

AGREEMENT
BETWEEN
CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
AND
MT DIABLO PAPER STOCK, INC. DBA MT. DIABLO RECYCLING
FOR
RECYCLABLE MATERIALS TRANSFER, TRANSPORT, PROCESSING,
AND DIVERSION SERVICES

MAY 14, 2014

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- B. Performance Standards and Liquidated Damages
- C. Corporate Guaranty
- D. Map of Service Area
- E. List of Recyclable Materials
- F. Contractor's Proposal
- G. Approved Affiliates and Subcontractors
- H. Labor Agreements for Drivers, Mechanics, and Facility Personnel
- I. Description of Facility
- J. Iran Contracting Certification
- K. Provider Services Agreement Between CCCSWA and Mt. Diablo Recycling for the Reuse and Cleanup Days Program and Retail Battery Collection Program

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**AGREEMENT
BETWEEN
CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
AND
MT. DIABLO PAPER STOCK, INC.
DBA MT. DIABLO RECYCLING
FOR
RECYCLABLE MATERIALS TRANSFER, TRANSPORT, PROCESSING,
AND DIVERSION SERVICES**

This Agreement for Recyclable Materials Transfer, Transport, Processing, and Diversion Services ("Agreement") is entered into on the 16 day of May, 2014, by and between the Central Contra Costa Solid Waste Authority, a Joint Powers Authority (hereinafter, "CCCSWA"), and Mt. Diablo Paper Stock, Inc., a California corporation, dba Mt. Diablo Recycling (hereinafter, "Contractor") (collectively, the "Parties").

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a solid waste management process that requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices; and

WHEREAS, the CCCSWA has the authority to assume municipal solid waste and materials diversion management responsibilities such as acquiring services, entering agreements, negotiating contracts, granting franchises, planning facilities, reviewing rates, and other related matters on behalf of the constituents of the Cities/Towns of Danville, Lafayette, Moraga, Orinda, Walnut Creek, and Contra Costa County ("Member Agencies"); and

WHEREAS, only certain unincorporated areas of Contra Costa County are included in the jurisdictional boundaries of the Service Area as defined herein; and

WHEREAS, the CCCSWA has the authority to enter into an exclusive agreement for source separated recyclable materials processing services and to prescribe the terms and conditions of such an agreement, including, but not limited to, transfer and processing standards, residue levels, and materials sales revenue payments; and

WHEREAS, the CCCSWA Board of Directors has found that collection, transport, processing, diversion, and disposal programs can most cost effectively be carried out on a multi-jurisdictional basis; and

WHEREAS, pursuant to California Public Resources Code § 40059(a)(1), the Board of Directors of the CCCSWA has determined that the public health, safety, and well-being of its Member Agencies requires the highest quality collection, transport, processing, diversion, and disposal services from a thorough, competent, and qualified company; and

WHEREAS, the CCCSWA Board of Directors initiated a request for proposals for such services, and through a competitive procurement process received a number of competitive proposals, including Contractor's proposal; and

WHEREAS, the CCCSWA Board of Directors has found and determined, based on Contractor's proposal, qualifications, demonstrated experience, reputation, and reasonable and competitive cost to the Member Agencies, that Contractor is best able to provide recyclable materials processing services, reuse and cleanup days program services, and retail battery collection program services in order to protect the public health, safety, and well-being of the Member Agencies; and

WHEREAS, Contractor has represented and warranted to the CCCSWA that it has the experience, responsibility, qualifications, and ability to implement safe, thorough, and competent transfer, transport, processing, and diversion services in compliance with applicable law and the provisions of this Agreement; and

WHEREAS, pursuant to this Agreement, "recyclable materials" are defined as "materials, by-products, or components of such materials that are set aside, handled, or packaged for the purpose of being recycled"; and

WHEREAS, this Agreement expressly limits the types and categories of recyclable materials that Contractor will process and divert; and

WHEREAS, the processing and diversion services contemplated in this Agreement generally refer to recycling and reusing recyclable materials; and

WHEREAS, the CCCSWA desires to process source separated recyclable materials collected from its Service Area at the Contractor's recyclable materials processing facility in Pittsburg, CA; and

WHEREAS, the CCCSWA has determined that, in the event Contractor satisfies the terms and conditions of this Agreement, it is in the best interest of CCCSWA and its residents, taking into account the qualifications and experience of Contractor, the cost of providing such services, and the revenues from the sale of materials for CCCSWA, to ensure the delivery of recyclable materials collected in the Service Area by the CCCSWA's franchised collector to such Facility.

WHEREAS, the CCCSWA Board of Directors has selected Contractor for the transfer, transport, processing, and diversion of selected recyclable materials as set forth herein and provision of reuse and cleanup days program services and retail battery collection program services as set forth in Exhibit K, and Contractor acknowledges and agrees to provide such services, and the CCCSWA Board of Directors has authorized the execution of this Agreement with Contractor on May 16, 2014; and

WHEREAS, both the CCCSWA and Contractor are mindful of the provisions of the laws governing the safe transfer, transport, processing and diversion of recyclable materials and disposal of solid waste, including AB 939, AB 341, and the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq.; and

WHEREAS, neither the CCCSWA nor the Contractor can anticipate all of the possible needs, considerations, or eventualities that may arise during the term of this Agreement, and the Parties agree that they will work together in a spirit of mutual cooperation to resolve any such issues as and when they arise; and

WHEREAS, neither the CCCSWA nor the Contractor can anticipate any changes in the industry as to the future means or methods of collection, transfer, transport, processing, diversion, and/or disposal services, and will work cooperatively to address such opportunities and/or issues as and when they arise.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and for other good and valuable consideration, the Parties do hereby agree as follows:

ARTICLE 1 DEFINITIONS

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code § 40000, et seq.), as amended, supplemented, superseded, and replaced from time to time.

"Accept" or **"Acceptance"** (or other variations thereof) means the transfer of Ownership of Recyclable Materials to Contractor from the Person Delivering the Recyclable Materials, as provided in Sections 5.6 and 5.9.

"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 any person, corporation, or other entity directly or indirectly controlling or controlled by another Person, corporation or other entity, or under direct or indirect common management or control with such Person, corporation, or entity. As between any two (2) or more Persons or entities, when ten percent (10%) of one is owned, managed, or controlled by another, they are hereunder Affiliates of one another. In a joint venture, each party to the joint venture may have his or her own Affiliate.

"Agreement" means this Agreement for Recyclable Materials Transfer, Transport, Processing, and Diversion Services between CCCSWA and the Contractor, including all exhibits, attachments, and any future amendments hereto.

"Alternative Daily Cover" means cover material used at a Disposal Site, other than at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control blowing litter, fires, odor, scavenging, and vectors; or, means materials used as soil amendments for erosion control and landscaping.

"Alternative Intermediate Cover (AIC)" means CalRecycle-approved materials other than soil used at a landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred eighty (180) Days. Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide breeding grounds for insects and vermin.

"Applicable Law" means all federal, State, and local laws, regulations, rules, orders, judgments, Permits, approvals, or other requirements of any governmental body having jurisdiction over the Transfer, Transport, Processing, and Diversion of Recyclable Materials and Disposal of Residue that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

"Approved Affiliates" means the Affiliates listed on Exhibit G that provide services, property, equipment, vehicles, or other support related directly or indirectly to this Agreement.

"Approved Facilities" means the Approved Trans-Loading Facility and Approved Recyclable Materials Processing Facility.

"Approved Recyclable Materials Processing Facility" means the Mt. Diablo Recycling Center at 1300 Loveridge Road, Pittsburg, CA, which is owned by Contra Costa Waste Services, Inc. (an Approved Affiliate) and operated by Contractor, and approved by the CCCSWA for Processing of Recyclable Materials.

115 **"Approved Trans-Load Facility"** means the Trans-Load Facility at 4050 Mallard Drive, Concord, CA, selected by
 116 CCCSWA, which is owned by Candy Properties, LP, a California Limited Partnership (an Approved Affiliate) and
 117 operated by Contractor. The Approved Trans-Load Facility shall serve as the point of Transfer for all Recyclable
 118 Materials Accepted by Contractor from the Franchised Collector and, at the sole discretion of Contractor, may
 119 serve as a Processing Facility for Source Separated cardboard Processing and baling.

120 **"Batteries"** means alkaline batteries that are typically found in common household items such as flashlights,
 121 cameras, and toys, and excludes rechargeable batteries or any type of battery found in a motorized or electric
 122 vehicle.

123 **"Beneficial Reuse Purposes"** means use of material for beneficial reuse at a Disposal Site, which shall include, but
 124 not be limited to, the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation
 125 layer, liner operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather
 126 operations pads and access roads, and soil amendments for erosion control and landscaping.

127 **"Board"** means the Board of Directors of the Central Contra Costa Solid Waste Authority.

128 **"Bulky Items"** means discarded appliances, furniture, tires, carpets, mattresses, and similar large items that
 129 require special Collection due to their size, but can be Collected by one Person without the assistance of special
 130 loading equipment (such as forklifts or cranes) and without violating vehicle load limits. They do not include
 131 abandoned automobiles, large auto parts, or trees.

132 **"Business Days"** means days during which CCCSWA offices are open to do business with the public.

133 **"CCCSWA"** means the Central Contra Costa Solid Waste Authority.

134 **"Change in Law"** means any of the following events or conditions that has a material and adverse effect on the
 135 performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

136 (1) The enactment, adoption, promulgation, issuance, modification, elimination, or written change in
 137 administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or

138 (2) The order or judgment of any governmental body, on or after the Effective Date, to the extent such
 139 order or judgment is not the result of willful or negligent action, error or omission, or lack of
 140 reasonable diligence of the CCCSWA or the Contractor, whichever is asserting the occurrence of a
 141 Change in Law; provided, however, that the contesting in good faith or the failure in good faith to
 142 contest any such order or judgment shall not constitute or be construed as such a willful or negligent
 143 action, error or omission, or lack of reasonable diligence.

144 **"Collect" or "Collection" (or any variation thereof)** means the act of removing Recyclable Materials from the place
 145 of generation within the Service Area, and Delivering such materials to the Approved Trans-Load Facility.

146 **"Commencement Date"** means March 1, 2015, or the date when Contractor shall begin to provide all Services set
 147 forth in this Agreement.

148 **"Commercial Premises"** means of, from, or pertaining to Non-Residential Premises where business activity is
 149 conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial
 150 operations, including hotels, motels, and other similar Premises, but excluding businesses conducted upon
 151 Residential Premises, which are permitted under applicable zoning regulations and are not the primary use of the
 152 property.

153 **"Construction and Demolition Debris, or C&D"** means materials removed from Premises during the construction
 154 or renovation of a structure as a result of construction, remodeling, repair, or demolition operations on any

Residential or Commercial building or other structure, including pavement, and for which building or other modification Permits are required and have been obtained.

"Contaminant(s)" means any materials not identified in Exhibit E, which are Collected by Franchised Collector with Recyclable Materials excluding Items 2 through 12 in the definition of Unpermitted Materials.

"Contractor" means Mt. Diablo Paper Stock, Inc. dba as Mt. Diablo Recycling, any Subcontractors, and Approved Affiliates listed in Exhibit G.

"Contractor's Proposal" means the March 13, 2014 letter from Joseph Garaventa, Chief Executive Officer, Mt. Diablo Recycling, to Paul Morsen, Executive Director, CCCSWA proposing Recyclable Materials Processing services, reuse program services, and the battery collection program for retail locations. This letter proposal is provided as Exhibit F.

"Contractor Revenue" means the total Contractor revenue comprised of revenues from the sale of Recyclable Materials less Recyclables Revenue Payments to the CCCSWA pursuant to Section 7.2.

"Criminal Activity" means, but is not limited to:

- (1) any criminal offense in connection with obtaining, attempting to obtain or procuring a public or private agreement related to Solid Waste, Organic Materials, or Recyclable Materials services of any kind, including this Agreement; or
- (2) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency; or
- (3) fraud, embezzlement, extortion, racketeering, false claims, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft; or
- (4) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to determination of Recyclables Revenue Payments.

"Days" means calendar days, including Saturdays, Sundays, and Holidays, except as otherwise specifically provided herein.

"Designated Disposal Facility" means the Keller Canyon Landfill at 901 Bailey Road, Pittsburg, CA, selected by Contractor and approved by CCCSWA, which is owned and operated by Keller Canyon Landfill Company, a wholly owned subsidiary of Republic Services, Inc. The Designated Disposal Facility shall serve as the Disposal facility for all Residue.

"Delivered" or "Delivery" (or other variations thereof) means arrival of Recyclable Materials in Franchised Collector's Collection vehicles at the entrance of an Approved Facility during facility receiving hours for the purposes of Acceptance.

"Designated Waste" means non-Hazardous Waste which may pose special disposal problems because of its potential to contaminate the environment and which may be disposed of only in Class II disposal facilities or Class III disposal facilities pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

192 **Direct Costs** means the sum of:

- 193 (1) payroll costs directly related to the Contractor's performance, or supervision of any obligation
194 pursuant to the provisions of this Agreement, or CCCSWA's administration and enforcement of this
195 Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, holidays,
196 retirement, workers compensation insurance, federal and State unemployment taxes and all medical
197 and health insurance benefits, plus
- 198 (2) the costs of materials, services, direct rental costs and supplies, plus
- 199 (3) the reasonable costs of any payments to Subcontractors necessary to and in connection with the
200 performance under or administration and enforcement of this Agreement; plus
- 201 (4) any other cost or expense which is directly or normally associated with the task performed.

202 Such Direct Costs are to be substantiated by: (i) a certificate signed by the principal financial officer of the
203 Contractor or the authorized representative of the CCCSWA or his or her designee, as the case may be, setting
204 forth the amount of the cost and the reason why the cost is properly chargeable to the CCCSWA or the Contractor,
205 as the case may be, and representing that the cost is an arm's length and competitive price, if there are
206 competitive prices, for the service or materials supplied; and (ii) if the CCCSWA or the Contractor requests, as the
207 case may be, additional back-up documentation as may be available to reasonably substantiate any Direct Cost,
208 including invoices from suppliers and Subcontractors.

209 **"Disposal" (or any variation thereof)** means the final disposition of Solid Waste at a Disposal Site.

210 **"Disposal Site"** means a permitted location approved by CCCSWA for the ultimate Disposal of Solid Waste and
211 Residue.

212 **"Diversion"** means activities that reduce or eliminate the amount of Solid Waste from Disposal, including, but not
213 limited to, Processing Recyclable Materials at a Processing Facility.

214 **"Effective Date"** means the date on which the Agreement becomes binding upon the Parties, which is the date
215 when the latter of the Parties has executed this Agreement.

216 **"Electronic Materials, or E-Materials"** means discarded electronic equipment including, but not limited to,
217 televisions, computer monitors, central processing units, laptop computers, computer peripherals (including
218 external hard drives, keyboards, scanners, and mice), printers, copiers, printer and copier cartridges, fusers and
219 toners, facsimile machines, shredders, patch cords and wire, radios, stereos, stereo speakers, VCRs, VHS tapes,
220 DVDs, CDs, floppy discs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices.
221 Some E-Materials or components thereof may be Hazardous Waste or include Hazardous Substances and thus
222 require special handling, Processing, Diversion, or Disposal.

223 **"Event of Default"** means a default by Contractor as described in Section 11.4.

224 **"Executive Director"** means the Executive Director of CCCSWA or his or her designated representative.

225 **"Facility"** means any plant(s) or site(s), owned or leased and maintained and/or operated or used by Contractor for
226 purposes of performing under this Agreement.

227 **"Fiscal Year"** means the twelve (12) month period commencing July 1 and concluding June 30 of the following
228 year.

229 **"Franchise"** means the right granted by CCCSWA to the Franchised Collector to provide Recyclable Materials
230 Collection services within the Service Area and Transportation of and Delivery of the Recyclable Materials to a
231 Facility selected by the CCCSWA in accordance with the terms and conditions of the Franchise Agreement between
232 the CCCSWA and the Franchised Collector.

233 **"Franchised Collector"** means Allied Waste Systems, Inc. (doing business as Republic Services of Contra Costa
234 County) that entered into an exclusive Franchise agreement with the CCCSWA, entitled "Franchise Agreement
235 between Central Contra Costa County Solid Waste Authority and Allied Waste Systems, Inc. for Franchised
236 Materials Collection, Transport, Processing, Diversion, and Disposal Services," dated May 2014.

237 **"Franchised Recyclable Materials"** means Recyclable Materials typically Source Separated from Solid Waste,
238 Green Materials, Home Food Scraps, Commercial Food Waste, C&D, and other materials, but may be combined in
239 Containers with other Franchised materials, and Collected by Franchise Collector within the Service Area for
240 subsequent Transfer, Transportation, Processing, Recycling, and Diversion by Contractor. Franchised Recyclable
241 Materials include, at a minimum, the materials listed in Exhibit E.

242 **"Generator"** means any Person that generates or produces Recyclable Materials, or whose act first causes
243 Recyclable Materials to become subject to regulation.

244 **"Green Materials"** means grass, lawn clippings, shrubs, plants, weeds, branches, and other forms of Organic
245 Materials generated from landscapes, yards, or gardens.

246 **"Guarantor"** means Garaventa Enterprises, Inc., a California Corporation duly organized and existing in good
247 standing under the laws of the State of California.

248 **"Hazardous Substance"** means any of the following:

249 (1) Any substances defined, regulated, or listed (directly or by reference) as "Hazardous Substances,"
250 "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant," or "toxic substances," or
251 similarly identified as hazardous to human health or the environment, in or pursuant to (i) the
252 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 U.S.C.
253 § 9601 et seq.; (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 et seq.; (iii) the
254 Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C.
255 § 1251 et seq.; (v) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (vi) California Health and Safety Code §§
256 25115-25117, 25249.8, 25281, and 25316; and (vii) California Water Code § 13050;

257 (2) Any amendments, rules, or regulations promulgated thereunder to such enumerated statutes or acts
258 currently existing or hereafter enacted; and,

259 (3). Any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as
260 hazardous or toxic or regulated under any other applicable federal, State, or local environmental laws
261 currently existing or hereinafter enacted, including, without limitation, friable asbestos,
262 polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products, and by-products.

