and Toxic Enforcement Act, (California Health and Safety Code Section
 1926 25249.5 *et seq.*);
- 1927 (12) “Proposition 65” (California Health & Safety Code, Section 25249.5 *et seq.*, and Health & Safety
 1928 Code Section 25192);
- 1929 (13) “Calderon Legislation” (former California Government Code, Sections 66796.53 and 66796.54,
 1930 now California Public Resources Code Sections 45300-04, 45700, California Health & Safety
 1931 Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273);
- 1932 (14) Title 14 California Code of Regulations;
- 1933 (15) Title 22 California Code of Regulations;
- 1934 (16) Title 27 California Code of Regulation;
- 1935 (17) “Subchapter 15” (Title 23 California Code of Regulations, Sections 2510-2610); and,
- 1936 (18) Any other government required rules, guidelines, laws, statutes, etc. which are imposed upon
 1937 Contractor and not discretionary, governing the provision of the Services outlined within this
 1938 Agreement.

1939
 1940 **Assign (Assignment)** means:

- 1941
- 1942 (i) selling, exchanging, or otherwise transferring effective control of management of the Contractor
 1943 (through sale, exchange, or other transfer of outstanding stock or otherwise);
- 1944
- 1945 (ii) issuing new stock or selling, exchanging, or otherwise transferring 20% or more of the then
 1946 outstanding common stock of the Contractor;
- 1947
- 1948 (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-
 1949 issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction
 1950 which results in a change of Ownership or change of control of Contractor;
- 1951
- 1952 (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment
 1953 for the benefit of creditors, writ of attachment of an execution, being levied against Contractor,
 1954 appointment of a receiver taking possession of any of Contractor’s tangible or intangible property,
 1955 or transfer occurring in the event of a probate proceeding;
- 1956
- 1957 (v) any combination of the forgoing (whether or not in related or contemporaneous transactions)
 1958 which has the effect of any that transfer or change of Ownership or change of control of Contractor.
- 1959

1960 **Authority** means the South Bayside Waste Management Authority or any governmental entity which may
 1961 assume waste management obligations of the Authority, including any joint exercise of powers authority or
 1962 other similar public entity with which the Authority participates or contracts with, established to provide
 1963 Solid Waste management services or meet Solid Waste Diversion requirements under Applicable Law. For
 1964 the purposes of Indemnities, “Authority” will include its officers, employees, agents, contractors, attorneys,

1965 administrators, affiliates, representatives, servants, insurers, heirs, assigns, and any successor or successors
1966 to the Authority's interest.
1967
1968 **Authority's Solid Waste** means Solid Waste delivered by the Transfer Company in accordance with the
1969 Transfer Station Operating Agreement;
1970
1971 **Authority's Reimbursement Costs** means Authority's Direct Costs.
1972
1973 **Authority Service Area** means the consolidated boundaries of the Member Agencies, except for portions
1974 of the County of San Mateo.
1975
1976 **Calendar Year** means a successive period of 12 months commencing on January 1 and ending on
1977 December 31.
1978
1979 **CCR** means California Code of Regulations.
1980
1981 **CERCLA** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980
1982 (42 U.S.C. Section 9600 *et. Seq.*).
1983
1984 **Change in Law** means the occurrence of any event or change in Applicable Law as follows:
1985
1986 (1) the adoption, promulgation, repeal, modification, amendment, or other change in Applicable
1987 Law or change in judicial or administrative interpretation thereof occurring after the Effective Date,
1988 *other than* laws with respect to taxes based on or measured by net income, or any unincorporated
1989 business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by the
1990 Authority or Member Agencies) or employment taxes; or
1991
1992 (2) any order or judgment of any federal, state, or local court, administrative agency, or
1993 governmental body issued after the Effective Date:
1994
1995 (i) the order or judgment is not also the result of the willful misconduct or negligent action
1996 or inaction of the Party relying thereon or of any third party for whom the Party relying
1997 thereon is directly responsible; and
1998
1999 (ii) the Party relying thereon, unless excused in writing from so doing by the other Party, will
2000 make or have made, or will cause or have caused to be made, Reasonable Business Efforts
2001 to contest the order or judgment (it being understood that contesting in good faith an order
2002 or judgment will not constitute or be construed as a willful misconduct or negligent action of
2003 the Party); or
2004
2005 (3) the imposition by a governmental authority or agency of any new or different material
2006 conditions in connection with the issuance, renewal, or modification of any Permit after the date of
2007 this Agreement; or
2008
2009 (4) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or
2010 renewal of, or the suspension, interruption, or termination of, any Permit after the date of this
2011 Agreement; *provided* the failure to issue or the suspension or termination of any Permit is not the
2012 result of negligent action or inaction of the Party relying thereon or any third party for whom the
2013 Party relying thereon is directly responsible.
2014

2015 **Closure** means closure of the Landfill or portions of the Landfill in accordance with Applicable Law,
2016 including all planning, design, regulatory approvals, plan implementation, construction, and monitoring.

2017
2018 **Contract Manager** means items (2) through (4) of this definition, and “**Contractor or any of its Contract**
2019 **Managers**” and means:

- 2020
- 2021 (1) the Contractor and its officers and directors,
 - 2022
 - 2023 (2) the officers and directors of [Insert Contractor Name] (or its successors),
 - 2024
 - 2025 (3) the Contractor Representative, and
 - 2026
 - 2027 (4) any other Persons, including Affiliates that, and Contractors’ or Affiliates’ employees, officers
2028 or directors who, have the authority or responsibility to directly or indirectly administer, manage,
2029 direct, supervise, or oversee Services or this Agreement, including the following:
2030
2031 supplying Goods or Services; serving as director of the board of directors of Contractor and an
2032 Affiliate; serving as an officer or employee of Contractor and an Affiliate; reviewing or negotiating
2033 Contractor’s contracts (including this Agreement); providing in-house legal services; providing
2034 insurance or other performance security; and providing processing or disposal, but *excluding* the
2035 following:
2036
2037 monitoring Contractor’s performance, supervising Contractor’s finance and capital budget
2038 decisions, and articulating general policies and procedures.

2039
2040 **Contractor** means [Insert Contractor Name], a corporation organized and operating under the laws of the
2041 State of California. For purposes of Indemnities, Contractor will include Contractor’s employees, officers,
2042 agents, Subcontractors, and consultants performing or responsible for performing Services; provided that
2043 only signatory Contractor, a corporation, is obligated to provide Indemnities and its employees, officers,
2044 agents, subcontractors, and consultants will not be liable therefore as individuals.

2045
2046 **Contractor Default** has the meaning provided in Section 7.01.

2047
2048 **Construction and Demolition Materials** includes, but is not limited to, concrete, cinder blocks, brick,
2049 mortar, wood, glass, and other material removed and discarded during the alteration, renovation,
2050 remodeling, repair, construction, or demolition of pavements, houses, commercial buildings, or structures
2051 which can be separated from Solid Waste for the purpose of reuse, processing, or re-manufacture.

2052
2053 **Conviction** means a criminal conviction, permanent mandatory or prohibitory injunction, or a final
2054 judgment or order from a court or regulatory agency of competent jurisdiction with respect to Criminal
2055 Activity.

2056
2057 **Criminal Activity** means:

- 2058
- 2059 (1) any criminal offense in connection with obtaining, attempting to obtain, procuring or
2060 performing a public or private agreement related to Recyclable Materials, Plant Materials, or Solid
2061 Waste services of any kind (including collection, hauling, Transfer, processing, composting, or
2062 disposal), including this Agreement; or
 - 2063
 - 2064 (2) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency;
2065 or

- 2066
2067 (3) fraud, embezzlement, extortion, racketeering, false claims, false statements, forgery,
2068 falsification, or destruction of records, obstruction of justice, knowingly receiving stolen property,
2069 theft, or misprision (failure to disclose) of a felony; or
2070
2071 (4) unlawful disposal of Hazardous Materials, Designated Waste, or Unpermitted Waste; or
2072
2073 (5) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and
2074 market allocation, and of unfair and anti-competitive trade practice laws, including with respect to
2075 inflation of waste collection, hauling, or disposal rates or fees.
2076

2077 **Day** means calendar day.
2078

2079 **Designated Waste** means non-Hazardous Material which may pose special Disposal problems because of
2080 its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites,
2081 or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services or
2082 pursuant to applicable permits. Designated Waste consists of those substances classified as Designated
2083 Waste by the State, in CCR Title 23, Section 2522.
2084

2085 **Direct Costs** means the sum of:
2086

- 2087 (1) payroll costs directly related to the Contractor's performance, or supervision of any obligation
2088 pursuant to the provisions of this Agreement, or Authority's administration and enforcement of this
2089 Agreement, comprised of compensation and fringe benefits, including vacation, sick leave,
2090 holidays, retirement, workers compensation insurance, federal and State unemployment taxes and
2091 all medical and health insurance benefits, plus
2092
2093 (2) the costs of materials, services, direct rental costs and supplies, plus
2094
2095 (3) the reasonable costs of any payments to subcontractors necessary to and in connection with the
2096 performance under or administration and enforcement of this Agreement; plus
2097
2098 (4) any other cost or expense which is directly or normally associated with the task performed.
2099

2100 Such Direct Costs are to be substantiated by (i) a certificate signed by the principal financial officer of the
2101 Contractor or the authorized representative of the Authority or his or her designee, as the case may be,
2102 setting forth the amount of the cost and the reason why the cost is properly chargeable to the Authority or
2103 the Contractor, as the case may be, and representing that the cost is an arm's length and competitive price,
2104 if there are competitive prices, for the service or materials supplied; and, (ii) if the Authority or the
2105 Contractor requests, as the case may be, additional back-up documentation as may be available to
2106 reasonably substantiate any Direct Cost, including invoices from suppliers and subcontractors. Direct Costs
2107 exclude Non-Allowable Costs.
2108

2109 **Disposal** (or **Dispose** or other variation thereof) means the final disposition of Solid Waste in accordance
2110 with this Agreement at the Landfill.
2111

2112 **Disposal Rate** means the amount established under Article 5 of this Agreement to be charged the Transfer
2113 Company by Contractor for Disposal of Solid Waste at the Landfill.
2114

2115 **Diversion (Divert)** means to divert from landfill Disposal or transformation through source reduction,
2116 reuse, recycling, composting, or other means within the meaning of the Public Resources Code Section
2117 41780.

2118
2119 **Effective Date** means the later date of execution by the Authority or Contractor on the execution page of
2120 this Agreement.

2121
2122 **Facility (Facilities)** means the Shoreway Environmental Center, which includes a Transfer Station located
2123 at 225 Shoreway Road, Recyclables Materials processing facility at 333 Shoreway Road, and any other
2124 building and improvement located at these addresses in San Carlos, California (including the administration
2125 and vehicle repair and maintenance building) as its Facilities to be utilized under this Agreement.

2126
2127 **Generator** means any Person whose act or process produces Solid Waste or Unpermitted Waste or other
2128 material that becomes part of the overall waste stream.

2129
2130 **Goods or Services** means all goods or services used in providing Services, including labor, leases,
2131 subleases, equipment, supplies, and capital related to furnishing Services; insurance, bonds, or other credit
2132 support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and legal, risk management,
2133 general, and administrative services.

2134
2135 **Government Fees** are fees or taxes imposed uniformly upon Solid Waste Landfill without regard to the
2136 specific site characteristics or operational history of those facilities, such as franchise fees, regulatory fees,
2137 mitigation fees, surcharges, governmental impositions, and/or taxes. "Government Fees" are not amounts
2138 imposed upon the Landfill in connection with the repair, remediation, improvement, addition, or expansion
2139 of the Landfill.

2140
2141 **Governmental Fee Component** has the meaning provided in Section 5.02.

2142
2143 **Guarantor** means [Insert Guarantor Name], a limited liability company duly organized and existing in
2144 good standing under the laws of the State of _____ [insert state].

2145
2146 **Guaranty Agreement** is the agreement in substantially the form attached as Exhibit 8.21 executed by the
2147 Guarantor.

2148
2149 **Hazardous Materials or Hazardous Waste** are materials that by reason of their quality, concentration,
2150 composition, or physical, chemical, or infectious characteristics may cause or significantly contribute to an
2151 increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to
2152 human health or the environment when improperly treated, stored, transported, or disposed of or otherwise
2153 mismanaged; or any waste which is defined regulated as a hazardous waste, toxic waste, hazardous
2154 chemical substance or mixture, or asbestos under Applicable Law, and:

2155
2156 (1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code;
2157 regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California
2158 Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or
2159 extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and
2160 Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code
2161 Section 25100 *et seq.*, including 23 CCR Sections 2521 and 2522; and

2162
2163 (2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901
2164 *et seq.*, as amended (including amendments thereto made by the Solid Waste Disposal Act
2165 Amendments of 1980), and