263 **"Hazardous Waste"** means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely
264 Hazardous Waste by the State in Health and Safety Code §§ 25117, 25110.02, and 25115, in Public Resources Code
265 § 40141, or in the future amendments to or recodifications of such statutes, or as identified and listed as
266 Hazardous Waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation
267 and Recovery Act (42 U.S.C. § 6901 et seq.), all future amendments thereto, and all rules and regulations
268 promulgated thereunder.

269 **"High Diversion Services"** means Processing and Diversion services implemented by the CCCSWA or Franchised
270 Collector for the purpose of achieving the CCCSWA Board of Director's seventy-five percent (75%) Diversion goal.

271 High Diversion services are described in Exhibit U to the Franchised Collector's exclusive Franchise agreement with
272 the CCCSWA, entitled "Franchise Agreement between Central Contra Costa County Solid Waste Authority and
273 Allied Waste Systems, Inc. for Franchised Materials Collection, Transport, Processing, Diversion, and Disposal
274 Services," dated May 2014.

275 **"Holidays"** are defined as New Year's Day and Christmas Day.

276 **"Home Food Scraps"** means discarded food, other than Commercial Food Waste, from Residential and Multi-
277 Family Premises that is typically Source Separated from, but may be combined in containers with other materials,
278 and offered for Collection for subsequent Processing and Diversion. Home Food Scraps may also include food-
279 soiled paper, paper-gabled cartons, and some types of bio-plastic products including compostable bags.

280 **"Household Hazardous Waste"** means, as defined in California Health and Safety Code Section 25218.1(e), any
281 Hazardous Waste generated incidental to owning or maintaining a place of residence, but does not include any
282 waste generated in the course of operating a business at a residence.

283 **"Implementation Period"** means the period between the Effective Date and the Commencement Date during
284 which Contractor makes the necessary preparations in order to implement all Contractor Services and obligations
285 set forth herein.

286 **"Liquidated Damages"** means the amounts agreed upon by Contractor and CCCSWA as fair and reasonable
287 damages for Contractor's failure to meet specific quantifiable standards of performance as described in Section
288 11.9 and Exhibit B.

289 **"Load"** means the payload contents of a Collection vehicle or Transfer Vehicle measured in Tons.

290 **"Market"** or **"Marketing"** (or other variations thereof) means all obligations of Contractor hereunder with respect
291 to selling or giving away Recyclable Materials, including Market promotion, storage, insurance, packaging,
292 transportation, sales, weighing, and maintaining records with respect thereto.

293 **"Maximum Vehicle Turnaround Time"** means an average weekly turnaround time of twenty (20) minutes for
294 vehicles Delivering Recyclable Materials to the Approved Trans-Load Facility, where the turnaround time for each
295 vehicle is measured from the vehicle's arrival time, which shall be recorded at the motor vehicle scale when the
296 inbound weight of the vehicle is recorded at the Approved Trans-Load Facility property, until the vehicle's
297 departure time, when it exits that Approved Trans-Load Facility. This excludes driver personal time and
298 mechanical problems of the Franchised Collector.

299 **"Medical Materials"** means biomedical materials generated at hospitals, public or private medical clinics, dental
300 offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other
301 similar establishments that are identified as "medical waste" in Health and Safety Code Section 25117.5 as may be
302 amended from time to time. For the purposes of this Agreement, untreated Medical Materials are not Franchised
303 Solid Waste unless they have been treated and deemed to be Solid Waste.

304 **"Member Agencies"** means members of the CCCSWA, including the Cities/Towns of Danville, Lafayette, Moraga,
305 Orinda, and Walnut Creek, Contra Costa County, and such other political jurisdictions as may join the CCCSWA in
306 the future.

307 **"Multi-Family Dwelling (or Multi-Family)"** means any Residential Premises, other than a Single-Family Premises,
308 where there is centralized Collection service for all units in the building that may be billed to one Subscriber at one
309 address. Multi-Family Dwelling does not include Residential Premises in which each unit of the building has its
310 own Subscriber who is separately billed for individual Collection service.

311 **"Non-Residential Premises"** means and includes all premises except Residential Premises. This term specifically
312 includes, but is not limited to, any and all facilities operated by governmental entities within the Service Area and
313 Commercial Premises.

314 **"Organic Materials"** means organic matter that can biologically decompose into a specific mixture of decayed
315 organic matter.

316 **"Ownership"** or **"Own"** (or other variations thereof) means Ownership as defined in the constructive Ownership
317 provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date herein, and Section
318 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or
319 indirect Ownership under Section 318(a), Ownership interest of less than ten (10) percent shall be disregarded and
320 percentage interests shall be determined on the basis of the percentage of voting interest of value which the
321 Ownership interest represents, whichever is greater.

322 **"Party or Parties"** means the CCCSWA and Contractor, individually or together.

323 **"Permits"** means all federal, State, county, CCCSWA, or other local or any other governmental permits, orders,
324 licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be
325 obtained or maintained by any Person, including Contractor, with respect to the Services performed under this
326 Agreement, as renewed or amended from time to time.

327 **"Person or Persons"** means any individual, business, firm, association, organization, partnership, public or private
328 corporation, trust, joint venture, political subdivision, special purpose district, the County of Contra Costa, or public
329 or governmental entity.

330 **"Process or Processing"** means to prepare, treat, Recycle, or convert through some special method.

331 **"Processing Facility"** means a permitted Facility in which materials are sorted, separated, or otherwise
332 manipulated for the purposes of Recycling, reuse, or composting.

333 **"Rate Year"** means a twelve (12) month period, commencing March 1 and concluding on the last day of February
334 of the following year.

335 **"Rate Year One"** means the first Rate Year covered by this Agreement. Rate Year One shall begin on March 1,
336 2015 and shall end on February 29, 2016.

337 **"Reasonable Business Efforts"** means those efforts a reasonably prudent business Person would expend under the
338 same or similar circumstances in the exercise of that Person's business judgment, intending in good faith to take
339 steps calculated to satisfy the obligation that that Person has undertaken to satisfy.

340 **"Recovered Material"** means Recyclable Materials that are Recovered.

341 **"Recovery"** or **"Recover"** or **"Recovered"** (or other variations thereof) means the picking, pulling, sorting,
342 separating, classifying and recovery of Recyclable Materials whether by manual or mechanical means, after
343 Acceptance of the materials and before Marketing of Recovered Materials, including Recycling, material reuse and
344 recovery, mulching, composting, land application or transformation.

345 **"Recyclable Materials"** means materials, by-products, or components of such materials that are set aside,
346 handled, or packaged for the purpose of being Recycled. Recyclable Materials are Source Separated Recyclable
347 Materials Collected by the Franchised Collector for subsequent Transfer, Transport, Processing, and Diversion by
348 Contractor. Recyclable Materials include, at a minimum, the materials listed in Exhibit E.

349 **"Recycled" or "Recycling"** (or other variations thereof) means the process of collecting, sorting, cleansing, treating,
350 reconstituting, or otherwise Processing materials that are or would otherwise become Solid Waste and returning
351 them to the economic mainstream in the form of raw material for new, reused, or reconstituted products.
352 Recycling does not include the use of Recyclable Materials for conversion to energy.

353 **"Recyclables Revenue Payments"** means the money paid by Contractor to the CCCSWA on a monthly basis
354 representing the CCCSWA's share of the revenues the Contractor receives from the Marketing of the Recovered
355 Materials resulting from the Processing of Recyclable Materials.

356 **"Residential"** means Single-Family Dwellings and Multi-Family Dwellings used for human shelter, irrespective of
357 whether such dwelling units are rental units or are owner-occupied, excluding hotels, motels or other similar
358 Premises.

359 **"Residue"** means materials that remain after Acceptance, Transfer, Transport, Processing, and Diversion of
360 Recyclable Materials that require Disposal.

361 **"Reusable Items"** means materials that are subsequently used in their original form for the same or similar
362 purpose such as, but not limited to: used furniture, clothing, toys, bicycles, books, household items, tools, etc.

363 **"Service Area"** means the physical area encompassed by the jurisdiction of the CCCSWA's Member Agencies, from
364 which Contractor receives Source Separated Recyclable Materials for Transfer, Transport, Processing, and
365 Diversion services, and as presented in the map attached as Exhibit D noting that only a portion of Contra Costa
366 County unincorporated area is included in the CCCSWA Service Area. Should other political jurisdictions become
367 members of the CCCSWA during the Term of this Agreement and choose to receive Collection services from the
368 Franchised Collector, then the Service Area will be expanded to include these additional jurisdictions, and
369 Contractor shall have a right to Transfer, Transport, Process, and Divert all Source Separated Recyclable Materials
370 generated and Collected within this expanded Service Area.

371 **"Services"** mean all obligations of Contractor under and in accordance with this Agreement to CCCSWA.

372 **"Sharps"** means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used
373 to penetrate the skin for the delivery of medications generated from use at Residential Premises.

374 **"Single-Family Dwelling (or Single-Family)"** means each unit used for or designated as a Premises for one (1)
375 family, including each unit of a duplex, triplex, townhouse, or condominium which receives individual or separate
376 Collection service.

377 **"Solid Waste"** means and refers to the definition of "solid waste" in California Public Resources Code § 40191: "All
378 putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish,
379 ashes, industrial waste, demolition and construction wastes, abandoned vehicles and parts thereof, discarded
380 home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous
381 waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes,"
382 but does not include hazardous waste as defined in California Public Resources Code § 40141, radioactive waste, or
383 untreated Medical Materials.

384 **"Source Separated"** means the Generator segregates the Recyclable Materials into separate containers for
385 Collection, such that all Recyclable Materials will be placed in a container different from containers used for Solid
386 Waste, Organic Materials, and other materials.

387 **"Special Revenue Payment Adjustment"** means when Contractor seeks an adjustment to the per-Ton Recyclables
388 Revenue Payment amount pursuant to Section 7.5.

389 **"Standard Industry Practice"** means the then-current development and operations practices and standards of the
390 northern California Solid Waste and materials management industry with respect to Recovery, Diversion, Transfer,
391 Transport, Processing, and Disposal services.

392 **"State"** means the State of California.

393 **"Subcontractor"** means a Party who has entered into a contract, express or implied, with the Contractor for the
394 performance of an act on Contractor's behalf (i) that involves Accepting, Transferring, Transporting, Processing,
395 Diverting, Marketing, Residue Disposal, and/or other handling of the Recyclable Materials, and (ii) that is necessary
396 for the Contractor's fulfillment of its obligations for providing service under this Agreement. Vendors providing
397 materials and supplies to Contractor shall not be considered Subcontractors.

398 **"Term"** means the duration of this Agreement, including extension periods if granted, as provided for in Section
399 4.1.

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

402 **"Townhouse"** means an attached or semi-attached Single-Family Premises within a group of attached or semi-
403 attached Residential Premises wherein each unit maintains individual Collection service subscription.

404 **"Transfer"** means the process of managing the Delivery and Acceptance of Recyclable Materials at the Approved
405 Trans-Load Facility and storage and loading the Recyclable Materials into Transfer Vehicles for the purpose of
406 Transporting the materials to the Approved Recyclable Processing Facility.

407 **"Trans-Load Facility"** means a Facility that receives and temporarily stores materials, and then Transfers the
408 materials into Transfer Vehicles for Transport to a Processing Facility or Disposal Site.

409 **"Transfer Vehicle"** means a tractor and trailer designed to haul Recyclable Materials from the Approved Trans-
410 Load Facility to the Approved Recyclable Materials Processing Facility.

411 **"Transport" (or any variation thereof)** means the conveyance of Recyclable Materials (i) from the point of
412 Collection to an Approved Recyclable Materials Processing Facility or to an Approved Trans-Load Facility, or (ii)
413 from the Approved Trans-Load Facility to the Approved Recyclable Materials Processing Facility.

414 **"Uncontrollable Circumstance"** means, except as otherwise provided in 11.9 of this Agreement:

415 (1) An act of nature, hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage, tsunami,
416 or similar occurrence (but not including reasonably anticipated weather conditions in the Service
417 Area), acts of terrorism, extortion, war, blockade or insurrection, riot or civil disturbance, and other
418 similar catastrophic events that are beyond the control of and not the fault of the Party; or,

419 (2) A Change in Law (as defined herein).

420 **"Universal Materials" or "U-Materials"** means all materials as defined in Title 22, Subsections 66273.1 through
421 66273.9 of the California Code of Regulations. These include, but are not limited to, Batteries, fluorescent light
422 bulbs, mercury switches, and E-Materials.

423 **"Unpermitted Waste"** means wastes or other materials that the Approved Facilities may not receive under their
424 Permits, including:

425 (1) All materials that the Approved Facilities are not permitted to accept;

- 426 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to
427 emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may
428 be Hazardous Materials if it contains more than 1% asbestos;
- 429 (3) Ash residue from the incineration of solid wastes, including Solid Waste, infectious waste described in
430 Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as defined by Title
431 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or Disposal of Sewage
432 Sludge) and agricultural wastes;
- 433 (4) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances,
434 which remain after the shredding of automobiles;
- 435 (5) Dead animals larger than 100 pounds;
- 436 (6) Hazardous Substances and Hazardous Waste;
- 437 (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Approved Facilities,
438 including cement kiln dust, or process residues;
- 439 (8) Medical Materials including infectious wastes that have disease transmission potential and are
440 classified as Hazardous Wastes by the State Department of Health Services, including pathological
441 and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles,
442 blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from
443 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or
444 with known infectious diseases;
- 445 (9) Liquid wastes that are not spadeable, usually containing less than 50% solids, including cannery and
446 food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap
447 pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts,
448 sewage sludge not meeting certain quality criteria (i.e. unclassified sludge less than B), and those
449 liquid wastes that may be Hazardous Wastes;
- 450 (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State
451 Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of
452 which is subject to any other state or federal regulation;
- 453 (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed
454 from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting
455 certain quality criteria (i.e. unclassified sludge less than "B");
- 456 (12) Designated Waste if not permitted at the Approved Facilities under Applicable Law, including Permits;
457 or,
- 458 (13) Single Loads with an excessive level of Contaminants based on visual inspection. .
- 459 This definition shall be promptly amended to reflect any applicable changes in permits or Applicable Law.

ARTICLE 2
GRANT AND ACCEPTANCE OF AGREEMENT

2.1 Scope of Agreement

Through this Agreement, the CCCSWA grants to Contractor the right and privilege to Transfer, Transport, Process, and Divert all Source Separated Recyclable Materials generated within and Collected in the Service Area by Franchised Collector. Subject to the limitations in Section 5.1.D, and except where otherwise prohibited by federal, State, and local laws and regulations, Contractor shall exclusively be responsible for the following:

- A. Managing Delivery, Acceptance, and Transfer of Recyclable Materials at the Approved Trans-Load Facility and Transporting Recyclable Materials from the Approved Trans-Load Facility to the Approved Recyclable Materials Processing Facility or any other Facility designated by Contractor and approved by CCCSWA;
- B. Processing and Marketing of Recyclable Materials Collected in the Service Area;
- C. Disposing or arranging for Disposal of Residue at the Designated Disposal Facility;
- D. Performing the services set forth in the Provider Services Agreement between CCCSWA and Contractor for the Reuse and Cleanup Days Program and Retail Battery Collection Program, attached hereto as Exhibit K and incorporated herein by reference.
- E. Furnishing all labor, supervision, vehicles, containers, Transfer, Transport, and Processing equipment, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;
- F. Paying all expenses related to provision of Services required by this Agreement including, but not limited to, taxes, regulatory fees, governmental fees, and payments to CCCSWA, etc.;
- G. Performing all Services in substantial accordance with the Contractor's Proposal (as it relates to Contractor Services) and in full accordance with this Agreement at all times using Standard Industry Practice for comparable operations. If the Contractor's Proposal and Agreement conflict, the terms and provision of the Agreement shall prevail;
- H. Securing and maintaining all necessary Permits for operation of the Approved Trans-Load Facility and Approved Recyclable Materials Processing Facility;
- I. Complying with Applicable Law;
- J. Providing reports in a timely manner;
- K. Providing all Services required by this Agreement in a thorough and professional manner so the CCCSWA is provided timely, reliable, courteous, and high-quality service at all times; and,
- L. Performing or providing all other Services necessary to fulfill Contractor's obligations under this Agreement.

2.2 Change in Marketability of Materials

Should any materials not currently designated as Recyclable Materials in Exhibit E, develop economic value over time, CCCSWA reserves the right to add such materials to the list in Exhibit E and may have Contractor Transfer,

494 Transport, Process, and Divert such materials under this Agreement. Such change will be treated as a change in
495 scope in accordance with procedures in Section 2.3.

496 **2.3 Change in Scope**

497 CCCSWA may, by written notice, direct Contractor to perform additional services or modify existing Services under
498 this Agreement, but no change in scope shall be constructed so as to materially impair the rights of Contractor
499 granted hereunder. Contractor may request CCCSWA's consideration of a Contractor-proposed change in scope,
500 by written notice to the CCCSWA.

501 A. For example, and without limitation, CCCSWA or Contractor may request the following changes in scope:

- 502 (1) Change in Marketability of materials, as provided above in Section 2.2;
- 503 (2) Inclusion of additional Recyclable Materials to Exhibit E
- 504 (3) Inclusion of new Diversion programs;
- 505 (4) Research, development, and implementation of innovative services, which may entail different
506 Transfer, Transport, Processing, and/or Diversion methods;
- 507 (5) Research, development, and performance of pilot programs;
- 508 (6) Modification of the manner in which Contractor performs existing Services; and,
- 509 (7) Implementation of other program or service adjustments as may be determined.

510 B. Within sixty (60) Days of CCCSWA's or Contractor's written request under this Section, Contractor shall
511 present a written proposal to perform the additional or modified services. At a minimum, the proposal shall
512 contain a complete description of the following:

- 513 (1) Transfer, Transport, Processing, and Diversion methodology to be employed (equipment, staffing
514 requirements, etc.).
- 515 (2) Equipment to be used.
- 516 (3) Labor requirements (number of employees by classification; estimated hours per year per employee).
- 517 (4) Type of materials to be Transferred, Transported, Processed, and Diverted and estimated volumes
518 per week and per year.
- 519 (5) Five-year projection of the financial results of the program's operations in a balance sheet and
520 operating statement format including documentation of the key assumptions underlying the
521 projections and the support for those assumptions, giving full effect to the savings or costs to existing
522 Services and revenues from Marketing of Recyclable Materials.

523 C. CCCSWA shall review Contractor's proposal for the change in scope of services. CCCSWA may negotiate with
524 Contractor to amend the Agreement to reflect the change in scope, or CCCSWA may choose not to
525 negotiate with Contractor.

D. Contractor shall not be compensated for the proposal preparation costs or costs incurred during the negotiation of its proposal for the change in scope. However, Contractor may seek a Special Revenue Payment Adjustment review in the event the scope of Services is modified in accordance with this Section.

E. If the CCCSWA chooses to negotiate with the Contractor and the Contractor and CCCSWA cannot agree on terms and conditions of such services within one hundred twenty (120) Days from the date when CCCSWA first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that CCCSWA may permit other Persons besides Contractor to provide additional Transfer, Transportation, Processing, and/or Diversion services not otherwise contemplated by this Agreement.

2.4 Obligation to Provide Service

CCCSWA and Contractor agree, as more fully set forth in the Recitals to this Agreement, that proper Transfer, Transportation, Processing, and Diversion of Source Separated Recyclable Materials is fundamental to the protection of the public health, safety and the well-being of CCCSWA's residents, businesses, and Member Agencies. Contractor agrees that it will exercise due diligence in performing the Services described herein. CCCSWA's responsibility for ensuring the adequacy of these Services in part provides the justification for executing this Agreement with the Contractor. This Agreement creates an obligation that such Services continue to be provided even under difficult, adverse, or unforeseeable circumstances, such as but not limited to, natural disaster, labor unrest, and any period where legal actions, future judicial interpretations of current law, or new laws or regulations impact the effectiveness of portions of this Agreement. In such an event, it shall be the responsibility of Contractor to mitigate any potential damages to other services being provided as much as possible.

Contractor shall bear the risk of any lost profits or losses associated with the cost of providing continued Service as a result of such a legal action or ruling, and similarly CCCSWA shall bear the loss of payments to CCCSWA.

2.5 No Guarantees of Materials Volume or Composition

The CCCSWA has the right to and agrees to direct its Franchised Collector to Deliver all Source Separated Recyclable Materials it Collects in the Service Area to the Approved Trans-Load Facility for the Contractor to Transfer and Transport to the Approved Recyclable Materials Processing Facility for Processing and Diversion by Contractor during the Term of the Agreement. The CCCSWA does not guarantee the quantity or composition of the Source Separated Recyclable Materials Delivered to the Approved Facility(ies). The Parties acknowledge that the quantity and composition of Recyclable Materials will be impacted during the Term of the Agreement based on a number of unpredictable factors such as, but not limited to, those factors listed below.

- The state of the economy;
- The number of residents and the number and type of businesses;
- Participation level of residents and businesses in various Diversion programs;
- Rate setting practices for Collection services;
- Changes in technology;
- CCCSWA's on-going effort to increase Diversion of C&D debris, materials which are collected by permitted haulers;
- CCCSWA's future implementation of High Diversion Services which may result in a reduction or increase in the volume of Source Separated Recyclable Materials and which may result in a change in the composition of the Recyclable Materials;
- Extent to which other Persons collect and transport Recyclable Materials that require special handling or unique Processing services;

- Diversion programs/policies of the CCCSWA, Member Agencies, the State, Contra Costa County, and others;
- Impact of AB 341;
- Impact of new bans or policies on the Disposal of materials including, but not limited to, polystyrene, single use bags, etc. established by the CCCSWA, one or more of its Member Agencies, Contra Costa County, and/or the State; and,
- Impact of new policies on product stewardship and extended producer responsibility established by the CCCSWA, one or more of its Member Agencies, Contra Costa County, and/or the State.

2.6 Reuse and Cleanup Days and Retail Battery Collection Programs

Contractor shall perform the services set forth in the "Provider Services Agreement between CCCSWA and Contractor for the Reuse and Cleanup Days Program and Retail Battery Collection Program," attached hereto as Exhibit K and incorporated herein by reference. Exhibit K further describes the Contractor's obligations to provide programs for Collection and Processing of Reusable Items and household Batteries and other related services. Exhibit K also expressly identifies which provisions of this Agreement specifically apply to the Provider Services Agreement; all other provisions herein shall not be applicable to the Provider Services Agreement.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Of Contractor

By acceptance of this Agreement, Contractor represents and warrants that:

- A. **Existence and Powers.** Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of California and is qualified to transact business in the State and has full legal right, power, and authority to enter into and perform its obligations under this Agreement.
- B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor has taken all actions required by law or otherwise to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of Contractor have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of Contractor enforceable against Contractor under its terms.
- C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written submittals made in connection with Contractor's Services, including Contractor's Proposal and any other supplementary information submitted to the CCCSWA, which the CCCSWA has relied on in awarding and entering this Agreement, is true, accurate, and complete, and does not contain material omissions or misleading statements. Contractor will inform CCCSWA of any change in that information within one (1) week of discovering any untruth or inaccuracy.
- D. **Contractor's Due Diligence.** Contractor has made an independent investigation and examination (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Relying solely upon its own investigation, advice, and counsel, Contractor has taken such matters into consideration in entering this Agreement to provide Services in exchange for the Contractor Revenue provided for under the terms of this Agreement.

- 606 E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to manage,
607 Transfer, Transport, Process, and Divert the Recyclable Materials, and Contractor possesses the equipment,
608 facilities, and employee resources required to perform this Agreement.
- 609 F. **Voluntary Use of Approved Facilities.** Contractor, without constraint and as a free-market business
610 decision in accepting this Agreement; agrees to use the Approved Facilities, Designated Disposal Facility, or
611 other location approved by CCCSWA, for the purposes of Transferring, Processing, or Diverting all Recyclable
612 Materials Accepted and for Disposal of Residue. Such decision by Contractor in no way constitutes a
613 restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition
614 thereof.
- 615 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that CCCSWA expressly
616 disclaims any warranties, either express or implied, as to the volume, type, merchantability or fitness for any
617 particular purpose of Recyclable Materials Delivered by Franchised Collector and Accepted, Transferred,
618 Transported, and Processed by Contractor.
- 619 H. **Capacity.** Contractor warrants that as of the Commencement Date it has Transfer capacity at the Approved
620 Trans-Load Facility to Accept and Transfer all Source Separated Recyclable Materials Delivered by the
621 Franchised Collector throughout the Term and that it shall maintain that Trans-Load Facility capacity
622 through the Term. Contractor warrants that as of the Commencement Date it has Processing capacity at the
623 Approved Recyclable Materials Processing Facility to Process all Source Separated Recyclable Materials
624 Accepted at the Approved Trans-Load Facility from the Franchised Collector throughout the Term and that it
625 shall maintain that Processing capacity through the Term. If Contractor fails to provide the capacity needed
626 to fulfill its obligation, the CCCSWA may assess Liquidated Damages for each Ton of the Recyclable Materials
627 that the Contractor does not Accept, Transfer, Transport, or Process in accordance with Section 11.9 and
628 Exhibit B.
- 629 I. **Permits and Approvals.** Contractor warrants that all licenses, Permits, qualifications, and approvals of
630 whatsoever nature that are legally required for Contractor to perform its obligations under this Agreement
631 shall be secured on or before the Commencement Date of this Agreement, and Contractor further warrants
632 that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses,
633 Permits, and approvals that are legally required for Contractor to perform its obligations under this
634 Agreement.
- 635 J. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor, its
636 officers, employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against the CCCSWA or the
637 Franchised Collector that alleges any claims related to, arising out of, or in connection with the CCCSWA's
638 Request for Proposals process for the Contractor's Services or the Franchised Collector's services, including
639 the award of any agreement or contract thereunder.
- 640 K. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance with and has
641 completed all requirements necessary to become certified under the Iran Contracting Act (Public Contract
642 Code Sec. 2200). Proof of certification shall be included as Exhibit J of this Agreement.

643 3.2 OF CCCSWA

644 By acceptance of this Agreement, CCCSWA represents and warrants that:

- 645 A. **Existence and Powers.** CCCSWA is a Joint Powers Authority duly organized and validly existing under the
646 laws of the State of California, with full legal right, power, and authority to enter into and perform its
647 obligations under this Agreement.

B. **Due Authorization and Binding Obligation.** CCCSWA has the authority to enter into and perform its obligations under this Agreement. CCCSWA has taken all actions required by law or otherwise to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of CCCSWA have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of CCCSWA enforceable against CCCSWA under its terms.

C. **No Warranty Regarding Volumes or Material Types.** CCCSWA expressly disclaims any warranties, either express or implied, as to the volume, type, merchantability or fitness for any particular purpose of the Source Separated Recyclable Materials Delivered to and Accepted, Transferred, Transported, and Processed by Contractor.

3.3 Of the Parties

By acceptance of this Agreement, the Parties represent and warrant that:

A. **No Conflicts.** To the best of the Parties' knowledge, after reasonable investigation, neither the execution or delivery of this Agreement or the performance by the Parties of their obligations hereunder does not conflict with, violate, or result in breach of:

(1) Any Applicable Law;

(2) Any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority; or,

(3) Any agreement or instrument to which Contractor or any of its Affiliates is a party or by which Contractor or any of its Affiliates' properties or assets are bound, or constitutes a default thereunder.

B. **No Litigation.** There is no administrative filing, action, suit, or other proceeding as of the Effective Date, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending or, to the Parties' best knowledge, threatened by or against either Party wherein an unfavorable decision, ruling, or finding in any single case or in the aggregate, would:

(1) Materially adversely affect the performance by either Party of its respective obligations hereunder or the transactions contemplated by this Agreement;

(2) Adversely affect the validity or enforceability of this Agreement; or,

(3) Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

C. **No Legal Prohibition.** The Parties have no knowledge of any adverse judicial decision or Applicable Law in effect on the Effective Date that either affects the validity of this Agreement or would prohibit the performance by either Party of its respective obligations hereunder or the transactions contemplated by this Agreement.

680 **ARTICLE 4**
681 **TERM OF AGREEMENT**

682 **4.1 Term and Option to Extend**

683 The Term of this Agreement shall commence March 1, 2015 (Commencement Date) and continue in full force for a
684 period of ten (10) years, through and including February 28, 2025, unless the Agreement is extended in accordance
685 with this Section or terminated pursuant to Article 11. Between the Effective Date and Commencement Date,
686 Contractor shall perform all activities necessary to prepare itself to provide Services required by this Agreement on
687 the Commencement Date.

688 At the CCCSWA's sole discretion, the Term of this Agreement may be extended, for up to twenty-four (24) months
689 after February 28, 2025 (i.e., until February 28, 2027), in one or more periods specified by the CCCSWA. Such
690 extensions shall be conditioned upon the Contractor's achievement of the two (2) performance standards defined
691 in Section 4.2, each of which may be waived by the CCCSWA, in its sole discretion. If the CCCSWA elects to
692 exercise this option to extend the Term, it shall give written notice of its election to the Contractor, specifying the
693 number of months by which it wishes to extend the Term, one hundred eighty (180) Days prior to the expiration
694 date then existing under this Agreement.

695 The CCCSWA has no obligation to renegotiate, renew, or extend the rights granted to Contractor beyond the initial
696 ten-year (10-year) Term of the Agreement.

697 **4.2 Extension Conditions**

698 Any extension to the Term of the Agreement is conditional upon Contractor meeting the following two (2)
699 requirements, each or either of which may be waived by the CCCSWA:

700 A. **Residue Level (Diversion Performance).** Contractor has maintained a monthly Residue level of less than ten
701 percent (10%) for Recyclable Materials for each month during the most recent three (3) years. The Residue
702 level shall equal the monthly Tonnage of Processing Residue requiring Disposal divided by the total monthly
703 Tonnage of Recyclable Materials Accepted.

704 B. **Overall Performance.** Contractor has not been assessed Liquidated Damages for the most recent three (3)
705 years.

706 Contractor's achievement of the conditions shall be determined by the CCCSWA through review of reports
707 provided pursuant to Article 9, a performance review pursuant to Section 8.2, and/or inspection of records
708 pursuant to Section 9.2. For the purpose of this Section, the most recent three (3) years shall be defined as the
709 most-recently completed thirty-six (36) months ending one year in advance of the then-current end date of the
710 Term. For example, if the CCCSWA is considering an extension beyond the initial ten- (10-) year Term, the most-
711 recently completed three- (3-) year period would be March 2021 through February 2024.

712 **ARTICLE 5**
713 **FACILITY OPERATIONS**

714 **5.1 Overview of Scope**

- 715 A. **Trans-Load Facility Services.** Contractor shall receive Delivery of and Accept at the Approved Trans-Load
716 Facility all Recyclable Materials Collected in the Service Area by the Franchised Collector, subject to the
717 limitations of Section 5.1.D. Contractor shall safely and lawfully Transfer such materials to the Approved
718 Recyclable Materials Processing Facility.
- 719 B. **Transport.** Contractor shall safely and lawfully Transport all Recyclable Materials from the Approved Trans-
720 Load Facility to the Approved Recyclable Materials Processing Facility. Contractor shall Transport materials
721 in Contractor-provided Transfer Vehicles.
- 722 C. **Processing and Marketing.** Contractor agrees to Process, Divert, and Market all Recyclable Materials it
723 Transported from the Approved Trans-Load Facility to the Approved Recyclable Materials Processing
724 Facility.
- 725 D. **Limitations to Scope.** The scope of this Agreement does not include Transfer or Transport of the following:
- 726 (1) Materials Collected by the Franchised Collector that are not Collected in the regular Recyclable
727 Materials Collection containers such as, but not limited to: Electronic Materials, Universal Materials,
728 Sharps, and Bulky Items that are Diverted by the Franchised Collector.
- 729 (2) Recyclable Materials generated in the Service Area which are not Collected by the CCCSWA or its
730 Franchised Collector.
- 731 E. **Cost of Service.** Contractor shall pay all costs associated with Accepting, Transferring, Transporting,
732 Processing, Diverting, and Marketing of Recyclable Materials.
- 733 F. **Facility Fees.** Contractor shall pay all fees assessed by governmental or regulatory agencies for operation of
734 the Approved Facilities and the Designated Disposal Facility. As of the Effective Date of this Agreement, no
735 governmental or regulatory fees are assessed at the Approved Facilities on Recyclable Materials.
- 736 G. **Commencement.** Services shall commence on March 1, 2015 unless otherwise provided for in this
737 Agreement.

738 **5.2 CCCSWA Obligations**

- 739 A. **Delivery of Recyclable Materials.** The CCCSWA shall, at all times, direct all Source Separated Franchised
740 Recyclable Materials Collected in the Service Area by the Franchised Collector to be Delivered to the
741 Approved Trans-Load Facility.
- 742 B. **No Tonnage Obligation or Limit on Waste Prevention.** The CCCSWA currently operates programs intended
743 to reduce the amount of waste for landfill Disposal. Nothing in this Agreement shall prevent, penalize, or
744 impede, in any manner, the CCCSWA from continuing and expanding these programs, reducing the scope of
745 these programs, or developing new programs all of which may reduce or increase the amount of Recyclable
746 Materials Collected and Delivered to the Approved Trans-Load Facility and subsequently Processed at the
747 Approved Recyclable Materials Processing Facility including implementation of High Diversion Services.

It is the CCCSWA's intent to continue to improve, develop, or enhance existing programs as well as to implement new programs and services throughout the Term to meet the Diversion goals set by AB 939 and AB 341 as well as the CCCSWA Board of Directors' goal of achieving 75% Diversion by the year 2020. As a result, the characterization and quantity of materials Delivered to the Approved Facilities will change over the Term and may be significantly different than that as of the Commencement Date of the Agreement. Contractor shall not be compensated for any changes in the characterization of, quantity of, or other changes to materials it receives except as provided for in Section 2.3 of this Agreement.

Notwithstanding the provisions of Section 2.1, neither the CCCSWA nor the Franchised Collector is obligated to Deliver any specified quantity of Source Separated Recyclable Materials from the Service Area to the Approved Trans-Load Facility.

C. **Franchised Collector's Unpermitted Materials Program.** The CCCSWA shall direct its Franchised Collector to implement an Unpermitted Materials screening, identification, and prevention protocol. CCCSWA shall prohibit its Franchised Collector from knowingly delivering Unpermitted Materials to the Approved Trans-Load Station.

D. **Costs and Facility Fees.** All costs associated with Acceptance and Transfer of Recyclable Materials at the Approved Trans-Loading Facility; Transporting to and Processing, Diversion, and Marketing of Franchise Recyclable Materials at the Approved Recyclable Materials Processing Facility; and Transporting to and Disposal of Residue at the Designated Disposal Facility shall be paid by Contractor.

5.3 Contractor Obligations

Contractor shall perform Services in accordance with Applicable Laws and regulations, Standard Industry Practice, due diligence and specification, and other requirements of this Agreement.