2166
2167 (3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as
2168 amended, and related federal, State, and local laws and regulations, including the California Toxic
2169 Substances Account Act, California Health and Safety Code Section 25300 et seq.; and
2170
2171 (4) materials regulated under the Comprehensive Environmental Response, Compensation and
2172 Liability Act, 42 U.S.C. 9601, et seq.,
2173
2174 (5) materials regulated under any future additional or substitute federal, State, or local laws and
2175 regulations pertaining to the identification, transportation, treatment, storage, or disposal of toxic
2176 substances or hazardous waste, and
2177
2178 (6) Any substance the presence of which at the Landfill is prohibited by Applicable Law.
2179
2180 If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous
2181 waste adopt conflicting definitions of “hazardous waste”, for purposes of collection, transportation,
2182 processing, and/or disposal, the broader, more restrictive definition is employed for purposes of this
2183 Agreement.
2184
2185 “**herein**,” “**hereunder**,” and the like mean “in this Agreement,” “of this Agreement,” “under this
2186 Agreement,” respectively; “**hereinafter**” mean before and after the date of this Agreement, respectively.
2187
2188 **Holidays** are defined as New Year’s Day and Christmas Day.
2189
2190 **Household Hazardous Waste** means any Hazardous Waste generated incidental to owning or maintaining
2191 a place of residence, excluding any Hazardous Waste generated in the course of operation of a business
2192 concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.
2193
2194 “**immediate**” of “**immediately**” means within 12 hours.
2195
2196 “**including**”, “**include**”, and variations thereof mean “including, without limitation,” “including, but not
2197 limited to” and “including, at a minimum”.
2198
2199 **Indemnities** or **Indemnification** means all defense and indemnities under this Agreement.
2200
2201 **Landfill** means [Insert name of Disposal Site to Be Used by Contractor] that is owned and operated by
2202 Contractor and located at _____ [insert address].
2203
2204 **Liabilities** means all liabilities, including:
2205
2206 (1) Actions;
2207
2208 (2) Awards, judgments and damages, both: (i) actual damages, whether special and consequential, in
2209 contract or in tort, such as natural resource damages, damage for injury to or death of any Person;
2210 and damage to property; and, (ii) punitive damages;
2211
2212 (3) Contribution or indemnity claimed by Persons other than the Parties;
2213
2214 (4) Injuries, losses, debts, liens, liabilities,
2215
2216 (5) Costs, such as response remediation and removal costs,

- 2217
2218 (6) Interest,
2219
2220 (7) Fines, charges, penalties, forfeitures, and
2221
2222 (8) Expenses such as attorney’s and expert witness fees, expenditures for investigation and
2223 remediation, and costs incurred in connection with defending against any of the foregoing or in
2224 enforcing Indemnities.
2225

2226 **Maximum Vehicle Turnaround Time** means 30 minutes, measured from the time recorded at the inbound
2227 scale documenting the vehicle enters the Landfill property until the time recorded at the outbound scale
2228 documenting the vehicle exiting the Landfill property, under the constraints of the [Insert Disposal Site to
2229 Be Used by Contractor Permit related to vehicles exiting Landfill.
2230

2231 **Member (Member Agency)** means any one of the public entities listed in Exhibit A (Equity Members) or
2232 Exhibit B (non-Equity Members) of the Joint Exercise of Powers Agreement South Bayside Waste
2233 Management Authority, as those exhibits may be changed from time to time.
2234

2235 **Non-Allowable Costs** include the following:
2236

- 2237 (1) fines, penalties, assessments, and other amounts paid for violations or noncompliance with
2238 Applicable Law or in settlement of claims or allegations of noncompliance with Applicable Law;
2239
2240 (2) any costs of indemnifications, including Indemnification, Liabilities, or any mediation,
2241 arbitration, or judicial proceeding, whether formal or informal;
2242
2243 (3) any contributions or donations to any Person (including charitable, non-profit, service or other
2244 community groups, and elected officials), including cash, property, and services in kind;
2245
2246 (4) lobbying costs, whether cash, property, or services in kind, such as:
2247
2248 - costs incurred in any direct or indirect attempt to influence the outcome of any federal,
2249 State, or local election, referendum, initiative, or similar process by citizen electorate or
2250 vote upon resolutions, ordinances, or other action items by elected officials (including
2251 members of a city council or a county board of supervisors), through cash contributions,
2252 endorsements, publicity, or other action;
2253
2254 - establishing, administering, contributing to, or paying the expense of a candidate, political
2255 party, campaign, political action committee, or other Person or organization established
2256 for the purpose of influencing the outcomes of elections or vote, including votes on
2257 resolutions, ordinances, or other actions by elected bodies such as a city council or a
2258 county board of supervisors;
2259
2260 - attempts to influence (i) the introduction of federal, State, or local legislation or (ii) the
2261 enactment or modification of any pending federal, State, or local legislation through
2262 communication with any member of employee of Congress, a state legislature, or local
2263 governing body, or by preparing, distributing, or using publicity;
2264
2265 - legislative liaison activities when those activities are carried on in support of, or in
2266 knowing preparation for, an effort to engage in unallowable activities;
2267

2268 (5) costs of preparing documentation, including cost, financial, and accounting books and records,
2269 upon request of Authority or any accountant, auditor, financial analyst, or rate consultant retained
2270 by Authority, incurred to substantiate Direct Costs, or allocation thereof.
2271

2272 **Notice** means a notice given in accordance with Section 8.09.
2273

2274 **Operating Agreement** means the Agreement for the Operation of the Authority’s Transfer Station and
2275 Recyclery (Facilities) between the Authority and South Bayside Recycling, dated January 1, 2010, as may
2276 be amended or replaced consistent with Authority’s obligations in Article 3 of this Agreement.
2277

2278 **Organics** means food waste including fruits, vegetables, grain products, dairy products, meat, seafood,
2279 napkins, waxed cardboard, and wood crates.
2280

2281 **Ownership** has the meaning provided under the constructive ownership provisions of Section 318(a) of the
2282 Internal Revenue Code of 1986 *except* that (1) 10 percent is substituted for 50 percent in Section
2283 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; (2) Section 318(a)(5)(C) is disregarded; (3) ownership
2284 interest of less than 10 percent is disregarded; and (4) percentage interests is determined on the basis of the
2285 percentage of voting interest or value which the ownership interest represents, whichever is greater.
2286

2287 **Party** or **Parties** refers to the Authority and Contractor, individually or together.
2288

2289 **Permits** means all federal, State, Authority, other local and any other governmental unit permits, orders,
2290 licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be
2291 obtained or maintained by any Person with respect to Services, as renewed or amended from time to time.
2292

2293 **Person(s)** includes an individual, firm, association, organization, partnership, corporation, trust, joint
2294 venture, the United States, the State, local governments and municipalities and special purpose districts and
2295 other entities.
2296

2297 **Plant Materials** means a subset of organic Recyclable Materials consisting of grass cuttings, weeds, leaves,
2298 pruning, branches, dead plants, brush tree trimmings, dead trees (not more than six (6) inches in diameter
2299 and four (4) feet in length), and similar materials generated at Premises within Agency, separated and set
2300 out for collection, processing, and Recycling. Plant Materials does not include materials not normally
2301 produced from farms, gardens, or landscapes, such as, but not limited to, brick, rock, gravel, large quantities
2302 of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood or wood products. Diseased
2303 plants and trees are also excluded from Plant Materials.
2304

2305 **Pleas** means the Contractor or any of its Contract Managers has pled “guilty” or entered a plea of “*nolo*
2306 *contendere*” or “no contest” to Criminal Activity occurring within the Authority or relating to this
2307 Agreement.
2308

2309 **Position of Influence** means the authority and responsibility described in item (4) of the definition of
2310 “Contract Managers”.
2311

2312 **Post-Closure** means post-closure of the Landfill or portions of the Landfill in accordance with Applicable
2313 Law, including all maintenance and monitoring.
2314