5.4 Transfer and Transport Services

A. **General.** The Contractor is responsible for receiving Deliveries of and Accepting Recyclable Materials at the Approved Trans-Load Facility. Contractor is responsible for Transferring and Transporting the Accepted Recyclable Materials to the Approved Recyclable Materials Processing Facility by use of Transfer Vehicles. If the Contractor plans to change its Transfer and Transport method, Contractor shall obtain written approval from the CCCSWA prior to making the change; pay all costs; and shall not be reimbursed for any additional costs. The CCCSWA shall approve the Transfer and Transport method, and the duration the Transfer and Transport method is expected to remain in use. A general description of the Approved Trans-Load Facility operation is provided in Exhibit I.

B. **Trans-Load Facility Operations.** Contractor shall provide Transfer Services at the Approved Trans-Load Facility in accordance with the Service standards described in Articles 5 and 6 and the following Service specifications:

- (1) Operating, managing and maintaining the Approved Trans-Load Facility including all buildings, scales, roads, utilities, equipment, and other facility requirements.
- (2) Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations and maintenance.
- (3) Operating and maintaining the scale house and scale system and weighing Recyclable Materials Delivered by the Franchised Collector in accordance with Section 6.5.

- 787 (4) Directing on-site traffic to appropriate unloading areas in accordance with Section 6.4 and providing a
788 safe working environment for Approved Trans-Load Facility users, visitors, and employees including
789 requirements set forth in Sections 6.6 and 6.19.
- 790 (5) Accepting Delivery of Recyclable Materials, subject to the limitations of Sections 5.6 and 6.1.
- 791 (6) Safely managing the Delivery and Acceptance of Recyclable Materials at the Approved Trans-Load
792 Facility, including, but not limited to, meeting requirements of Section 6.6.
- 793 (7) Implementing an Unpermitted Materials screening, identification, and prevention protocol; not
794 knowingly Delivering Unpermitted Materials to the Approved Recyclable Materials Processing Facility.
- 795 (8) Managing Recovered Materials in a manner compliant with AB 939 to ensure that the CCCSWA shall
796 benefit from Diversion credit for that material.
- 797 (9) Loading materials into Transfer Vehicles and using its reasonable efforts to ensure that Transfer
798 Vehicles do not exceed legal road limits.
- 799 (10) Transferring and Transporting all Recyclable Materials to the Approved Recyclable Materials
800 Processing Facility.
- 801 (11) At Contractor's option, Contractor may Process cardboard at the Approved Trans-Loading Facility to
802 bale or otherwise prepare the material for Market.

803 5.5 Recyclable Materials Processing Services

804 A. **General.** The Contractor is responsible for Processing All Source Separated Recyclable Materials Collected in
805 the Service Area by the Franchised Collector, which were Accepted at the Approved Trans-Load Facility. The
806 Contractor shall use the Approved Recyclable Materials Processing Facility for Recyclable Materials
807 Processing, Diversion, and Marketing. A general description of the Approved Recyclable Materials
808 Processing Facility operation is provided in Exhibit I. Below is information about the Approved Recyclable
809 Materials Processing Facility approved by the CCCSWA for Processing of Recyclable Materials:

810 Facility Name: Mt. Diablo Recycling Center
811 Owner: Contra Costa Waste Services, Inc., an Approved Affiliate
812 Operator: Contractor
813 Address: 1300 Loveridge Road, Pittsburg, CA
814 Contact Person and telephone number: Jim Nejedly, Operations Manager, (925) 771-2716

815 B. **Recyclable Materials Processing Facility Operations.** Contractor shall provide Recyclable Materials
816 Processing Services at the Approved Recyclable Materials Processing Facility in accordance with the Service
817 standards described in Articles 5 and 6 and the following Service specifications:

- 818 (1) Operating, managing, and maintaining the Approved Recyclable Materials Processing Facility
819 including all buildings, scales, roads, utilities, equipment, and other Facility requirements.
- 820 (2) Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for
821 operations and maintenance.
- 822 (3) Operating and maintaining the scale house and scale system and weighing Recyclable Materials
823 Delivered to the Approved Recyclable Materials Processing Facility in accordance with Section 6.5.

- 824 (4) Directing on-site traffic to appropriate unloading areas in accordance with Section 6.4 and providing a
825 safe working environment for Approved Recyclable Materials Processing Facility users, visitors, and
826 employees including requirements set forth in Sections 6.6 and 6.19.
- 827 (5) Accepting Delivery of all Recyclable Materials, subject to the limitations of Sections 5.6 and 6.1.
- 828 (6) Processing Recyclable Materials and preparing Recovered Materials for Market.
- 829 (7) Safely managing the Recyclable Materials Accepted at the Approved Recyclable Materials Processing
830 Facility, including, but not limited to, meeting requirements of Section 6.6.
- 831 (8) Implementing an Unpermitted Materials screening, identification, and prevention protocol.
832 Contractor shall not knowingly deliver Unpermitted Materials to the Approved Recyclable Materials
833 Processing Facility.
- 834 (9) Managing Recovered Materials in a manner compliant with AB 939 to ensure that the CCCSWA shall
835 benefit from Diversion credit for that material.
- 836 (10) Marketing Recovered Materials and arranging for or providing Transportation of the Recovered
837 Materials to end-users or Markets.
- 838 C. **Marketing.** The Contractor shall be responsible for Marketing the Recyclable Materials Accepted at the
839 Approved Recyclable Materials Processing Facility. No Recyclable Materials shall be deposited for Disposal.
- 840 Upon request, Contractor shall provide proof to the CCCSWA that all Recyclable Materials are Marketed for
841 Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the
842 State regulations established by the AB 939 and AB 341. All Residue, which will include a de minimis
843 amount of Recyclable Materials, from the Processing activities that is not Marketed for use shall be reported
844 to the CCCSWA as Residue and accounted for as Disposal Tonnage at a permitted Disposal Facility. No
845 Recyclable Materials shall be Transported to a domestic or foreign location if Solid Waste Disposal of such
846 material is its intended use. No Recyclable Materials or Residue shall be used for Beneficial Reuse Purposes.
- 847 Upon request, Contractor shall provide a summary of its Marketing plan, average commodity value for each
848 material, end Markets for Recyclable Materials and submit it to the CCCSWA for review and approval.
849 Contractor shall provide CCCSWA with a list of broker/buyers it has used during the preceding twelve (12)
850 months, if requested by CCCSWA. If Contractor becomes aware that a broker or buyer has illegally handled
851 or Disposed of material generated in the Service Area or elsewhere, Contractor shall immediately inform the
852 CCCSWA and terminate its contract or working relationship with such party.
- 853 Contractor shall maintain complete, accurate, and detailed Marketing records, including Tonnage of
854 material Marketed, price, revenue received, purchaser, and end use in accordance with Section 9.1.
- 855 D. **Residue Level (Diversion Performance) and Disposal.** Contractor shall guarantee a Residue level of less
856 than ten percent (10%) for Recyclable Materials. For the purpose of this Residue guarantee, the Residue
857 level shall be equal to the monthly Tonnage of Processing Residue requiring Disposal divided by the total
858 monthly Tonnage of Recyclable Materials Accepted. Residue from the Processing activities shall be
859 Disposed of by Contractor at the Designated Disposal Facility selected by Contractor and approved by the
860 CCCSWA. The Contractor shall not use Residue for Beneficial Reuse Purposes.
- 861 E. **Visitor Education Facility.** Contractor shall make its visitor education facility at the Approved Recyclable
862 Materials Processing Facility available for use by CCCSWA. The facility will be available for scheduled visits at
863 a minimum, from 8:00 a.m. to 3:00 p.m., Monday through Friday, except for Holidays, or at any other times
864 upon mutual agreement. Contractor shall deliver visitor presentations and provide up to twenty (20) tours

of the Approved Recyclable Materials Processing Facility per Rate Year for organizations and schools within the Service Area approved by CCCSWA unless impractical due to safety concerns.

5.6 Delivery and Acceptance of Recyclable Materials

A. General. On the Commencement Date and continuing throughout the Term, CCCSWA shall direct its Franchised Collector to Deliver All Recyclable Materials Collected in the Service Area to the Approved Trans-Load Facility, and Contractor shall commence Acceptance, Processing, Diversion, and Marketing of such materials on the Commencement Date. Contractor shall provide CCCSWA written notice no less than fourteen (14) Days prior to the Commencement Date if Contractor will not be able to commence Services on such date.

Parties acknowledge that the Approved Trans-Load Facility is operating under a City of Concord Permit that does not allow for Acceptance of Recyclable Materials Loads which would result in Processing Residue Levels of equal to or greater than ten percent (10%) determined on a monthly basis or which contain one percent (1%) or more of putrescible materials. As a result, Contractor and CCCSWA agree to work cooperatively with the Franchised Collector to manage the Collection, Delivery, and Acceptance process in such a way that Loads Accepted by the Contractor do not include an excessive amount of Contaminants that would cause Contractor to exceed such Processing Residue level (for a particular month).

B. CCCSWA Obligation for Delivery. CCCSWA's obligation to direct Delivery of Source Separated Recyclable Materials Collected by its Franchise Collector in the Service Area shall be contingent upon Contractor's satisfaction of the terms and conditions of this Agreement including, but not limited to, the following requirements:

(1) **Contractor.** Contractor being able to fully perform Contractor's Services.

(2) **Site Permits and Approvals.** Contractor and Approved Facilities being in compliance with Applicable Law with respect to any and all Permits required for operations of Approved Facilities.

(3) **Confirmation of Contractor's Representations and Warranties.** Representations and warranties made by Contractor in Article 3 are true and correct in all material respects, there have been no substantial changes in the financial position of the Contractor.

(4) **Adverse Changes in Guarantor or Contractor.** Since the Effective Date, there shall not have occurred any material change, financial or otherwise, that would adversely affect the ability of the Guarantor to perform its obligations under the Financial Guaranty Agreement or the ability of Contractor to perform Contractor's obligations hereunder or its obligations under any other agreement, contract or instrument entered into or to be entered into by the Contractor in connection with operation of the Approved Facilities, Contractor's obligations, the Services hereunder, and the transactions contemplated hereby.

(5) **No Default.** Contractor not being in breach or default under this Agreement or any other agreement with the CCCSWA.

C. Acceptance by Contractor. Contractor shall diligently visually inspect Loads and periodically shall manually characterize Loads to confirm that Accepted Recyclable Materials conform to the list of Recyclable Materials in Exhibit E and do not contain Unpermitted Materials. Contractor shall implement Load-checking procedures in a uniform and non-discriminating manner from day to day and for the CCCSWA's Recyclable Materials and materials from other sources. Ownership of the Recyclable Materials transfers to Contractor pursuant to Section 5.9 and Contractor cannot reject the Load thereafter.

D. **Contaminated Load Monitoring and Rejection.** The objective of the Load monitoring and notification process is for the Contractor to identify specific Franchised Collector route(s) (e.g., determined by vehicle number, day of the week, and time of Delivery) that routinely have excessive Contamination and to provide the Franchised Collector with an opportunity to inspect the Loads and remedy the Contamination problem on a route-by-route basis. It is the Contractor's responsibility to monitor the Delivered Loads of Recyclable Materials at the Approved Trans-Load Facility for excessive Contamination and to inform both the Contractor and CCCSWA in writing if a particular Load's Contamination level is excessive based on visual inspection. After written notification to the CCCSWA, the CCCSWA and its Franchised Collector can inspect the vehicle's Loads to determine the source of the Contamination and what steps need to be taken to reduce the Contamination such as educating Residents and Commercial customers on keeping non-Recyclable Materials out of the Recyclable Materials Collection containers. The Contractor can reject Deliveries from a Franchised Collector's vehicle if its Contamination level is excessive; however, in order to do so, the Contractor must (1) identify the vehicle number, (2) document at least five (5) dates of Contaminated Load Delivery, (3) provide a description of the Contaminant materials, (4) provide pictures evidencing the Contamination, and, (5) set aside the rejected Load and provide the Franchised Collector and CCCSWA shall have twenty four (24) hours to inspect the rejected Load. If Contractor identifies a Load that is extremely Contaminated based on its visual inspection, Contractor shall have the right to reject the Load without following the five- (5-) step process described in this paragraph.

If Contractor rejects a Load, the Load shall be segregated from other Loads, and Contractor shall immediately notify the CCCSWA and the Franchised Collector verbally and then follow verbal notifications with written notice identifying the date and time of occurrence; Contractor's reason for rejection of the Delivered material; photographs of the material, and the identification number or information of the vehicle that Delivered the material. The Franchised Collector and CCCSWA shall be given twenty-four (24) hours from receipt of written notice to inspect the Load. After twenty-four (24) hours of written notice, Contractor shall Recycle or Dispose of the Load and shall bill the Franchised Collector \$150.00 per Ton.

If a Load contains Unpermitted Materials characterized as Items (2) through (12) in the definition of the Unpermitted Materials, this Section shall not be applicable. In such case the Unpermitted Materials shall be handled in accordance with Section 6.1.

5.7 Guaranteed Capacity

Contractor shall secure sufficient capacity to Transfer and Process all Source Separated Recyclable Materials Collected in the Service Area by the Franchised Collector and shall cause the Approved Facilities to Transfer, Transport, Process, Divert, and Market the Recyclable Materials. Contractor shall provide the CCCSWA, upon request, with documentation demonstrating the availability of such capacity.

5.8 Permits

A. **Securing Permits.** Contractor shall obtain and maintain, at Contractor's sole cost, all Permits required under Applicable Law to perform Services. Contractor shall provide CCCSWA copies of Permits for the Approved Facilities, and shall demonstrate compliance with the terms and conditions of Permits within ten (10) Days of CCCSWA request. In its Monthly Report or more frequently, as necessary, Contractor shall inform CCCSWA of Contractor's status of securing the issuance, revision, modification, extension or renewal of Permits including those at its or an Affiliate's Approved Facilities. Within ten (10) Days following CCCSWA's request, Contractor shall provide the CCCSWA with copies of any applications or other correspondence that the Contractor submits in connection with securing Permits.

B. **Complying with Permits.** Contractor shall comply with all Permits, including any mitigation measures related to the operation and maintenance of the Approved Facilities at no additional cost to the City.

950 Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or
951 violation of Permits or failure to obtain Permits.

952 **5.9 Ownership of Recyclable Materials**

953 Once Recyclable Materials are Delivered by the Franchised Collector and Accepted by Contractor at the Approved
954 Trans-Load Facility, ownership and the right to possession of Recyclable Materials shall transfer directly from the
955 Franchised Collector to Contractor upon the earlier occurrence of either: (i) Processing the material, (ii) loading the
956 material into a vehicle or container for Transport to the Approved Recyclable Materials Processing Facility, or (iii)
957 the end of the Day's defined hours for Acceptance of materials which are specified in Section 6.2.

958 Both benefits and liabilities resulting from ownership and possession of the Recyclable Materials shall accrue to
959 Contractor.

960 **5.10 Cooperation and Disputes with Franchised Collector**

961 Contractor shall fully comply with its obligations to provide Services including receipt of Deliveries and Acceptance
962 of Recyclable Materials from the Franchised Collector at the Approved Trans-Load Facility and operation and
963 maintenance of the Approved Trans-Load Facility in a manner that meets the requirements of this Agreement.
964 Contractor's operations shall allow for safe and efficient Delivery and Acceptance of Recyclable Materials by the
965 Franchised Collector. In the event of disputes between Contractor and the Franchised Collector, Contractor shall
966 provide written notice of the dispute to the CCCSWA and Franchised Collector and Contractor agrees to meet and
967 confer with the Franchised Collector in good faith to resolve the dispute. If at the end of thirty (30) Days following
968 the initial notice to the CCCSWA, Contractor and Franchised Collector have not resolved the dispute, Contractor
969 shall notify the CCCSWA and the CCCSWA and Contractor shall follow the dispute resolution procedure in Sections
970 12.1, 12.2, and 12.5. In the event of a dispute, Contractor shall continue performance of Contractor's Service
971 obligations under this Agreement (including payment of Recyclables Revenue Payments to the CCCSWA) and shall
972 attempt to continue to resolve that dispute in a cooperative manner, including but not limited to negotiating in
973 good faith.

974 **ARTICLE 6** 975 **PERFORMANCE STANDARDS**

976 **6.1 Rejection of Unpermitted Waste**

977 A. **Inspection.** Contractor shall use Standard Industry Practices to detect and reject Unpermitted Waste in a
978 uniform manner and shall not knowingly accept Unpermitted Waste at the Approved Facilities. Contractor
979 shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly
980 modify that procedure to reflect any changes in Permits or Applicable Law.

981 Contractor shall develop a Load inspection program that includes the following components: (i) personnel
982 and training; (ii) Load checking activities; (iii) management of materials; and, (iv) record keeping and
983 emergency procedures. Contractor's Load checking personnel shall be trained in: (i) the effects of Hazardous
984 Substances on human health and the environment; (ii) identification of Unpermitted Waste; and, (iii)
985 emergency notification and response procedures. Load inspection personnel shall inspect Recyclable
986 Materials Delivered to the Approved Trans-Load Facility immediately after unloading of the materials from
987 the Collection vehicles. Contractor shall implement its procedures in a uniform and non-discriminating
988 manner from day to day and for Franchised Materials and materials from other sources.

989 B. **Unpermitted Wastes Handling and Costs.** Contractor shall arrange for or provide handling, transportation,
990 and delivery to a Recycling facility, incinerator, or Disposal Site permitted in accordance with Applicable Law
991 all Unpermitted Wastes detected at the Approved Facilities. Contractor is solely responsible for making
992 those arrangements or provisions and for all costs thereof, subject to the remedies available under Section
993 6.1.C below.

994 C. **Remedies for Rejected Materials.** If Unpermitted Waste is Delivered to the Approved Trans-Load Facility,
995 Contractor shall be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that
996 Unpermitted Waste to the Approved Trans-Load Facility.

997 If Contractor identifies Unpermitted Waste Delivered to the Approved Trans-Load Facility from the
998 Franchised Collector, Contractor shall notify the CCCSWA and Franchised Collector and, in accordance with
999 6.1.D below, the Franchised Collector shall Collect, Transport, and Recycle or Dispose of that Unpermitted
1000 Waste and/or remediate any contamination resulting there from at the Franchised Collector expense. Upon
1001 notification by Contractor, CCCSWA shall have the option to require Contractor to Recycle or Dispose of the
1002 Unpermitted Waste and/or remediate any contamination resulting there from on Franchised Collector's
1003 behalf and Franchised Collector shall pay the Direct Costs for such service.