2315 **PRC** means the California Public Resources Code.
2316

2317 **Rate Period** means a twelve- (12-) month period, commencing January 1 and concluding December 31.
2318

2319 **RCRA** means the Resource Conservation and Recovery Act (42 U.S.C. Section 6900 *et. seq.*).
2320
2321 **Reasonable Business Efforts** means those efforts a reasonably prudent business Person would expend
2322 under the same or similar circumstances in the exercise of that Person’s business judgment, intending in
2323 good faith to take steps calculated to satisfy the obligation that that Person has undertaken to satisfy.
2324
2325 **Records** means all ledgers, book of account, invoices, vouchers, canceled checks, logs, correspondence
2326 and other records or documents evidencing or relating to Disposal Rates, Tonnage of Solid Waste and other
2327 materials handled, satisfaction of Contractor’s obligations under this Agreement and performance of the
2328 terms of this Agreement, damages payable under this Agreement and Contractor Defaults, including those
2329 Records described in Sections 4.03, 4.04, 4.14, 4.17, 4.18, 8.14, 8.15, and 10.01.
2330
2331 **Recovered Material** means Recyclable Materials that are Recovered.
2332
2333 **Recovery** (or **Recover**, **Recovered** or other variations thereof) means the picking, pulling, sorting,
2334 separating, classifying, and recovery of Recyclable Materials from Solid Waste whether by manual or
2335 mechanical means, after acceptance of that materials and before marketing of Recovered Materials,
2336 including recycling, material reuse and recovery, mulching, composting, land application, or
2337 transformation.
2338
2339 **Recyclable Materials** means materials that are reused, remanufactured, or processed.
2340
2341 **Self Haul** means the collection and transportation of Solid Waste and Recyclable Materials by Persons
2342 other than the Transfer Company, Member Agencies’ franchise haulers, or commercial haulers as allowed
2343 by Applicable Law of the Member Agencies, including the Generator thereof and the owner or occupant of
2344 residential or commercial premises located in the Authority where the Solid Waste was generated.
2345
2346 **Services** mean all obligations of Contractor under and in accordance with this Agreement to Authority and
2347 Transfer Company.
2348
2349 **Service Commencement Date** means January 1, 2020, the date that Solid Waste Disposal Services
2350 provided by the Contractor will commence.
2351
2352 **Solid Waste** means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes,
2353 including garbage, trash, refuse, rubbish, ashes, industrial wastes, **dewatered, treated, or chemically-fixed**
2354 **sewage sludge which is not hazardous waste**, demolition and construction wastes, discarded home and
2355 industrial appliances, manure, vegetable or animal solid and semisolid wastes, biosolids, and other
2356 discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as that section
2357 may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include
2358 abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste, medical waste,
2359 Recyclable Materials, Construction and Demolition Materials, or Plant Materials.
2360
2361 **South Bayside Waste Management Authority** means the joint powers authority created under
2362 Government Code Section 6500 *et seq.* by an agreement dated October 13, 1999 among the Town of
2363 Atherton, the cities of Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park,
2364 Redwood City, San Carlos, San Mateo, the County of San Mateo, and the West Bay Sanitary District.
2365
2366 **Standard Industry Practice** means (1) the then-current development and operations practices and
2367 standards of the California solid waste management industry with respect to Recovery, Diversion, transfer,
2368 Transport, and Disposal services, and (2) the then-current development, operations, closure, and post-
2369 closure practices and Solid Waste Association of North America (or any successor organization) Manager

2370 of Landfill Operations standards in meeting Contractor’s obligations under this Agreement for Recovery,
2371 Diversion, and Disposal services.

2372
2373 **State** means the State of California.

2374
2375 **Subcontractors** includes any Person that provides Goods or Services to Contractor, whether pursuant to
2376 formal, written agreement, or merely in fact; “**subcontract**” means any arrangement, formal or informal,
2377 written, or otherwise, between Contractor and a subcontractor for providing Goods or Services.

2378
2379 **Term** is defined in Section 2.02.

2380
2381 **Ton (or Tonnage)** means a unit of weight equal to 2,000 pounds (907.18474 kg).

2382
2383 **Transfer (or Transferring** or other variations thereof) means transferring Solid Waste at the Transfer
2384 Station, if any, from residential collection vehicles, commercial collection vehicles, and self-haulers into
2385 Transport vehicles.

2386
2387 **Transfer Company** means the Person that Authority directs pursuant to the Operating Agreement to
2388 Transfer Solid Waste at the Transfer Station into Transport containers or vehicles and deliver such Solid
2389 Waste to the Landfill.

2390
2391 **Transfer Station** means the transfer station that is owned by the South Bayside Waste Management
2392 Authority, at the Shoreway Environmental Center located 225 Shoreway Boulevard, San Carlos, CA 94070.

2393
2394 **Transfer Vehicle** means a tractor and trailer designed to haul Solid Waste from any Transfer Station to the
2395 Landfill.

2396
2397 **Transport (or Transportation)** means the transportation of Solid Waste from any transfer station to the
2398 Landfill in accordance with Section 4.04.

2399
2400 **Uncontrollable Circumstances** has the meaning provided in Section 8.12.

2401
2402 **Unpermitted Waste** means wastes or other materials that the Landfill may not receive under their Permits,
2403 including:

2404
2405 (1) all materials that the Landfill are not permitted to accept, *excluding* white goods with chlorinated
2406 fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely
2407 handles, recycles, or Disposes;

2408
2409 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely
2410 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which
2411 may be a Hazardous Materials if it contains more than 1% asbestos;

2412
2413 (3) Ash residue from the incineration of solid wastes, including Solid Waste; infectious waste
2414 described in Item (8) below, wood waste, sludge, and agricultural wastes;

2415
2416 (4) Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic
2417 substances, which remain after the shredding of automobiles;

2418
2419 (5) Dead animals larger than 100 pounds;

2420

- 2421 (6) Hazardous Materials;
2422
2423 (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Landfill, including
2424 cement kiln dust, or process residues;
2425
2426 (8) Infectious Wastes that have disease transmission potential and are classified as Hazardous
2427 Wastes by the State Department of Health Services, including pathological and surgical wastes,
2428 medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles,
2429 drugs, patient care items that as linen or personal or food service items from contaminated areas,
2430 chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known
2431 infectious diseases, where “**Infectious Waste**” means biomedical waste generated at hospitals,
2432 public or private medical clinics, dental offices, research laboratories, pharmaceutical industries,
2433 blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in
2434 the California Health and Safety Code Section 25117.5;
2435
2436 (9) Liquid wastes that are not spadeable including cannery and food processing wastes, landfill
2437 leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal
2438 field wastes, septic tank pumpings, rendering plant byproducts, and those liquid wastes that may
2439 be Hazardous Wastes; and,
2440
2441 (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the
2442 State Health and Safety Code, and any waste that contains a radioactive material, the storage or
2443 disposal of which is subject to any other State or federal regulation.
2444

2445 This definition will be promptly amended to reflect any applicable changes in permits or Applicable Law.
2446

2447 **Violation** means any notice, assessment, or determination of non-compliance with Applicable law from
2448 any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assess, levied, or
2449 attached, where “**Regulatory Agency**” means any federal, State, or local governmental agency that
2450 regulates Transfer, Transportation and Disposal of Solid Waste, including California Department of
2451 Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization
2452 Services, California Air Resources Board, regional water quality management districts, California
2453 Department of Toxic Substances, CIWMB, the Local Enforcement Agency, federal and State
2454 Environmental Protection Agencies, and other federal or State health and safety department, applicable to
2455 Services.
2456

2457 **Working Days** (or **Work Day** or other variations thereof) means days during which Authority offices are
2458 open to do business with the public.
2459

2460

EXHIBIT 1.01.1: Member Agencies

2461	
2462	
2463	
2464	Town of Atherton
2465	City of Belmont
2466	City of Burlingame
2467	City of East Palo Alto
2468	City of Foster City
2469	Town of Hillsborough
2470	City of Menlo Park
2471	City of Redwood City
2472	City of San Carlos
2473	City of San Mateo
2474	County of San Mateo
2475	West Bay Sanitary District
2476	
2477	

EXHIBIT 6.02: Insurance

[Note to proposers: The insurance requirements are undergoing review by the Authority's insurance broker; therefore, the Authority reserves the right to modify the requirements, including increasing limits.]

1. **General Liability** Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). \$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

The Commercial General Liability Business policy must contain endorsements in substantially the following form:

- (i) "Thirty (30) calendar days' prior written notice shall be given to the South Bayside Waste Management Authority in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Executive Director
South Bayside Waste Management Authority
600 Elm Street
San Carlos, CA 94070

- (ii) "The South Bayside Waste Management Authority, its officers, employees, and agents are additional insureds on this policy." The Authority requires form CG2010 1101.
- (iii) "This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by the South Bayside Waste Management Authority, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only."
- (iv) "Inclusion of the South Bayside Waste Management Authority as an insured shall not affect the Authority's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured."

2. **Automobile Liability** Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement CA 0025 (occurrence form).

\$10,000,000 combined single limit per accident for bodily injury and property damage.

The Automobile Liability policy must contain the same endorsements as required for Comprehensive General Liability and CA 99 48 Broadened Auto Pollution Liability and MCS 90 upset and overturn coverage.

3. **Workers Compensation and Employers Liability Insurance.** Workers' compensation limits as required by State Labor Code Section 2700.

The Workers' Compensation policy must contain an endorsement in substantially the following form:

2528 The insurer must waive all rights of subrogation against the Authority, its officers, employees, and
2529 volunteers for losses arising from work performed by the Contractor for the Authority, except for the sole
2530 negligence of the Authority.
2531

2532 4. **Environmental Impairment Liability** in the amount of \$10,000,000 covering liability arising from
2533 the release of pollution at the Landfill. The Environmental Impairment Liability policy must contain the
2534 same endorsements as required for Comprehensive General Liability.
2535

2536

2537

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EXHIBIT 8.10: Authority and Contractor Representatives

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The Contractor Representative is: _____ [Insert name and contact information]

Date: Effective Date

If the Contractor changes the Contractor Representative upon Notice from Contractor Representative to Authority Representative, the amended form will be substituted and attached. The dated signature of each Party Representative on the changed designation form will be deemed evidence that Notice was duly given in accordance with Section 8.09, that Authority consented, and that the new attachment supersedes the prior attachment.

The Authority Representative is Authority Executive Director

Date: Effective Date

If the Authority changes the Authority Representative upon Notice from Authority Representative to Contractor Representative, the changed designation will be substituted and attached. The dated signature of each Party Representative on the amended form will be deemed evidence that Notice was duly given in accordance with Section 8.09, that Authority consented, and that the new attachment supersedes the prior attachment.

EXHIBIT 8.21: Guaranty Agreement

2570
2571
2572 This Guaranty, made as of the date written below by [INSERT CONTRACTOR NAME] a limited liability
2573 company duly organized and existing in good standing under the laws of the State of [REDACTED]
2574 (“**Guarantor**”), to and for the benefit of the South Bayside Waste Management Authority (“**Authority**”),
2575 a municipal corporation of the State of California (the “**State**”).

2576 2577 WITNESSETH

2578
2579 WHEREAS, [Insert Contractor Name] (the “Contractor”), a wholly owned subsidiary of the Guarantor, and
2580 the Authority have negotiated the AGREEMENT BETWEEN THE SOUTH BAYSIDE WASTE
2581 MANAGEMENT AUTHORITY AND [INSERT CONTRACTOR NAME] FOR SOLID WASTE
2582 DISPOSAL SERVICES dated as of the later of the date of execution thereof by the Authority or the
2583 Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof
2584 (the “**Agreement**”), which Agreement is incorporated in this Agreement by reference and by this
2585 Agreement made part of this Agreement;

2586
2587 WHEREAS, it is in the interest of Guarantor that the Contractor enter into the Agreement with the
2588 Authority;

2589
2590 WHEREAS, the Authority is willing to enter into the Agreement only upon the condition that the Guarantor
2591 execute this Guaranty;

2592
2593 WHEREAS, in the event Contractor fails to timely and fully perform its obligations, including the payment
2594 of moneys, pursuant to the Agreement, Guarantor is willing to Guaranty, Contractor’s timely and full
2595 performance thereof; and

2596
2597 WHEREAS, it is a condition precedent to the Authority’s obligations under the Agreement that the
2598 Guarantor provide this Guaranty.

2599
2600 NOW, THEREFORE, as an inducement to the Authority to enter into the Agreement, the Guarantor agrees
2601 as follows:

2602
2603 Capitalized terms used in this Agreement and not otherwise defined in this Agreement, will have the
2604 meaning assigned to them in the Agreement.

2605
2606 **(1) Guaranty of Contractor’s Performance Under Agreement.** Guarantor by this Guaranty directly,
2607 unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Contractor’s
2608 obligations under the Agreement in accordance with the terms and conditions contained therein or to cause
2609 that timely and full performance. Within 30 days’ written request therefore by the Authority, Guarantor
2610 will honor the Guaranty. Notwithstanding the unconditional nature of the Guarantor’s payment obligations
2611 set forth in this Agreement, the Guarantor may assert the defenses provided in the paragraph entitled
2612 Defenses under Section 8 of this Guaranty, against claims made under this Guaranty.