1004 D. **Notification.** If the Contractor rejects Unpermitted Waste received at the Approved Trans-Load Facility
1005 from the Franchised Collector, Contractor shall immediately notify the CCCSWA and the Franchised Collector
1006 verbally and then follow verbal notifications with written notice identifying the date and time of occurrence;
1007 material type; material weight or volume; characterization of material; the Contractor's reason for rejection
1008 of the Delivered material; photographs of the material, and the identification number or information of the
1009 vehicle that Delivered the material.

1010 E. **Not Applicable for Contaminated Loads.** The provisions of this Section 6.1 shall not apply to Single Loads
1011 with excess Contamination, which shall be handled in accordance with Section 5.6.D.

1012 6.2 Days and Hours of Operation

1013 A. **Approved Trans-Load Facility.** Contractor shall operate the Approved Trans-Load Facility for the Delivery
1014 and Acceptance of the Recyclable Materials on all Days except Holidays in accordance with the days and
1015 hours of operation set forth below. At a minimum, Contractor shall Accept Deliveries of Recyclable
1016 Materials Monday through Friday from 5:00 a.m. to 7:00 p.m. Contractor shall be operational on the
1017 Saturday immediately following a Holiday for Delivery and Acceptance of Recyclable Materials during the
1018 hours listed in this subsection. Contractor may not reduce the hours or total number of hours for Delivery
1019 and Acceptance of Recyclable Materials without prior written approval of the CCCSWA except for reductions
1020 required by a change in a Permit subsequent to the Commencement Date. Contractor shall use every effort
1021 possible to provide the CCCSWA a minimum of sixty (60) Days written notice of such an anticipated
1022 modification.

1023 B. **Approved Recyclable Materials Processing Facility.** Contractor shall operate the Approved Recyclable
1024 Materials Processing Facility for Acceptance of the Recyclable Materials Transported from the Approved
1025 Trans-Load Facility with the days and hours of operation set forth below. At a minimum, Contractor shall
1026 Accept Recyclable Materials Monday through Saturday from 3:00 a.m. to 5:00 p.m. Contractor may not
1027 reduce the hours or total number of hours for Acceptance of Recyclable Materials without prior written
1028 approval of the CCCSWA except for reductions required by a change in a Permit subsequent to the
1029 Commencement Date. Contractor shall use every effort possible to provide the CCCSWA a minimum of sixty
1030 (60) Days written notice of such an anticipated modification. In the event the Franchised Collector needs to
1031 Deliver Recyclable Materials to Contractor on a Saturday, Franchised Collector may Deliver Recyclable
1032 Materials to the Approved Recyclable Materials Processing Facility because the Approved Trans-Load Facility
1033 is not scheduled to be operational on Saturdays.

- C. **Extended Facility Receiving Hours.** Upon request of CCCSWA, no less than one (1) Business Day in advance or any other mutually agreed time period, or in event of emergencies such as truck breakdown, poor weather or road conditions, as soon as possible using Reasonable Business Efforts, Contractor shall Accept Recyclable Materials at times other than the Facility hours listed in Sections 6.2.A and 6.2.B. Contractor may charge the Franchised Collector \$270 per hour (in 15 minute increments), if directed by CCCSWA. This provision is intended to address temporary extension of Facility hours that may be needed from time to time to accommodate special circumstances.
- D. **Holiday Schedule.** The Franchised Collector does not intend to provide Collection services on Holidays, therefore, there will not be Deliveries of Recyclable Materials on Holidays to the Approved Trans-Load Facility. The Franchised Collector will adjust its Collection schedule around the Holiday, which potentially will result in increased volumes of Recyclable Materials Delivered before or after the Holiday and will likely result in Delivery of Recyclable Materials on the Saturday immediately following the Holiday. Contractor agrees to work cooperatively with the CCCSWA and Franchised Collector to adjust Acceptance, Transfer, Transportation, and Processing services to accommodate Holiday-related Collection schedule changes.

6.3 Equipment and Supplies

Contractor shall equip and operate the Approved Facilities in a manner to fulfill Contractor's obligations under this Agreement. Contractor is solely responsible for the adequacy, safety, and suitability of the Approved Facilities. Contractor shall modify, enhance, and/or improve the Approved Facilities as needed to fulfill Services under this Agreement.

Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, Transfer, Transport, and Processing equipment, and other consumables as appropriate and necessary to operate the Approved Facilities and provide all Services required by this Agreement. Contractor shall place the equipment in the charge of competent operators. Contractor shall repair and maintain all equipment at its own cost and expense.

6.4 Traffic Control and Direction

A. **Road Design and Maintenance.** Contractor shall construct and maintain all roads at the Approved Facilities required for vehicles Delivering the Recyclable Materials to safely and efficiently access and use the Approved Facilities. Contractor shall direct on-site traffic to appropriate unloading areas and provide a safe working environment for the Franchised Collector's employees. Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas. Contractor shall maintain all signs at the Approved Facilities in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of Persons using the Approved Facilities and to facilitate safe and efficient traffic flow at the Approved Facilities.

B. **Maximum Vehicle Turnaround Guarantee.** Contractor shall manage the scale house and vehicle receiving process at the Approved Trans-Load Facility to ensure that Franchised Collector's vehicles Delivering Recyclable Materials are not unnecessarily delayed in unloading. Contractor guarantees (the "Maximum Vehicle Turnaround Guarantee") that each of the Franchised Collector's Collection vehicles Delivering material is able to conduct its Delivery of such materials within the Maximum Vehicle Turnaround Time specified in Article 1, absent vehicle breakdown or driver negligence. As of the Commencement Date of the Agreement, the arrival time shall be the time recorded for the vehicle at the motor vehicle scale when the inbound weight of the vehicle is recorded. An exit time shall not be recorded because the vehicle's tare weight will be recorded in the scale system allowing the vehicle to by-pass the scale when exiting the Facility. The Contractor will operate a video camera system that will capture each vehicles' license plate at the time the vehicle arrives at the site and exits the site (recorded where the vehicle exits the Facility onto

Mallard Drive) providing a record of the date and time for each Load. Upon CCCSWA request, Contractor shall provide the CCCSWA reports or access to electronic scale house system records that provide the CCCSWA information to determine vehicle turnaround times based on documented entry time at the entry scale house and documented facility exit time. The CCCSWA may approve the Franchised Collector's use GPS (global positioning system) records for Collection vehicles to calculate turnaround time, or the CCCSWA may conduct on-site surveys of performance to verify compliance with the Maximum Vehicle Turnaround Time.

Contractor shall provide the CCCSWA and Franchised Collector with the opportunity to review the video recordings of the inbound and outbound vehicles for the day in question and to calculate the average vehicle turnaround time. If the average weekly vehicle turnaround time for the week in question is in excess of the Maximum Vehicle Turnaround Time, the Contractor shall pay the Franchised Collector five dollars (\$5.00) per Load for each minute in excess of the twenty (20) minute average guaranteed, where the number of Loads shall be equal to the number of Loads received during the week in which the Maximum Vehicle Turnaround Time was exceeded. For this purpose of this Section, a week shall include the five (5) most recently completed Days of Facility operations.

If Contractor fails to meet the Maximum Vehicle Turnaround Time, the CCCSWA may assess Liquidated Damages in accordance with 11.9.

6.5 Scale Operation

A. **Maintenance and Operation.** Contractor shall maintain and operate two (2) State-certified motor vehicle scales at the Approved Recyclable Materials Processing Facility and one (1) at the Approved Trans-Load Processing Facility, all in accordance with Applicable Law. Contractor shall provide documentary evidence of such certification within ninety (90) Days of the Commencement Date and within ten (10) Days of CCCSWA's request during the Term. Scales shall be operated by State-licensed weighmaster(s). Contractor shall link all scales to a centralized computer recording and billing system that shall be compatible with Contractor's systems. Such computerized system shall track pertinent data on all incoming and outgoing vehicles and materials as further described in Section 6.5.G. Contractor shall operate those scales during Approved Facility Delivery and Acceptance hours established in Section 6.2 and during other hours as determined by the Contractor as needed to weigh all inbound and outboard Collection vehicles Delivering Recyclable Materials and all Transfer Vehicles Transporting Recyclable Materials with the exception that Contractor is not required to weigh empty vehicles if the vehicle tare weight was recorded during the most recently completed six- (6-) month period in accordance with Section 6.5.B. Contractor shall provide CCCSWA with access to weighing information at all times and copies thereof on the next Business Day following the CCCSWA's request therefore.

B. **Vehicle Tare Weights.** Within fourteen (14) Days of the Commencement Date, Contractor shall weigh the Franchised Collector's vehicles and the Transfer Vehicles and determine the unloaded ("tare") weight(s) of the vehicle(s). Contractor shall record tare weight, name of Franchised Collector or Approved Trans-Load Facility Contractor, and vehicle identification number. Within ten (10) Business Days of weighing, Contractor shall provide the CCCSWA with a report listing vehicle tare weight information. Contractor shall determine tare weights of vehicles at least once each calendar quarter within the first two (2) weeks of the quarter. If there is reasonable suspicion or evidence that tare weights are not accurate, CCCSWA may, at any time and without limitation, request re-determination of tare weights, in which case Contractor shall promptly re-determine tare weights for requested vehicles. Contractor may update tare weights, at Contractor's own initiative or, at the request of the CCCSWA, more frequently. Contractor may use the tare weight to calculate the Tonnage of Loads Delivered by the Franchised Collector or Tonnage of Transfer Vehicle Loads.

C. **Substitute Scales.** If any scale at an Approved Facility is inoperable, being tested, or otherwise unavailable, Contractor shall use Reasonable Business Efforts to weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Contractor shall

1124 substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for
1125 any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours
1126 (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to
1127 take more than twelve (12) hours, Contractor shall immediately obtain a temporary substitute scale(s).

1128 D. **Estimates.** Pending substitution of portable scales or during power outages, Contractor shall estimate the
1129 Tonnage of the Recyclable Materials Delivered to and Accepted at the Approved Facilities by utilizing the
1130 arithmetic average of each vehicle's recorded Tons of Recyclable Materials Delivered on its preceding three
1131 (3) Deliveries, on the same day of the week, to the Approved Facility.

1132 During any period the scales are out of service, Contractor shall continue to record all information required
1133 by Section 6.5.G for each Delivery of Recyclable Materials to the Approved Facilities and each Load
1134 Transported to the Approved Recyclable Materials Processing Facility.

1135 E. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every
1136 twelve (12) months or upon CCCSWA request.

1137 F. **Weighing Standards and Procedures.** At the Approved Trans-Load Facility, Contractor shall weigh and
1138 record inbound weights of all vehicles Delivering Recyclable Materials, when the vehicles arrive at the
1139 Approved Trans-Load Facility and weigh and record outbound weights of vehicles for which Contractor does
1140 not maintain tare weight information. Furthermore, at the Approved Trans-Load Facility, Contractor shall
1141 weigh and record inbound weights (if tare weight not maintained) and outbound weights of all vehicles
1142 Transporting Recyclable Materials to the Approved Recyclable Materials Processing Facility. At the Approved
1143 Recyclable Materials Processing Facility, Contractor shall weigh and record inbound weights of all vehicles
1144 Delivering Recyclable Materials from the Approved Trans-Load Facility, when the vehicles arrive at the
1145 Approved Recyclable Materials Processing Facility and weigh and record outbound weights of vehicles for
1146 which Contractor does not maintain tare weight information. Contractor shall provide each driver a receipt
1147 showing the date, time, and quantity of Recyclable Materials that the vehicle Delivered to the Approved
1148 Facility. Contractor shall also weigh and record inbound weights for vehicles Transporting Recovered
1149 Materials to Market and Residue to the Designated Disposal Facility.

1150 G. **Records.** Contractor shall maintain computerized scale records and reports that provide information
1151 including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification
1152 number, jurisdiction of origin of materials Delivered, type of material, company/hauler identification, and
1153 classification, type, weight, and destination of material (where the destination of materials shall be the
1154 Approved Facilities, Designated Disposal Facility, or Market location where materials are Transported to from
1155 the Approved Facilities). Contractor shall also maintain computerized scale records and reports providing
1156 historical vehicle tare weights for each vehicle and the date and location for each tare weight recorded.

1157 H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at
1158 the Approved Recyclable Materials Processing Facility, Contractor shall make those videos available for
1159 CCCSWA review during the Facility's operating hours, upon request of the CCCSWA, and shall provide the
1160 name of the driver of any particular Load if available.

1161 **6.6 Safety**

1162 The Contractor shall conduct the operations of the Approved Facilities in a safe manner, in accordance with
1163 Applicable Law and insurance requirements provided in Article 10.

6.7 Monthly Detailed Tonnage Report

On or before the fifteenth (15th) Business Day of each month, Contractor shall report to the Franchised Collector and CCCSWA the total monthly Tonnages of the Recyclable Materials Delivered to and Accepted at the Approved Trans-Load Facility during the previous month. The Tonnage reports shall be in a form satisfactory to the CCCSWA and shall, at a minimum, separately list vehicle number, date and time of Delivery, and associated Tonnage for each Load of Recyclable Materials Delivered. If Contractor does not submit a complete report in a timely fashion or incorporate comments, additions, and corrections requested by the CCCSWA within fifteen (15) Days of receipt of those comments, additions, and corrections, the CCCSWA may assess Liquidated Damages for each Day it is late in accordance with Section 11.9.

6.8 Monthly Summary Report

Within fifteen (15) Days after the end of each calendar month in form and content satisfactory to CCCSWA, Contractor shall submit a monthly report with the information described in this paragraph. If Contractor does not submit a complete report in a timely fashion or incorporate comments, additions, and corrections requested by the CCCSWA within fifteen (15) Days of receipt of those comments, additions, and corrections, the CCCSWA may assess Liquidated Damages for each Day it is late in accordance with Section 11.9. In the monthly report, Contractor shall include, at a minimum, the total monthly Tonnage and the number of Loads of Recyclable Materials that were (i) Delivered and Accepted at the Approved Trans-Load Facility, (ii) Transferred to the Approved Recyclable Materials Processing Facility, (iii) Processed at the Approved Recyclable Materials Processing Facility; (iv) Marketed at the Approved Recyclable Materials Processing Facility; and (v) Residue Disposed. The CCCSWA may direct Contractor to provide additional information CCCSWA deems necessary to corroborate Tonnage reports. Copies of the Monthly Reports shall be provided by Contractor to the Franchised Collector within the same time frame specified for submittal to the CCCSWA.

6.9 Right to Enter Facility and Observe Operations

The CCCSWA and its designated representative(s) reserve the right to enter, observe, and inspect the Approved Facilities during Facility operations; conduct studies or surveys of the Approved Facilities; meet with the Approved Facilities' manager(s) or his or her representatives at any time, provided that the CCCSWA and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with the work of the Contractor or its Subcontractors.

If CCCSWA exercises its right to enter the Approved Facilities, Contractor is obligated to allow entry to the Approved Facilities and allow for representatives to conduct observations, inspections, studies, or surveys. However, if the Contractor representative or Approved Facility manager is not at the Approved Facility when the CCCSWA or its designated representative(s) visit without prior announcement, Contractor may limit the visit of the CCCSWA or its designated representative to a portion of the facility including, but not limited to, offices, container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for CCCSWA or its designated representative(s) to return for a visit of the complete Facility within twenty-four (24) hours of the CCCSWA's visit. Upon CCCSWA direction, Contractor shall make personnel available to accompany CCCSWA employees or representatives on inspections. Contractor shall ensure that its employees cooperate with the CCCSWA and respond to the CCCSWA's reasonable inquiries. Contractor shall facilitate similar observation and inspection at Approved Facilities owned by it or an Affiliate upon CCCSWA request and within three (3) Business Days of receiving such request.

6.10 Provision of Emergency Services

Subject to Permit restrictions, Contractor shall provide emergency services, as set forth in this Section, at the CCCSWA's request in the event of major accidents, disruptions, or natural calamities. Contractor shall provide emergency services within twenty-four (24) hours of CCCSWA oral notice followed by notice or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services that exceed the Contractor's obligations under this Agreement include extending Approved Facility Delivery and Accepting hours and increasing the types and quantities of permitted materials accepted, if applicable. Contractor shall be paid its Direct Costs, plus profit calculated at an operating ratio of 0.83 excluding indirect costs (which include, but are not limited to, general and administrative costs, regional and corporate charges, allocated costs) of providing emergency services no later than thirty (30) Days following submission of an invoice therefore in form and content sufficient to determine and corroborate those Direct Costs.

6.11 Alternative Facilities

A. **Contractor-Initiated Change in Facility.** Contractor may change its selection of one or more of the Approved Facilities following CCCSWA's written approval, of which may not be unreasonably withheld, but Contractor shall not be compensated for any increased Transfer, Transportation, and Processing costs. Contractor shall bear any increased Transfer, Transportation, and Processing costs associated with a Contractor-initiated change in the Approved Facility(ies) including additional costs related to the Franchised Collector's Transportation of Recyclable Materials to the alternative Facility(ies). In such case, Contractor shall guarantee the same Recyclables Revenue Payment specified in Section 7.2 or shall increase the Recyclables Revenue Payment associated with the use of Transfer and/or Processing Facility(ies) different from the Approved Facilities. If Contractor elects to use a Transfer and/or Processing Facility(ies) that is different than Approved Facility(ies), it shall request written approval from the CCCSWA sixty (60) Days prior to use of such site and obtain the CCCSWA's written approval no later than ten (10) Days prior to use of the site, if any.

B. **Inability to Use Approved Facilities.** If Contractor is unable to use an Approved Recyclable Materials Processing Facility or Approved Trans-Load Facility due to an emergency or sudden unforeseen closure of the Facility, Contractor may use an alternative Facility provided that the Contractor provides verbal and written notice to the CCCSWA and receives written approval from the CCCSWA at least twenty-four (24) hours prior to the use of an alternative Facility. The Contractor's written notice shall include a description of the reasons the Approved Recyclable Materials Processing Facility or Approved Trans-Load Facility is not feasible and the period of time Contractor proposes to use the alternative Facility. Unless the use of an alternative Facility is due to an Uncontrollable Circumstance, Contractor shall: (i) not be compensated for any increased Transfer, Transportation, and Processing costs; (ii) guarantee the same Recyclables Revenue Payment specified in Section 7.2 or shall increase the Recyclables Revenue Payment associated with the use of Facility(ies) different from the Approved Recyclable Materials Processing Facility(ies) or Approved Trans-Load Facility; and (iii) compensate the CCCSWA or Franchised Collector (as directed by the CCCSWA) for additional costs related to the Franchised Collector's Transportation of Recyclable Materials to the alternative Facility(ies).

C. **Pre-Approved Alternate Emergency Processing Facility(ies).** As of the Commencement Date, the CCCSWA has approved each of the Recyclable Materials Processing Facilities listed below to be used by Contractor as alternative Facility subject to the provisions of Sections 6.11.A and 6.11.B above. Contractor may request, in writing to CCCSWA pre-approval of additional Recyclable Materials Processing Facilities.

Facility Name	Owner/Operator	Location
Approved Recyclable Materials Processing Facility	Contra Costa Waste Services, Inc./Contractor	1300 Loveridge Road, Pittsburg, CA
Newby Island Recyclery	BFI of California, Inc. (a wholly-owned subsidiary of Republic Services, Inc.)	1601 Dixon Landing Road, Milpitas, CA
Pacific Rim Recycling	Pacific Rim Recycling	3690 Sprig Road, Benicia, CA
Recology Vallejo Recyclables Processing Facility	Recology Vallejo	2021 Broadway Street, Vallejo, CA
City of Napa Materials Recovery Facility	City of Napa/Napa Recycling and Waste Services	820 Levitin Way, Napa, CA
California Waste Solutions Recyclables Processing Facilities	California Waste Solutions	1820 10th Street and 3300 Wood Street, Oakland, CA

1248 **6.12 Allocation Method**

1249 Contractor shall develop a method of allocating Recyclable Materials by material type and allocating Processing
 1250 Residue to CCCSWA and individual Member Agencies. The allocation method shall be the same as that used to
 1251 report Solid Waste Disposal to the State or a method reviewed and approved by the CCCSWA. Reports including
 1252 Tonnage allocations shall be certified by an authorized person or officer of that Approved Facility and submitted to
 1253 the CCCSWA in accordance with Exhibit A.

1254 Periodically, the Contractor shall review its Marketing records to calculate the volume of Recyclable Materials
 1255 received at the Approved Recyclable Materials Processing Facility and Marketed to determine the percentage of
 1256 various Recyclable Materials (e.g., glass, newspaper, cardboard, PET, HDPE, aluminum, etc.) and the CCCSWA's
 1257 Residue level. The percentages determined from the review of Marketing records shall be used to allocate the
 1258 total Tonnage of Recyclable Materials into various categories of Recyclable Materials and Residue.

1259 **6.13 Insurance, Indemnifications and Performance Standards**

1260 If Contractor (i) uses an Affiliate or Subcontractor for Services required to be provided by Contractor hereunder
 1261 related to Recyclable Materials Acceptance, Transfer, Transportation, Processing, Diversion, and Marketing, or (ii)
 1262 enters into any contract, agreement or understanding with an Affiliate or third party for services required to be
 1263 provided by Contractor hereunder related to Recyclable Materials Acceptance, Transfer, Transportation,
 1264 Processing, Diversion, and Marketing, Contractor shall provide that terms and conditions (such as insurance
 1265 requirements, indemnifications, Acceptance, Transfer, Transportation, Processing, Marketing performance,
 1266 Maximum Vehicle Turnaround Time guarantee, Residue level guarantees) of any such contract, agreement, or
 1267 other understanding Contractor has with such Affiliate or third party can be enforced by the CCCSWA as an
 1268 additional insured or third party beneficiary thereof in the same manner provided in Article 10 and in a manner
 1269 reasonably satisfactory to CCCSWA.

1270 If Contractor, an Affiliate, or Subcontractor owns or operates the Approved Facilities, Contractor shall include
1271 CCCSWA as an additional insured on liability policies and defend and indemnify CCCSWA in the manner as set forth
1272 in Sections 10.1, 10.2, and 10.3 satisfactory to CCCSWA, and provide that any materials recovery and Marketing
1273 performance standards or guarantees made to any other Facility users are made to CCCSWA as well, including
1274 obligations such as recovered product quality guarantees, Maximum Vehicle Turnaround Times, and limits on the
1275 Residue level.

1276 Contractor shall demonstrate compliance with the requirements of this paragraph on or before the
1277 Commencement Date of this Agreement.

1278 **6.14 Compliance with Applicable Law**

1279 Contractor (or its Affiliate or Subcontractor(s)) warrants throughout the Term that the Approved Facilities selected
1280 by Contractor are respectively authorized and Permitted to accept Recyclable Materials in accordance with
1281 Applicable Law and are in full compliance with Applicable Law. Contractor shall: (1) verify compliance for the
1282 Approved Facilities (that neither it nor its Affiliates own) by contacting the local enforcement agency and other
1283 regulatory agencies having jurisdiction over the Approved Processing Facilities at least quarterly; and (2) upon
1284 CCCSWA direction, shall promptly provide CCCSWA with copies of the Approved Facilities' Permits or notice of
1285 violations.

1286 **6.15 Compliance with Facility Rules**

1287 Contractor shall observe and comply with all regulations in effect at the Approved Facilities and cooperate with the
1288 operators thereof with respect to Delivery and Acceptance of Recyclable Materials, including complying with
1289 Unpermitted Waste exclusion programs.

1290 **6.16 Disposal of Recyclable Materials Prohibited**

1291 With the exception of Processing Residue which shall be less than ten percent (10%) of the Recyclable Materials
1292 (based on a monthly average), Recyclable Materials may not be Disposed of or used for Beneficial Reuse Purposes,
1293 without the expressed written approval of the CCCSWA.

1294 If for reasons beyond its reasonable control, Contractor (or its Affiliate(s) or Subcontractor(s)) believes that it
1295 cannot Divert the Recyclable Materials from Disposal, then it shall prepare a written request for approval to
1296 Dispose of such material. Such request shall contain the basis for Contractor's belief (including, but not limited to,
1297 supporting documentation), describe the Contractor's efforts to arrange for the Diversion of such material, the
1298 period required for such Disposal, the incremental net cost increases or net cost savings (giving account to the
1299 value from the sale of the Recyclable Materials) and net reduction to the Revenue Share Payment resulting from
1300 such Disposal, and any additional information supporting the Contractor's request.

1301 In addition, the request shall describe the Contractor's proposed interim plans for implementation while the
1302 CCCSWA is evaluating its request. If the CCCSWA objects to the interim plans, the CCCSWA shall provide written
1303 notice to the Contractor and request an alternative arrangement. The CCCSWA shall consider the Contractor's
1304 request and inform Contractor in writing of its decision within sixty (60) Days. If the CCCSWA approves such
1305 request, any difference in the net cost of such Disposal compared to Diversion shall be adjusted in accordance with
1306 Section 7.6. Depending on the nature of the Contractor's request, the CCCSWA may extend the sixty (60) Day
1307 period, at its own discretion not to exceed a total duration of one hundred eighty (180) Days, to provide more time
1308 for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

1309 **6.17 AB 939 and AB 341**

1310 On a monthly basis, the Contractor shall provide all necessary reporting data requested by the CCCSWA relating to
1311 the CCCSWA's compliance requirements pertaining to AB 939 and AB 341 as it affects the CCCSWA's reporting to
1312 CalRecycle. Reports shall be presented on a calendar year and/or rate year basis, at the CCCSWA's request, and in
1313 a format approved by the CCCSWA.

1314 The Contractor shall cooperate in activities requested by the CCCSWA to measure Diversion of Recyclable
1315 Materials from landfills including, but not limited to, providing a location for conducting composition analyses of
1316 the Recyclable Materials through sorting of the materials into individual types of Recyclable Materials at the
1317 Contractor's Facility. Such reports shall include, but not necessarily be limited to, throughput, Diversion rates per
1318 material type, Residue, costs, Recyclable Materials commodity values, and final disposition of Recyclable Materials.
1319 The Contractor shall also supply any other information reasonably requested by the CCCSWA to meet State,
1320 federal, or Contra Costa County regulatory requirements as those requirements may be amended from time to
1321 time.

1322 **6.18 Provision of Contingency Plan**

1323 Contractor shall submit to CCCSWA for review and approval on or before the Commencement Date, a written
1324 contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain
1325 uninterrupted service during mechanical breakdowns, and in case of natural disaster, other emergencies, or labor
1326 disputes. This contingency plan shall be specific to the needs of the CCCSWA. Contractor shall provide emergency
1327 services at the CCCSWA's request in the event of major accidents, disruptions, or natural calamities in a manner
1328 consistent with the services and procedures identified in its contingency plan, or as directed by the CCCSWA in
1329 consultation with impacted Member Agencies. Emergency services may include, but are not limited to, assistance
1330 handling salvaged materials, Transferring, Transporting, or Processing Recyclable Materials, or Transferring,
1331 Transporting, or Disposing of Solid Waste following a major accident, disruption, or natural calamity.

1332 **6.19 Personnel**

1333 A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the services
1334 required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1)
1335 qualified employee as CCCSWA's primary point of contact with Contractor who is principally responsible for
1336 Transfer, Transport, and Processing operations and resolution of service requests and complaints.

1337 Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct
1338 themselves in a courteous manner. Contractor shall not permit its employees to accept, demand, or solicit,
1339 directly or indirectly, any additional compensation, or gratuity from members of the public.

1340 B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the
1341 California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor
1342 Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

1343 C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees
1344 Contractor shall train its employees involved in Transfer and Processing to identify, and not to Accept,
1345 Transfer, and/or Process Unpermitted Waste. Upon the CCCSWA's request, Contractor shall provide
1346 CCCSWA with a copy of its safety policy and safety training program, the name of its safety officer, and the
1347 frequency of its trainings.

1348 D. **Hiring Displaced Employees.** Contractor shall make a good faith effort to offer employment to qualified
1349 employees that are working under the Agreement between the CCCSWA and the prior contractors for

1350 Processing of Recyclable Materials, which agreements expire February 28, 2015, and who become
1351 unemployed by reason of the change in contractors ("prior contractor's employees").

1352 E. **Affiliates and Subcontractor Obligations.** Approved Affiliates and Subcontractors shall be required to
1353 comply with the obligations stated in this Section 6.19.

1354 F. **Labor Agreements.** Labor agreements for drivers, mechanics, and Facility personnel shall be included as
1355 Exhibit H and any future modification shall be provided to the CCCSWA as they occur. The Contractor shall
1356 provide full copies of the labor agreements including any and all amendments, extensions, renewals, or
1357 other forms of modification.

1358 **ARTICLE 7**

1359 **CONTRACTOR REVENUE AND PAYMENTS TO CCCSWA**

1360 **7.1 Overview**

1361 The Contractor's compensation for performance of its obligations under this Agreement shall be the Contractor
1362 Revenue. Contractor Revenue shall be the full, entire, and complete compensation due to Contractor pursuant to
1363 this Agreement to cover Contractor's costs for all labor, equipment, materials and supplies, Facility fees, payments
1364 due to CCCSWA, taxes, insurance, bonds, overhead, Acceptance, Transfer, Transportation, Recycling, Processing,
1365 Diversion, Residue Disposal, operations, profit, and all other things necessary to perform all the services required
1366 by this Agreement in the manner and at the times prescribed.

1367 Contractor Revenue shall be derived from the Contractor's Marketing and sale of the Recyclable Materials
1368 Processed at the Approved Recyclable Materials Processing Facility. Contractor shall not look to the CCCSWA for
1369 payment for any sums under this Agreement other than as may be due pursuant to the provisions contained in
1370 Section 6.2.C (Extended Facility Receiving Hours) and Section 7.5 (Special Review of Revenue Payment). Contractor
1371 shall perform the responsibilities and duties described in this Agreement in consideration of the right to retain a
1372 share of the revenues obtained from a sale of the Recyclable Materials., including all revenues derived from those
1373 materials lawfully obtained from the California Redemption Values (CRV) program for said materials. CCCSWA shall
1374 have no obligation to reimburse Contractor for any losses that Contractor may incur due to fluctuations in Market
1375 prices.

1376 Contractor acknowledges that its actual costs for Acceptance, Transfer, Transport, Processing, Diversion, and
1377 Residue Disposal, and revenues from the sale of Recyclable Materials may be different than anticipated in
1378 Contractor's Proposal. Contractor shall not be compensated for the difference in actual costs and/or actual
1379 revenues. If Contractor's actual costs are less than anticipated and/or revenues are greater than anticipated,
1380 Contractor shall retain the difference provided that Contractor has paid the Recyclables Revenue Payments to the
1381 CCCSWA pursuant to this Article 7.

1382 **7.2 Recyclable Revenue Payment**

1383 On a monthly basis, Contractor shall remit to the CCCSWA a Recyclable Revenue Payment. Contractor's Recyclable
1384 Revenue Payment shall be fifty-five dollars (\$55.00) per Ton for each Accepted Ton of Recyclable Materials from
1385 the Service Area Delivered by the Franchised Collector to the Approved Trans-Load Facility over the Term of the
1386 Agreement. To make the payments required by this Article, Contractor shall Process the Recyclable Materials and
1387 Market the Recovered Materials. No adjustments shall be made to the per-Ton amount specified herein during the
1388 Term of the Agreement except as provided for under Section 7.5 (Special Review of Revenue Payment).

7.3 Timing of Payments and Penalties for Late Payments

Contractor shall remit all payments required under this Article 7 on or before the twentieth (20th) day of each month during the Term of this Agreement. Such payments shall be payable to the CCCSWA and sent or delivered to the CCCSWA or paid to the CCCSWA via an electronic payment method. If any of the payments specified in this Article 7 are not paid on or before the twentieth (20th) day of any month, Contractor shall pay to CCCSWA a late payment penalty in an amount equal to two percent (2%) of the amount owing for that month. Contractor shall pay an additional two percent (2%) owing on any unpaid balance for each following thirty (30) day period the total combined fee amount remains unpaid. The late payment penalty amounts are not intended as interest on debt, but rather are intended as a predetermined penalty for failure to meet an obligation under this Agreement.

Each monthly remittance to CCCSWA shall be accompanied by a statement detailing Tons of Recyclable Materials Accepted for the period covered by the monthly remittance and the calculation of the monthly Recyclable Revenue Payment due to the CCCSWA. Contractor shall maintain copies of all Tonnage records, each in chronological order, for the Term of this Agreement and for three (3) years beyond the Term, for inspection and verification by the CCCSWA at any reasonable time but in no case more than thirty (30) Days after receiving a request to do so.

7.4 Compliance, Tonnage, Residue, and Payment Audit

The CCCSWA may, at any time during the Term or within three (3) years following the expiration or early termination of this Agreement, perform an audit of Contractor's compliance with the Agreement and performance standards, Tonnage records, Residue level, and payment of monies due to the CCCSWA. Contractor shall fully cooperate with the CCCSWA in any such audit. Contractor shall, in addition to compensating the CCCSWA for lost payments and applicable delinquency penalties, reimburse the CCCSWA's cost of the review if determined to be due under Section 13.8.

7.5 Special Review of Recyclables Revenue Payment

A. **Eligible Items.** The Contractor is entitled to apply to the CCCSWA for consideration of a Special Revenue Payment Adjustment review, or the CCCSWA may initiate such a review, should one or more of the following events occur and should such occurrence(s) have a material effect totaling two percent (2%) or more annually on the Recyclable Revenue Payments to the CCCSWA for the then-current Rate Year.

(1) Change in Scope. Documented significant changes in the cost to provide services required in this Agreement as a result of an agreed-upon or CCCSWA-directed change in scope, as provided for under Section 7.6.

(2) Emergency Services. Provision of emergency services pursuant to Section 6.10.

(3) Catastrophic Events. Flood, earthquake, other acts of nature, war, civil insurrection, riots, acts of any government agency (including judicial action), or other similar catastrophic events that are beyond the control of and not the fault of the Contractor.

(4) Change in Law. Change in Law, including, but not limited to, Changes in Law that result in regulatory, governmental, or other surcharge fees, after the Effective Date that: (1) were not reasonably known to the Contractor before the Effective Date, and (2) the Contractor substantiates.

B. **Ineligible Items.** A Special Revenue Payment Adjustment review may not be initiated for the following items and Contractor shall not be compensated for such items over the Term of the Agreement.