2613
2614 **(2) Governing law; consent to jurisdiction; service of process.** This Guaranty is governed by the laws
2615 of the State of California. The Guarantor by this Guaranty agrees to the service of process in the State for
2616 any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor by this
2617 Guaranty agrees that the Superior Court of San Mateo County, and to the extent permitted by law, the
2618 United States District Court for the Northern District of California, will have the exclusive jurisdiction of
2619 all suits, actions, and other proceedings involving itself and to which the Authority may be party for the

2620 adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this
2621 Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of any
2622 suit, action, or proceeding, and consents to the service of process in any suit, action, or proceeding by
2623 prepaid registered mail, return receipt requested.
2624

2625 **(3) Enforceability; no assignment.** This Guaranty is binding upon and enforceable against Guarantor, its
2626 successors, assigns, and lawful representatives. It is for the benefit of the Authority, its successors and
2627 assigns. The Guarantor may not Assign or delegate the performance of this Guaranty without the prior
2628 written consent of the Authority in its sole discretion. Any assignment made without the consent of
2629 Authority is voidable by the Authority in its sole discretion. Together with its request for Authority consent,
2630 Guarantor will pay Authority \$20,000 to pay Authority its reasonable expenses for private attorneys' fees
2631 and investigation costs ("assignment expenses") necessary to investigate the suitability of any proposed
2632 assignee, and to review and finalize any documentation required as a condition for approving any
2633 assignment. Authority will reimburse Guarantor the excess, if any, over those assignment expenses it incurs.
2634 Contrariwise, Guarantor will pay Authority the excess assignment expenses, if any, over \$20,000 Authority
2635 incurs within 30 days of Authority's request therefore. Guarantor will further pay to Authority the
2636 Authority's Reimbursement Costs for fees of attorneys who are not Authority employees and investigation
2637 costs necessary to enjoin the assignment or to otherwise enforce this provision within 30 days of Authority's
2638 request therefore ("injunction costs").
2639

2640 For purposes of this Guaranty, "assign" and "assignment" means:

- 2641
- 2642 (i) selling, exchanging, or otherwise transferring effective control of management of the Guarantor
2643 (through sale, exchange or other transfer of outstanding stock or otherwise);
2644
 - 2645 (ii) issuing new stock or selling, exchanging, or otherwise transferring 20% or more of the then
2646 outstanding common stock of the Guarantor;
2647
 - 2648 (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-
2649 issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which
2650 results in a change of Ownership or control of Guarantor;
2651
 - 2652 (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for
2653 the benefit of creditors, writ of attachment of an execution, being levied against Guarantor,
2654 appointment of a receiver taking possession of any of Guarantor's tangible or intangible property;
2655 and,
2656
 - 2657 (v) any combination of the forgoing (whether or not in related or contemporaneous transactions)
2658 which has the effect of any transfer or change of Ownership or control of Guarantor.
2659

2660 For purposes of determining "Ownership", the constructive ownership provisions of Section 318(a) of the
2661 Internal Revenue Code of 1986, as in effect on the date here, will apply, provided that (1) 10 percent is
2662 substituted for 50 percent in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (2) Section
2663 318(a)(5)(C) is disregarded. For purposes of determining ownership under this paragraph and constructive
2664 or indirect ownership under Section 318(a), ownership interest of less than 20 percent is disregarded and
2665 percentage interests is determined on the basis of the percentage of voting interest or value which the
2666 ownership interest represents, whichever is greater.
2667

2668 **(4) Guaranty absolute and unconditional.** The undertakings of Guarantor set forth in this Agreement are
2669 absolute and unconditional, and the Authority is entitled to enforce any or all of those undertakings against
2670 Guarantor without being first required to enforce any remedies or to seek to compel the Contractor to

2671 perform its obligations under the agreement or to seek, or obtain recourse against any other party or parties,
2672 including but not limited to the Contractor or any assignee of the Contractor, who are, or may be, liable
2673 therefore, in whole or in part, irrespective of any cause or state of facts whatever. Without limiting the
2674 generality of the foregoing, the Guarantor expressly agrees that its obligations under this Guaranty will not
2675 be affected, limited, modified or impaired by any state of facts or the happening from time to time of an
2676 event, other than the payment of monetary obligations by the Contractor to Authority under the Agreement
2677 in accordance with the terms of the Agreement, including, without limitation, any of the following, each of
2678 which is by this Guaranty expressly waived as a defense to its liability under this Guaranty, *except* to the
2679 extent those defenses would be available to the Contractor and release, discharge or otherwise offset
2680 Contractor's obligations under the Agreement:

2681
2682 (a) the invalidity, irregularity, illegality or unenforceability, of any defect in or objections to the
2683 Agreement;

2684
2685 (b) any modification or amendment or compromise of or waiver of compliance with or consent to
2686 variation from any of the provisions of the Agreement by the Contractor;

2687
2688 (c) any release of any collateral or lien thereof, including, without limitation, any performance bond;

2689
2690 (d) any defense based upon the election of any remedies against the Guarantor of the Contractor, or
2691 both, including without limitation, any consequential loss by the Guarantor of its right to recover any
2692 deficiency, by way of subrogation or otherwise, from the Contractor or any other person or entity;

2693
2694 (e) the recovery of any judgment against the Contractor to enforce any of that collateral or performance
2695 bond;

2696
2697 (f) the Authority or its assigns taking or omitting to take any of the actions which it or any of that
2698 assign is required to take under the Agreement; any failure, omission or delay on the part of the
2699 Authority or its assignees to enforce, assert or exercise any right, power or remedy conferred on it or
2700 its assigns by the Agreement, except to the extent that failure, omission or delay gives rise to an
2701 applicable statute of limitations defense by the Contractor with respect to a specific obligation;

2702
2703 (g) the default or failure of the Guarantor to fully perform any of its obligations set forth in this
2704 Guaranty;

2705
2706 (h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor or the
2707 Authority, or any order or decree of a court, trustee or receiver in any proceeding;

2708
2709 (i) in addition to those circumstances described in item (h), any other circumstance which might
2710 otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the Authority
2711 to the Guarantor;

2712
2713 (j) the existence or absence of any action to enforce the Agreement;

2714
2715 (k) subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present
2716 or future law or order of any government or of any agency thereof, purporting to reduce, amend or
2717 otherwise affect the Agreement or to vary any terms of payment or performance under the Agreement;

2718
2719 *provided that*, notwithstanding the foregoing, Guarantor will not be required to pay any monetary obligation
2720 of Contractor to Authority from which Contractor would be discharged, released or otherwise excused
2721 under the provisions of the Agreement.