- 1428 (1) Acceptance, Transfer, Transport, Processing, Diversion, and Marketing Cost Increases. Increases in
1429 Recyclable Materials Acceptance, Transfer, Transport, Processing, Diversion, and Marketing costs
1430 unless cost increases are related to eligible items listed in Section 7.5.A above or unless changes in
1431 operating conditions are initiated by or at the direction of the CCCSWA.
- 1432 (2) Changes in Revenues from Sale of Recyclable Materials. Changes in revenues from the sale of
1433 Recyclable Materials.
- 1434 (3) Change in Material Quantities and Composition. Change in the Tonnage or composition of Recyclable
1435 Materials Delivered to the Approved Facilities.
- 1436 (4) Costs incurred due to Contractor's negligence or misconduct;
- 1437 (5) Costs incurred due to Permit changes of which Contractor did not provide timely notice;
- 1438 (6) Any fines or penalties imposed on Contractor or the Approved Facilities;
- 1439 (7) Cost of remediation and cost-recoveries pursuant to Applicable Law, including CERCLA and RCRA;
- 1440 (8) Costs attributable to changing the classification of the Approved Facilities under Applicable Law,
1441 unless directed by the CCCSWA in accordance with Section 2.3;
- 1442 (9) Costs and expenses related to the handling of Unpermitted Waste, notwithstanding the provisions of
1443 Section 6.1;
- 1444 (10) Increases in Contractor costs including, but not limited to, labor, fuel, and equipment;
- 1445 (11) Increases in Contractor's costs due to changes in the Tonnage and/or characterization of the
1446 Recyclable Materials; and,
- 1447 (12) Decreases in Contractor's revenues from the Marketing of Recyclable Materials due to changes in the
1448 Tonnage and/or characterization of the Recyclable Materials and changes in Market conditions
1449 relative to Recyclable Materials commodity values.
- 1450 C. **Review of Costs and Revenues.** If the Contractor or the CCCSWA requests a Special Revenue Payment
1451 Adjustment review, the CCCSWA shall have the right to review any or all financial and operating records of
1452 Contractor and right to review any or all financial and operating records of Affiliates only as it pertains to the
1453 scope of this Agreement.
- 1454 D. **Submittal of Request.** If the Contractor is requesting a Special Revenue Payment Adjustment review, the
1455 Contractor must submit its request for a Special Revenue Payment Adjustment, along with cost, operational,
1456 and material sales revenue data, in a form and manner specified by the CCCSWA.
- 1457 If CCCSWA is requesting a Special Revenue Payment Adjustment review, the CCCSWA shall notify the
1458 Contractor at least four (4) months before the proposed effective date of any adjustment to the per-Ton
1459 Recyclables Revenue Payment amount. Upon such notification, Contractor shall, within thirty (30) Days,
1460 submit reasonable cost, operational, and material sales revenue data as requested by the CCCSWA, in a
1461 form and manner specified by the CCCSWA.
- 1462 E. **Burden of Justification.** Contractor shall bear the burden of justifying to the CCCSWA by substantial
1463 evidence any entitlement to current, as well as a reduced or increased, per-Ton Recyclables Revenue
1464 Payment amount under this Section 7.5. Records required to be maintained pursuant to Article 9 shall be
1465 subject to review, in accordance with appropriate professional standards, and inspection, for the primary

purpose of reviewing changes in costs and material sales revenues to the Contractor attributable to the circumstances that triggered the Special Revenue Payment Adjustment review, at any reasonable time by an independent third party. The selection of the independent third party as well as the scope of work for such review shall be approved in advance by the CCCSWA. The independent reviewer shall provide any and all drafts of its review to the CCCSWA and the Contractor. The Party requesting the extraordinary Rate adjustment review shall bear the cost of the review.

If the CCCSWA determines that the Contractor has not met its burden, the Contractor may request a meeting with CCCSWA to produce additional evidence. Upon such request, the CCCSWA shall permit said additional hearing. Any resulting disputes shall be managed pursuant to Article 12.

F. **Grant of Request.** Based on evidence the Contractor submits, the CCCSWA Board may grant some, all, or none of the requested adjustment to the per-Ton Recyclables Revenue Payment amount.

G. **Compensation.** If Contractor requests the Special Revenue Payment Adjustment review, Contractor shall bear all reasonable costs of both Parties for participating in such review up to a maximum of \$25,000 per Party. If a Special Revenue Payment Adjustment review occurs in response to a CCCSWA-directed change in scope (pursuant to Section 7.6), the CCCSWA shall be considered the Party requesting the special review and the CCCSWA shall pay the costs of the review.

7.6 Adjustment of Revenue Payment for Changes in Scope

In the event either the CCCSWA or Contractor requests a change in scope in accordance with Section 2.3 of this Agreement, the Contractor shall furnish the CCCSWA with projected operational, cost, and material sales revenue data for the change in scope to support any adjustment to the per-Ton Recyclables Revenue Payment amount. For the purposes of analyzing cost and material sales revenue impacts of changes in scope, the Contractor's profit shall be calculated using an operating ratio of 0.83 of actual reasonable and necessary costs. The CCCSWA reserves the right to require that the Contractor supply any additional cost or revenue data or other information it may reasonably need to ascertain the appropriate adjustment of the per-Ton Recyclables Revenue Payment amount, if any, for the change in scope. The CCCSWA shall review this operational, cost, and material sales revenue data, and the CCCSWA Board shall approve the adjusted per-Ton Recyclables Revenue Payment amount for the change in scope, if warranted.

The granting of any change in scope shall be contingent upon CCCSWA's written approval and establishment of a new per-Ton Recyclables Revenue Payment amount, if appropriate. The CCCSWA Board shall approve the per-Ton Recyclables Revenue Payment amount adjustment, in good faith, so that the change in scope and the corresponding per-Ton Recyclables Revenue Payment amount become effective on the same date.

ARTICLE 8 REVIEW OF SERVICES AND PERFORMANCE

8.1 Performance Review

The CCCSWA reserves the right to conduct a performance review to verify if Contractor has fulfilled its obligations under the Agreement, to review complaints, to review Recyclables Revenue Payments, to review supporting documentation for the Recyclables Revenue Payment including records of Tonnage Delivered to and Accepted at the Approved Trans-Load Facility, Tonnage Transported to and Processed at the Approved Recyclable Materials Processing Facility, and revenues received from sale of Recyclable Materials and to determine if Contractor has met performance standards specified in this Agreement. If CCCSWA incurs a cost for this review, Contractor shall

1506 pay for the cost of the performance review and hearing up to \$20,000 during any given Rate Year for CCCSWA
1507 actual costs of consulting services. Contractor shall cooperate with the review.

1508 **8.2 Performance Hearing**

1509 If the CCCSWA conducts a performance review pursuant to Article 8, the CCCSWA may, at its sole discretion, hold a
1510 public hearing (no more than once per year) to further review Contractor's Services and performance.
1511 Performance review hearings may be scheduled by CCCSWA at any time deemed appropriate by CCCSWA. The
1512 Contractor shall be present and shall participate in the hearing. The purpose of the hearing is to provide for a
1513 discussion and review of technological, economic, and regulatory changes in order to achieve a continuing,
1514 advanced Transfer, Transport, Processing, and Diversion services; to ensure Services are being provided with
1515 adequate quality, effectiveness, and economy; to ensure the Contractor's level of cooperation with Franchised
1516 Collector is resulting in productive and efficient Services; and to ensure acceptable Diversion and Residue levels.

1517 Topics for discussion and review at the performance review hearing shall include, but shall not be limited to,
1518 Services provided, feasibility of providing new services, application of new technologies, amendments to this
1519 Agreement, developments in the law, new initiatives for meeting or exceeding AB 939 and AB 341 goals and the
1520 CCCSWA Board's goals, regulatory constraints, and Contractor's compliance with requirements of the Agreement
1521 and its performance. CCCSWA and Contractor may each select additional topics for discussion at any performance
1522 review hearing.

1523 At CCCSWA request, Contractor shall, at a minimum, submit a report to CCCSWA indicating the following:

1524 A. Changes recommended and/or new services to improve CCCSWA's ability to continue to meet or exceed the
1525 goals of AB 939, AB 341, and the CCCSWA Board and to contain costs and maximize Recyclable Materials
1526 revenue and Diversion.

1527 B. Any specific plans for provision of changed or new services by Contractor.

1528 Contractor may submit relevant performance information and reports for consideration. CCCSWA may request
1529 Contractor to submit additional specific information for the hearing. In addition, any Person may submit comments
1530 or complaints during or before the hearing, either orally or in writing, and these shall be considered.

1531 Not later than sixty (60) Days after the conclusion of each performance hearing, CCCSWA may issue a report. As a
1532 result of the review, CCCSWA may require Contractor to provide expanded or new services within a reasonable
1533 time and for a reasonable adjustment of the per-Ton Recyclable Materials Revenue payment amount as provided
1534 for in Section 7.6, and CCCSWA may direct or take corrective actions for any established performance inadequacies
1535 as a result of that hearing. Contractor shall have the opportunity to comment and provide additional information
1536 on, or with respect to CCCSWA's findings regarding performance inadequacies.

1537 **ARTICLE 9** 1538 **RECORD KEEPING AND REPORTING**

1539 **9.1 General Record Keeping Provisions**

1540 Contractor shall maintain, in its principal office at the Approved Recyclable Materials Processing Facility, such
1541 accounting, statistical, and other records required to conduct its operations, to support requests it may make to
1542 CCCSWA, to respond to requests from CCCSWA, and as shall be necessary to develop the financial statements and
1543 other reports required by this Agreement. Adequate record security shall be maintained to preserve records from

events that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically-maintained data/records shall be protected and a second copy of data/records shall be saved to a protected source, such as a combination of off-site and cloud-based backup with the ability to restore complete functionality within twenty-four (24) hours, or a hot fail-over database configuration.

Contractor and/or its Affiliates shall account for revenues received and expenses incurred as a result of this Agreement separately from the accounting for other operations performed by Contractor or its Affiliates.

9.2 Review and Inspection

Contractor agrees to provide or make available its relevant records of any and all companies conducting operations as it pertains to this Agreement to CCCSWA and its official representatives for review during normal business hours. During the Term of this Agreement, the CCCSWA, its auditors, and other agents, shall have the right, during normal business hours, to conduct unannounced on-site inspections of the records and accounting systems of Contractor and to make copies of any documents it deems relevant to this Agreement. In the event the custodian of such records and systems is not on the premises at the time of inspection, Contractor shall not be in breach of this Agreement, the CCCSWA shall then give notice to Contractor requesting access to the records, and Contractor shall make arrangements to allow for inspection within twenty-four (24) hours of such notice. The CCCSWA's right to inspection of records under this paragraph shall continue for five (5) years after the expiration or early termination of this Agreement. However, after expiration or early termination of this Agreement, the CCCSWA shall provide Contractor with a written request to inspect records and Contractor shall make records available for inspection within two (2) weeks of such request.

9.3 Retention of Records

Unless otherwise herein required, Contractor shall retain all records and data required by this Agreement for five (5) years after the expiration or early termination of this Agreement.

9.4 Other Information Requirements

Contractor agrees to conduct data collection and other reporting activities as needed to comply with federal, State, Contra Costa County, and local laws and regulations, and the requirements of this Agreement. To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

9.5 Reporting

Contractor's reporting obligations are presented in Exhibit A.

9.6 CERCLA Reporting for Residue

CCCSWA views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, CCCSWA regards its ability to prove where Solid Waste is taken for transfer or Disposal. Contractor shall maintain records which can establish where Residue was Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to CCCSWA (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or Disposing of them.

ARTICLE 10
INDEMNIFICATION AND INSURANCE

10.1 General Indemnification

Contractor shall indemnify, defend with counsel acceptable to CCCSWA (provided that such acceptance shall not be unreasonably withheld), and hold harmless CCCSWA and its Member Agencies, their officers, directors, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability, loss, injuries, damages, expense, penalties, and costs (including, without limitation, CCCSWA and Member Agency staff costs, costs and fees of litigation, including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of every nature arising out of or in connection with Contractor's performance (including Contractor's officers, employees, agents and/or Subcontractors' performance) under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the active negligence or willful misconduct of Indemnitees. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

10.2 Hazardous Substance Indemnification

To the extent allowed by Applicable Law, Contractor shall indemnify, defend with counsel acceptable to CCCSWA (provided that such acceptance shall not be unreasonably withheld), and hold harmless CCCSWA and its Member Agencies, their officers, directors, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs (including but not limited to all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity (collectively, "damages")) of any nature whatsoever paid, incurred, suffered by, or asserted against Indemnitees, arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any Hazardous Substances or Hazardous Waste released, spilled, or disposed of by Contractor pursuant to this Agreement. Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees against claims arising from Contractor's delivery of Residue to a Disposal Site owned or operated by a third party, unless such claims are a direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

10.3 Unpermitted Waste Defense and Indemnification

Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel approved by the CCCSWA, the CCCSWA (including the Persons described in the definition of "CCCSWA" in Article 1) in any Actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the CCCSWA that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum in, on, at, or under the Approved Facilities, whether:

A. in one or more instance,

- 1623 B. threatened or transpired,
1624 C. Contractor is negligent or otherwise culpable, or
1625 D. those Liabilities are litigated, settled, or reduced to judgment.

1626 The foregoing indemnity in favor of the CCCSWA shall not apply to the extent that the CCCSWA's Franchised
1627 Collector failed to follow Standard Industry Practices and protocols in screening for Unpermitted Waste during
1628 collection. For purposes of this Indemnity, "Liabilities" includes, in addition to those included in Exhibit A, Liabilities
1629 arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and
1630 implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether
1631 undertaken due to government directive or action, such as remediation of surface or ground water contamination
1632 and replacement or restoration of natural resources.

1633 The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and
1634 California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the CCCSWA
1635 from liability in accordance with this Section.

1636 **10.4 Insurance**

1637 Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not
1638 less than the following coverage and limits of insurance:

1639 A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1640 (1) The most recent editions of Insurance Services Office form number GL 0002 covering Commercial or
1641 Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad
1642 Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability
1643 coverage ("occurrence" form CG 0001).

1644 (2) The most recent editions of Insurance Services Office form number CA 0001 covering Automobile
1645 Liability, code 1 "any auto" and endorsement CA 0025.

1646 (3) Workers' compensation Employers Liability insurance as required by California Labor Code §3700 et
1647 al.

1648 B. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:

1649 (1) Commercial or Comprehensive General Liability: Ten Million Dollars (\$10,000,000) combined single
1650 limit per occurrence for bodily injury, Personal injury and property damage.

1651 (2) Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident for bodily
1652 injury and property damage.

1653 (3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the
1654 Labor Code of the State of California and Employers Liability limits of One Million dollars (\$1,000,000)
1655 per accident/occurrence.

1656 C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to
1657 and approved by CCCSWA. At the option of and to the satisfaction of CCCSWA in its sole discretion, either:
1658 the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CCCSWA, its
1659 Member Agencies, its officials and employees; or Contractor shall procure a bond or other acceptable

1660 security device guaranteeing payment of losses and related investigations, claim administration and defense
1661 expenses for the deductibles or self-insured retentions.

1662 D. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1663 (1) General Liability and Automobile Liability Coverage.

1664 i. The CCCSWA, its Member Agencies, their officials, directors, employees and volunteers are to
1665 be covered as insureds as respects: liability arising out of activities performed by or on behalf
1666 of Contractor; products and completed operations of Contractor; Premises owned, leased or
1667 used by Contractor; or automobiles owned, leased, hired or borrowed by contractor. The
1668 coverage shall contain no special limitations on the scope of protection afforded to the
1669 CCCSWA, its Member Agencies, their officials, directors, employees or volunteers.

1670 ii. Contractor's insurance coverage shall be primary insurance with regards to the circumstances
1671 articulated in the preceding paragraph as respects CCCSWA, its Member Agencies, its officials,
1672 employees and volunteers. Any insurance or self-insurance maintained by CCCSWA, its
1673 Member Agencies, its officials, employees or volunteers shall be excess of Contractor's
1674 insurance and shall not contribute with it.

1675 iii. Any failure to comply with reporting provisions of the policies shall not affect coverage
1676 provided to CCCSWA, its Member Agencies, its officials, employees or volunteers.

1677 iv. Coverage shall state that Contractor's insurance shall apply separately to each insured against
1678 whom claim is made or suit is brought, except with respect to the limits of the insurer's
1679 liability.

1680 v. Contractor's insurers shall agree to waive all rights of subrogation against CCCSWA, its
1681 Member Agencies, its officials, employees and volunteers for losses arising from work
1682 performed by Contractor under this Agreement.

1683 (2) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights
1684 of subrogation against CCCSWA, its Member Agencies, its officials, employees and volunteers for
1685 losses arising from work performed by Contractor under this Agreement.

1686 E. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance
1687 company or companies admitted to do business in the State of California and with a rating in the most
1688 recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or
1689 better, unless CCCSWA agrees in writing to alternative ratings. To the extent permitted by law, all or any
1690 part of the required insurance may be provided under a plan of self-insurance, only if, in the sole discretion
1691 of CCCSWA, Contractor can provide adequate assurances that the self-insured coverage provides
1692 commercially equivalent protection to CCCSWA and its Member Agencies, their officials, employees,
1693 volunteers, and agents.

1694 F. **Verification of Coverage.** Contractor shall furnish CCCSWA with certificates of insurance and with original
1695 endorsements affecting coverage required by this clause. The certificates and endorsements for each
1696 insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The
1697 certificates and endorsements are to be on forms provided by or acceptable to CCCSWA and are to be
1698 received and approved by CCCSWA before work commences. CCCSWA reserves the right to require
1699 complete, certified copies of all required insurance policies for good cause, at any time, but shall respect the
1700 confidentiality of such documents to the extent such confidentiality may be provided for under California
1701 law.

1702 G. **Subcontractor.** Contractor shall include all Subcontractors as insureds under its policies or shall furnish
1703 separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be
1704 subject to all of the requirements stated herein.