- 2722
2723 **(5) Waivers.** Guarantor by this Guaranty waives:
2724
2725 (a) notice of acceptance of this Guaranty and of the creation, renewal, extension and accrual of the
2726 limited financial obligations Guaranteed under this Guaranty;
2727
2728 (b) notice that any person has relied on this Guaranty;
2729
2730 (c) diligence, demand of payment and notice of default or nonpayment under this Guaranty or the
2731 Agreement, and any and all other notices required under the Agreement;
2732
2733 (d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the
2734 Contractor;
2735
2736 (e) any right to require a proceeding first against the Contractor or with respect to any collateral or
2737 lien, including, without limitation, any performance bond, or any other requirement that the Authority
2738 exercise any remedy or take any other action against the Contractor or any other person, or in respect
2739 of any collateral or lien, before proceeding under this Guaranty;
2740
2741 (f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or
2742 (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any
2743 performance bond) for the obligations of the Contractor under the Agreement; any pursuit of exhaustion
2744 of remedies against the Contractor or any other obligor or guarantor of the obligations; and any
2745 requirement of promptness or diligence on the part of any person in connection therewith;
2746
2747 (g) to the extent that it lawfully may do so, any and all demands or notices of every kind and description
2748 with respect to the foregoing or which may be required to be given by any statute or rule of law, and
2749 any defense of any kind which it may now or hereafter have with respect to this Guaranty or the
2750 obligations of the Contractor under the Agreement, except any Notice to the Contractor required
2751 pursuant to the Agreement or Applicable Law which Notice preconditions the Contractor's obligation
2752 or the defenses listed in Section 8 below.
2753

2754 To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to waive, and does
2755 by this Guaranty absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does
2756 by this Guaranty covenant not to assert, any appraisal, valuation, stay, extension, redemption or similar
2757 laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the due
2758 performance or proper enforcement of this Guaranty, the Agreement, or the obligations of the Contractor
2759 under the Agreement, and by this Guaranty expressly agrees that the right of the Authority under this
2760 Guaranty may be enforced notwithstanding any partial performance by the Contractor or the Guarantor, or
2761 the foreclosure upon any security (including, with limitation, any performance bond) given by the
2762 Contractor for its performance of any of its obligations under the Agreement.
2763

2764 **(6) Agreements between Authority and Contractor; Waivers by Authority.** The Guarantor agrees that,
2765 without the necessity for any additional endorsement or Guaranty by or any reservation of rights against
2766 Guarantor and without any further assent by Guarantor, by mutual agreement between the Authority and
2767 Contractor, the Authority and Contractor may, from time to time
2768

- 2769 (a) renew, modify or compromise the liability of the Contractor for or upon any of the obligations by
2770 this Guaranty Guaranteed; or
2771
2772 (b) consent to any amendment or change of any terms of the Agreement; or

2773
2774 (c) accept, release, or surrender any security (including, without limitation, any performance bond), or
2775
2776 (d) grant any extensions or renewals of the obligations of the Contractor under the Agreement, and any
2777 other indulgence with respect thereto, and to effect any release, compromise or settlement with respect
2778 thereto,
2779
2780 all without releasing or discharging the liability of Guarantor under this Guaranty.
2781
2782 The Guarantor further agrees that the Authority or any of its assigns will have and may exercise full power
2783 in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this
2784 Guaranty, to waive compliance with and any default of the Contractor under, the Agreement.
2785
2786 **(7) Continuing Guaranty.** This Guaranty is a continuing Guaranty and will continue to be effective or
2787 be reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is
2788 rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the
2789 Contractor or Guarantor or otherwise, all as though payment had not been made.
2790
2791 **(8) Defenses.** Notwithstanding any provision in this Guaranty to the contrary, the Guarantor may exercise
2792 or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the
2793 Agreement or Applicable Law which the Contractor could assert against any party seeking to enforce the
2794 Agreement against the Contractor, and nothing in this Guaranty will constitute a waiver thereof by the
2795 Guarantor.
2796
2797 **(9) Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses and fees,
2798 including all reasonable attorney's fees, which may be incurred by the Authority in enforcing this Guaranty
2799 following the default on the part of the Guarantor under this Guaranty whether the same is enforced by suit
2800 or otherwise.
2801
2802 **(10) Enforcement.** The terms of this Guaranty may be enforced as to any one or more breaches either
2803 separately or cumulatively.
2804
2805 **(11) Remedies cumulative.** No remedy in this Agreement conferred upon or reserved to the Authority
2806 under this Guaranty is intended to be exclusive of any other available remedy or remedies, but each and
2807 every remedy is cumulative and is in addition to every other remedy given under the Guaranty and the
2808 Agreement or in this Agreement after existing at law or in equity or by statute.
2809
2810 **(12) Severability.** The invalidity or unenforceability of any one or more phrases, sentences or clauses in
2811 this Guaranty contained will not affect the validity or enforce ability of the remaining portions of this
2812 Guaranty, or any part thereof.
2813
2814 **(13) Amendments.** No amendment, change, modification or termination of this Guaranty is made except
2815 upon the written consent of Guarantor and the Authority.
2816
2817 **(14) Term.** The obligations of the Guarantor under this Guaranty will remain in full force and effect until
2818 (i) all monetary obligations of the Contractor under the Agreement will have been fully performed or
2819 provided for in accordance with the Agreement, or (ii) the discharge, release or other excuse of those
2820 obligations in accordance with the terms of the Agreement.
2821
2822 **(15) No set-offs, etc.**
2823

2824 **By Guarantor.** The obligation of Guarantor under this Guaranty will not be affected by any set-off,
2825 counterclaim, recoupment, defense or other right that Guarantor may have against the Authority on account
2826 of any claim of the Guarantor against the Authority; *provided* that Guarantor reserves the right to bring
2827 independent claims not arising from the Agreement against the Authority so long as any claims will not be
2828 used to set-off or deduct from any claims which the Authority may have against the Guarantor arising
2829 from this Guaranty.

2830
2831 **By Contractor.** The obligation of Guarantor under this Guaranty is subject to any set-off, counterclaim,
2832 recoupment, defense or other right that the Contractor may assert pursuant to the Agreement, if any, but the
2833 obligation of Guarantor under this Guaranty will not be subject to any set-off, counterclaim, recoupment,
2834 defense or other right that the Contractor may assert independently of and outside the Agreement.

2835
2836 **(16) Warranties and representations.** The Guarantor warrants and represents that as of date of execution
2837 of this Guaranty:

2838
2839 (a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform
2840 its obligations and undertakings under this Guaranty, and the execution, delivery and performance of
2841 this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder
2842 action on the part of the Guarantor, (ii) have the requisite approval of all federal, State and local
2843 governing bodies having jurisdiction or authority with respect thereto, (iii) do not violate any judgment,
2844 order, law or regulation applicable to the Guarantor; (iv) do not conflict with or constitute a default
2845 under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its
2846 assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or
2847 certificate of incorporation or by-laws;

2848
2849 (b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal,
2850 valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its
2851 terms; and

2852
2853 (c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceedings
2854 before any court or administrative agency which would have a material adverse effect on the financial
2855 condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings
2856 under this Guaranty.

2857
2858 **(17) No merger; no conveyance of assets.** Guarantor agrees that during the term of this Guaranty in
2859 accordance with Section 14 Guarantor will not consolidate with or merge into any other corporation where
2860 the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to
2861 the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets
2862 to any person, firm, joint venture, corporation and other entity, unless the Authority consents thereto in
2863 accordance with Section 3 above.

2864
2865 **(18) Counterparts.** This Guaranty may be executed in any number of counterparts, some of which may
2866 not bear the signatures of all parties to this Guaranty. Each counterpart, when so executed and delivered,
2867 is deemed to be an original and all counterparts, taken together, will constitute one and the same instrument;
2868 *provided, however,* that in pleading or proving this Guaranty, it will not be necessary to produce more than
2869 one copy (or sets of copies) bearing the signature of the Guarantor.

2870
2871 **(19) Notices.** All notices, instructions and other communications required or permitted to be given to or
2872 made upon any party to this Guaranty is in writing, and is given in the manner and to the addresses provided
2873 in the Agreement.

2874

2875 **(20) Separate suits.** Each and every payment default by Contractor under the Agreement will give rise to
2876 a separate cause of action under this Guaranty, and separate suits may be brought under this Guaranty by
2877 the Authority or its assigns as each cause of action arises.
2878

2879 **(21) Headings.** The Section headings appearing in this Agreement are for convenience only and will not
2880 govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.
2881

2882 **(22) Entire Agreement.** This Guaranty constitutes the entire agreement between the parties to this
2883 Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is
2884 intended to confer on any person other than the Guarantor, the Authority and their permitted successors and
2885 assigns under this Guaranty any rights or remedies under or by reason of this Guaranty.
2886

2887 **(23) Personal Liability.** It is understood and agreed to by the Authority that nothing contained in this
2888 Agreement will create any obligation or right to look to any director, officer, employee or stockholder of
2889 the Guarantor (or any affiliate thereof) for the satisfaction of any obligations under this Guaranty, and no
2890 judgment, order or execution with respect to or in connection with this guaranty is taken against any
2891 director, officer, employee or stockholder.
2892

2893 **(24) Events of Default.** Each of the following will constitute an event of default under this Guaranty:
2894

2895 **(a) Failure to fulfill payment of guaranty.** Guarantor fails to fulfill full and timely payment of
2896 any guaranty under this Guaranty, including Section 1, and the failure continues for 5 days after
2897 Notice (which is deemed given upon receipt of registered or certified mailing by U.S. Postal Service
2898 or of invoiced commercial service) (hereinafter defined as “**Notice**”) has been given to the
2899 Guarantor by the Authority; fails to perform any of its obligations under this Guaranty or engages
2900 in any acts prohibited under this Guaranty other than failures itemized below, and fails to cure that
2901 failure or conduct within 30 days ;
2902

2903 **(b) Breach of Guaranty.** The Guarantor fails to observe and perform any covenant, condition or
2904 agreement of this Guaranty, other than any failures listed explicitly in this section, and that failure
2905 continues for more than 30 days after Notice has been given the Guarantor by the Authority;
2906

2907 **(c) Failure to give Notice of proposed assignment, etc.** The Guarantor fails to give Authority
2908 notice in accordance with Section 19 within 10 days of the first to occur of:
2909

2910 (i) Contractor or any Affiliate issuing a press release as to any proposed assignment, (within
2911 the meaning of Section 3, or consolidation, merger, conveyance, transfer or lease described
2912 in subsection 24.e or;
2913

2914 (ii) the filing with the Securities and Exchange Commission of a Form 8-K or other filing
2915 with respect to a memorandum of intent or an agreement and plan therefore.
2916

2917 (paragraphs (i) and (ii) together defined as, “**Change Notice**”);
2918

2919 **(d) Consolidation, merger; conveyance of assets.** The Guarantor consolidates, merges or
2920 conveys, transfers or leases assets in violation of Section 17 despite Authority Board of Directors
2921 action following Change Notice in preceding paragraph (c) withholding or denying Authority
2922 consent, and on or before 15 days thereafter, does not provide Authority with a substitute Guarantor
2923 satisfactory to Authority in Authority’s sole discretion;
2924

2925 **(e) Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt relief under

2926 any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect,
2927 or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee,
2928 trustee, custodian, administrator (or similar official) of Guarantor for any substantial part of
2929 Guarantor's operating assets or any substantial part of Guarantor's property, or will make any
2930 general assignment for the benefit of Guarantor's creditors, or will fail generally to pay Guarantor's
2931 debts as they become due or will take any action in furtherance of any of the foregoing.

2932
2933 A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any
2934 involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or
2935 hereafter in effect, or Guarantor consents to or fails to oppose any proceeding, or any court enters
2936 a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or
2937 similar official) of the Guarantor or for any substantial part of the Guarantor's operating equipment
2938 or assets, or orders the winding up or liquidation of the affairs of the Guarantor;

2939
2940 **(f) Breach of Representations or Warranties.** Any representation or warranty of Guarantor is
2941 untrue as of the date thereof; Guarantor knowingly makes, causes to be made or condones the
2942 making of any false entry in its books, accounts, records and report under this Guaranty.

2943
2944 Upon any Event of Default the Authority may proceed first and directly against the Guarantor under
2945 Guaranty without proceeding against or exhausting any other remedies which it may have. The
2946 Guarantor acknowledges that any Contractor Default comprises a Default under the Agreement.

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IN WITNESS WHEREOF Guarantor has executed this instrument the day and year first above written.

By: _____ Date: _____

Attest: _____ Date: _____

Proper notarial acknowledgment of execution by Guarantor must be attached.

- (1) Chairman, president, or vice-president, and (2) secretary, assistant secretary, chief financial officer, or assistant treasurer, must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

EXHIBIT 9.01: Contractor's Representations and Warranties

A. Status. Contractor is a corporation duly organized, validly existing, and in good standing under the laws of California and is qualified to do business in the State.

B. Authority and Authorization. The Contractor has full legal right, power, and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid, and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

C. No Conflicts. Neither the execution or delivery by the Contractor of this Agreement, the performance by the Contractor of its Service obligations, nor the fulfillment by the Contractor of the terms and conditions of this Agreement: (1) conflicts with, violates, or results in a breach of any Applicable Law; (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Contractor or any of its Subcontractors or Affiliates is a party or by which the Contractor or any of its Subcontractors or Affiliates' properties or assets are bound, or constitutes a default thereunder.

D. No Approvals Required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency, or instrumentality is required for the valid execution and delivery of this Agreement by the Contractor, except those as have been duly obtained from its Board of Directors.

E. No Litigation. As of the Effective Date, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality pending or, to the best of the Contractor's knowledge, threatened, against the Contractor wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations under this Agreement or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforce ability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated by this Agreement.

F. Due Diligence. Contractor has made an independent investigation, examination, and research satisfactory to it of the conditions and circumstances surrounding the Agreement and best and proper method of providing Services (including Service types) and labor, equipment, and materials for the volume of Services to be provided. Contractor agrees that it will make no claim against the Authority based on any estimates, statements, or interpretations made by any officer, employee, agent, or consultant of the Authority in connection with the procurement of this Agreement which proves to be in any respect erroneous.

G. Compliance with Applicable Law. Contractor further represents and warrants that it has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.

H. Ability to Perform. Contractor warrants that it possesses the business, professional, and technical capabilities to provide Services; has secured and maintains in full force and effect Permits; and possess the equipment, facility, and employee resources required to fully and timely perform Services.

I. Capacity. Contractor warrants that as of the Effective Date it has Landfill capacity to Dispose of Authority's Solid Waste throughout the Term and that it will maintain that capacity through the Term.