1705 H. **Required Endorsements.** Both the Workers' Compensation policy and Comprehensive General Liability
1706 policy shall contain the following endorsements in substantially the following form:

1707 (1) "Thirty (30) days prior written notice shall be given to CCCSWA in the event of cancellation or non-
1708 renewal of this policy. Unless notified of a different address, such notice shall be sent to:

1709 Executive Director
1710 Central Contra Costa Solid Waste Authority
1711 1850 Mt. Diablo Blvd, Suite 320
1712 Walnut Creek, CA 94596"

1713 (2) "Inclusion of CCCSWA and Member Agencies as an insured shall not affect CCCSWA's or its Member
1714 Agencies' rights as respects any claim, demand, suit or judgment brought or recovered against
1715 Contractor. This policy shall protect Contractor and CCCSWA and Member Agencies in the same
1716 manner as though a separate policy had been issued to each, but this shall not operate to increase
1717 Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor
1718 would have been liable if only one party had been named as an insured. Unless notified of a different
1719 address, notices of cancellation shall be sent to:

1720 Executive Director
1721 Central Contra Costa Solid Waste Authority
1722 1850 Mt. Diablo Blvd, Suite 320
1723 Walnut Creek, CA 94596"

1724 I. **Delivery of Proof of Coverage.** Thirty (30) Days prior to the Commencement Date, Contractor shall furnish
1725 CCCSWA certificates of each policy of insurance required hereunder, in form and substance satisfactory to
1726 CCCSWA. Such certificates shall show the type and amount of coverage, effective dates and dates of
1727 expiration of policies and shall have all required endorsements. If CCCSWA requests, copies of each policy,
1728 together with all endorsements, shall also be promptly delivered to CCCSWA. Renewal certificates will be
1729 furnished periodically to CCCSWA to demonstrate maintenance of the required coverages throughout the
1730 term.

1731 J. **Other Insurance Requirements.**

1732 (1) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of
1733 insurance shall not relieve Contractor from any obligation under this Agreement. If any claim
1734 exceeding the amount of any deductibles or self-insured reserves is made by any third Person against
1735 Contractor on account of any occurrence related to this Agreement, Contractor shall promptly report
1736 the facts in writing to the insurance carrier and to CCCSWA.

1737 (2) If Contractor fails to procure and maintain any insurance required by this Agreement, CCCSWA may
1738 take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the
1739 cost thereof from any monies due Contractor.

1740 **ARTICLE 11**
1741 **BREACH, DEFAULT, REMEDIES, AND TERMINATION**

1742 **11.1 Events of Breach**

1743 All provisions of this Agreement are considered material and a Party's failure to perform any provision shall
1744 constitute an Event of Breach. In addition, each of the following shall also constitute an Event of Breach:

1745 A. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the Workers'
1746 Compensation, liability, or indemnification coverage as required by this Agreement.

1747 B. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement, including any
1748 orders or filings of any regulatory body having authority over Contractor relative to this Agreement,
1749 provided that Contractor may contest any such orders or filings by in good faith, in which case no breach or
1750 default of this Agreement shall be deemed to have occurred upon final resolution of the contest or appeal in
1751 favor of Contractor.

1752 C. **Failure to Pay or Report.** Contractor fails to make any payments to CCCSWA or its Member Agencies
1753 required under this Agreement, and/or refuses to provide CCCSWA with required information, reports,
1754 and/or records in a timely manner as provided for in this Agreement.

1755 D. **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor's operating
1756 equipment, including, without limitation, its maintenance or office facilities, or any part thereof.

1757 E. **Breach of Provider Services Agreement.** If the Contractor breaches a material provision of its Provider
1758 Services Agreement with CCCSWA for the Reuse and Cleanup Days Program and Retail Battery Collection
1759 Program, attached hereto as Exhibit K.

1760 F. **Criminal Activity of Employee.** If a Contractor's employee (other than officers or managers) is found guilty
1761 of Criminal Activity related to performance of this Agreement or any other Agreement held with the
1762 CCCSWA. Contractor shall immediately notify the CCCSWA upon the occurrence of any convictions or pleas.

1763 G. **Breach or Default of Other CCCSWA Agreement.** If the Contractor or its Affiliate has entered into an
1764 agreement with the CCCSWA for services outside the scope of this Agreement and is in breach or default of
1765 that Agreement.

1766 **11.2 Contractor Rights to Remedy Breach**

1767 CCCSWA shall promptly or as soon as practicable provide Contractor written notice of an Event of Breach. Upon
1768 written notice, Contractor shall have ten (10) Days to cure the breach. However, if Contractor demonstrates that
1769 (a) the breach is curable; and (b) ten (10) Days is insufficient to cure the breach, then Contractor shall receive thirty
1770 (30) Days in order to cure the breach or another extension of time agreed to by CCCSWA provided such agreement
1771 shall not be unreasonably withheld.

1772 **11.3 Acts Necessary to Perform Service**

1773 Failure to specifically require an act necessary to perform any of the services required under this Agreement does
1774 not relieve Contractor of its obligation to perform such act, or the service(s) dependent on such act.

11.4 Event of Default

Each of the following shall constitute an Event of Default, upon which CCCSWA shall promptly or as soon as practicable provide Contractor written notice of the default:

- A. **Failure to Cure Breach.** If Contractor fails to cure an Event of Breach as provided above in Section 11.2.
- B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the combination of breaches constitutes a material failure by Contractor to perform its obligations, even if each individual breach is later cured.
- C. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon CCCSWA.
- D. **False or Misleading Statements.** Any representation or disclosure made to CCCSWA by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement. In addition, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or a deliberate omission of fact or content explicitly defined by the Agreement, excepting typographical and grammatical errors.
- E. **Failure to Perform.** Except as provided under Section 11.10, Contractor fails to provide Transfer, Transport, Processing, Diversion, or any other Services as required under this Agreement for a minimum of either two (2) consecutive Business Days or three (3) non-consecutive Business Days within one (1) week. CCCSWA may give notice of Contractor's failure to perform verbally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such verbal notification shall be sent to Contractor within twenty-four (24) hours of the verbal notification.
- F. **Criminal Activity.** Contractor, its officers, or managers are found guilty of Criminal Activity related to performance of this Agreement or any other Agreement held with the CCCSWA. Contractor shall immediately notify the CCCSWA upon the occurrence of any convictions or pleas.
- G. **Assignment without Approval.** Contractor transfers or assigns this Agreement without express written approval of the CCCSWA, unless the assignment is permitted without CCCSWA approval pursuant to Section 13.6.
- H. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, a receiver is appointed or Contractor's assets are involuntarily assigned, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

11.5 Event of Default Not Curable

Contractor shall have no right to cure an Event of Default.

11.6 CCCSWA's Remedies in the Event of Default

Upon a determination by CCCSWA that an Event of Default has occurred, CCCSWA has the following remedies:

- A. **Waiver of Default.** CCCSWA may waive any Event of Default if CCCSWA determines that such waiver would be in the best interest of the Member Agencies. CCCSWA's waiver of an Event of Default is not a waiver of future events of default that may have the same or similar conditions.

B. **Right to Terminate.** The CCCSWA Board may terminate this Agreement. The CCCSWA Board shall conduct a hearing upon ten (10) Days written notice to the Contractor to determine if termination is in the best interests of the public health, safety, and welfare of the citizens of the Member Agencies. In the event the CCCSWA Board decides to terminate this Agreement, termination shall be effective thirty (30) Days, or such other period determined by the CCCSWA Board, after CCCSWA has given written notice to Contractor.

C. **Right to Suspend.** The CCCSWA Board may suspend this Agreement, in whole or in part, if Contractor fails to cure within the time frame specified in Section 11.2, until Contractor can provide assurance of performance in accordance with Section 11.11. However, Contractor shall have at a minimum, a right to *quantum meruit* for the services it continues to perform during any suspension. For the purposes of this Section, "suspend" means to temporarily freeze, set aside, and make inoperative one or more provisions of this Agreement.

D. **Other Available Remedies.** CCCSWA's election of one or more remedies described herein shall not limit CCCSWA from any and all other remedies at law and in equity, such as a right to immediately contract with another service provider.

11.7 Specific Performance

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

11.8 CCCSWA's Remedies Cumulative

CCCSWA's rights to suspend or terminate this Agreement, to obtain specific performance, and to perform under this Article are not exclusive, and CCCSWA's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that CCCSWA may have, including a legal action for damages or imposition of Liquidated Damages under Exhibit B.

11.9 Liquidated Damages

The Parties agree that, as of the time of execution of this Agreement, it is impractical and extremely difficult to reasonably ascertain the extent of damages that CCCSWA and its Member Agencies will suffer as a result of a breach by Contractor of its obligations under this Agreement. The Parties acknowledge that consistent and reliable Acceptance, Transfer, Transport, Processing, and Diversion services are of utmost importance to CCCSWA and its Member Agencies. The Parties further recognize that some quantifiable standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. Therefore, without prejudice to CCCSWA's right to treat such non-performance as an Event of Default, and in addition to any other remedies provided for in this Agreement, CCCSWA may assess Liquidated Damages for Contractor's failure to meet specific performance standards, and Contractor agrees to pay the Liquidated Damages amounts specified in Exhibit B. Liquidated Damages are paid as damages, and not as a penalty. The Parties agree that the amounts set forth in Exhibit B represent a reasonable estimate of the amount of the damages that CCCSWA and its Member Agencies will suffer for the specified breaches, considering all of the circumstances existing on the date of this Agreement.

A. Prior to assessing Liquidated Damages, CCCSWA shall give Contractor written notice of its intention to do so. The notice shall include a brief description of the incident(s)/non-performance giving rise to the damages.

B. CCCSWA shall assess Liquidated Damages and provide Contractor with a written explanation of its determination for each incident(s)/non-performance. CCCSWA may assess Liquidated Damages for each day or incident of non-performance with the Agreement. The decision of the CCCSWA Executive Director or

1853 designee shall be subject to the right to appeal the imposition of the Liquidated Damages to the CCCSWA
1854 Board when the amount imposed exceeds two thousand dollars (\$2,000) per month in total for multiple
1855 events of non-performance.

1856 C. Contractor shall pay any Liquidated Damages assessed by CCCSWA within thirty (30) Days after they are
1857 assessed. If they are not paid within the thirty (30) Day period, CCCSWA treat such failure as an Event of
1858 Default subject to the remedies in this Article.

1859 **11.10 Excuse from Performance**

1860 In the event that a Party is prevented from performing all or some of its obligations under this Agreement by an
1861 Uncontrollable Circumstance, it shall not constitute an Event of Breach or Default of this Agreement, so long as the
1862 Party in good faith has used its best efforts to perform its respective obligations. The Party claiming excuse from
1863 performance shall, within five (5) Days after such Party has notice of the effect of such cause, give the other Party
1864 notice of the facts constituting such cause and asserting its claim to excuse under this Section. Specifically, such
1865 information shall include the following:

1866 A. The Uncontrollable Circumstance and the cause thereof (to the extent known);

1867 B. The date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during
1868 which the Party's performance of its obligations hereunder will be delayed;

1869 C. Potential mitigating actions that might be taken by either Party and any areas where costs might be reduced
1870 and the approximate amount of such cost reductions.

1871 In the event that either Party validly exercises its rights under this Section, the Parties hereby waive any claim
1872 against each other for any damages sustained thereby.

1873 Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or other
1874 concerted job action conducted by Contractor's employees, directed at Contractor, or a contractor or supplier of
1875 Contractor, is not an Uncontrollable Circumstance and will not excuse performance, and Contractor will be
1876 obligated to continue to perform in accordance with this Agreement.

1877 **11.11 Right to Demand Assurances of Performance**

1878 If CCCSWA believes in good faith that Contractor's ability to perform under this Agreement has been placed in
1879 substantial jeopardy, CCCSWA may require that Contractor provide reasonable assurances that none of the events
1880 listed below will prevent Contractor from timely and proper performance of its obligations under this Agreement.
1881 Such events include, but are not limited to:

1882 A. Contractor or an Affiliate is the subject of any labor unrest including work stoppages or slowdown, sick-out,
1883 picketing, or other concerted job action affecting this Agreement;

1884 B. Contractor or an Affiliate appears, in CCCSWA's reasonable judgment, unable to regularly pay its bills as they
1885 become due; or,

1886 C. Contractor or an Affiliate is the subject of a civil or criminal judgment or order entered by a federal, State,
1887 Contra Costa County, regional, or local agency for violation of a law that may affect performance under this
1888 Agreement, including but not limited to environmental laws, or laws related to fraud and malfeasance of
1889 public contracts.

1890 If Contractor fails or refuses to provide CCCSWA with adequate information to establish its ability to perform
1891 within thirty (30) Days, such failure or refusal shall be an Event of Default for purposes of Section 11.4.

1892 **11.12 Waiver of Defenses**

1893 In order to insure the non-interruption of a vital public service, except as provided in Section 11.10, Contractor
1894 acknowledges that it is solely responsible for providing the services described herein, and hereby irrevocably
1895 waives the following defenses to the payment and performance of its obligations under this Agreement: any
1896 defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance,
1897 commercial frustration of purpose, or the existence, non-existence, occurrence or non-occurrence of any foreseen
1898 or unforeseen fact, event, or contingency that may be a basic assumption of the Contractor with regard to any
1899 provision of this Agreement.

1900 **11.13 Guaranty of Contractor's Performance**

1901 The Guarantor has agreed to guaranty Contractor's performance of this Agreement including Contractor's
1902 Indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached as
1903 Exhibit C. The Guaranty Agreement is being provided concurrently with Contractor's execution of this Agreement.

1904 **ARTICLE 12** 1905 **RESOLUTION OF DISPUTES**

1906 **12.1 Informal Resolution**

1907 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any time
1908 during the term of this Agreement, the provisions of this Article shall apply. Either Party shall give the other
1909 written notice of such dispute. Such notice shall specify a date and location for the Parties to meet and confer in
1910 good faith to resolve any dispute that may arise in a cooperative and mutually satisfactory manner. The Parties
1911 shall attempt to resolve their disputes informally to the maximum extent possible.

1912 **12.2 Mediation**

1913 In the event the Parties cannot resolve such dispute within thirty (30) Days of such notice, either Party may
1914 propose the appointment of a mediator for advice and non-binding mediation, and the other Party shall attend
1915 such mediation. If the dispute is not resolved through mediation, within sixty (60) Days thereafter, and if the
1916 dispute does not concern "valuation items" identified in Section 12.3, then either Party may refer the matter to a
1917 Court of competent jurisdiction. Disputes that concern valuation items that are not resolved through mediation
1918 shall proceed with binding arbitration procedures set forth in Section 12.4 below.

1919 **12.3 Valuation Items**

1920 For the purposes of this Agreement, disputes over "valuation items" refers to disputes over basic financial issues
1921 valued under one hundred fifty thousand dollars (\$150,000.00) that is due or owed by either Party. If mediation is
1922 unsuccessful, disputes concerning valuation items shall be referred to binding arbitration.

12.4 Binding Arbitration

Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure Section 1280 et. seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of this Section. In the event of any inconsistency, the terms of this Section shall control. The arbitration shall be administered by JAMS and conducted in the County of Contra Costa. If the Parties are unable to select an arbitrator, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (a) serve as the provider of arbitration or (b) enforce any provision of this arbitration clause, the Parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Contra Costa County Superior Court shall designate such an organization upon the petition of either Party.

A. The arbitrator shall be independent of, and unaffiliated with, each Party and shall not ever have been an employee of either Party, under contract with either Party in the past five (5) years or acted as an arbitrator for such Party within the past five (5) years.

B. Within twenty (20) days after initiation of the arbitration, if not previously done so under the terms of this Agreement, the Parties shall simultaneously submit to each other and the arbitrator their respective best or final offer for the item subject to the valuation dispute, with such supporting information as is reasonably necessary to support such suggested value. If the two (2) valuations so submitted differ by less than or equal to ten percent (10%) of the higher of the two (2), the average of the two (2) shall become the agreed-upon and binding amount for purposes of this Agreement and the arbitration shall not be continued. If the two (2) valuations differ by more than ten percent (10%) of the higher of the two (2), then the arbitrator shall make a determination of the relevant value and submit such determination to both Parties. This third valuation will then be averaged with the closer of the two (2) previous valuations and the result shall be the relevant value. In no event shall the arbitrator award, on a *quantum meruit* or other basis, an amount that is greater than any amount set forth in this Agreement. The final arbitrated value shall be binding on the Parties.


C. The arbitrator shall have the authority and power to award costs, including attorneys' fees and costs to the prevailing Party. Unless otherwise awarded by the arbitrator, the Parties shall evenly split the cost of any arbitration under this Section.

D. By agreeing to binding arbitration under the terms contained herein, the Parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law with regard to the same.

Acknowledgement of waiver of rights to trial by jury if proceeding with binding arbitration pursuant to Section 12.4 of this Agreement.



CCCSWA



Mt. Diablo Paper Stock, Inc.
dba Mt. Diablo Recycling

12.5 Pendency of Dispute

During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any matters other than those directly related to the dispute and such tolling shall not entitle a Party to breach, default, or fail to perform its obligations under this Agreement. In addition, the pendency of any dispute shall not stay or affect CCCSWA's

1959 remedies under this Agreement, including but not limited to its rights to terminate, suspend, or take possession of
1960 Contractor's property.

ARTICLE 13

OTHER AGREEMENTS OF PARTIES

13.1 Relationship of Parties

1964 The Parties intend that Contractor shall perform the services required by this Agreement as an independent
1965 contractor engaged by CCCSWA and nothing in this Agreement shall be deemed to constitute either Party an
1966 employee, partner, joint venturer, officer, agent, or legal representative of the other Party or to create any
1967 fiduciary relationship between the Parties. Neither Contractor nor its officers, employees, Subcontractors,
1968 Affiliates, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other
1969 benefits that accrue to CCCSWA employees by virtue of Contractor's Agreement with CCCSWA.

13.2 Compliance with Law

1971 In providing the services required under this Agreement, Contractor shall at all times comply with all Applicable
1972 Law now in force and as may be enacted, issued, or amended during the Term.

13.3 Governing Law

1974 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of
1975 California.

13.4 Jurisdiction

1977 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of
1978 Contra Costa County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With
1979 respect to venue, the Parties agree that this Agreement is made in and will be performed in Contra Costa County.
1980 Nothing in this Agreement shall be construed to limit the rights of either Party to seek judicial review of or
1981 remedies for any alleged breach of this Agreement by either Party.

13.5 Notice to Parties

1983 All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses,
1984 by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as
1985 specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices
1986 shall be deemed received five (5) Days after deposit. A Party may change the address to which notice is given by
1987 giving notice as provided herein.

1988 To CCCSWA:
1989 Executive Director
1990 Central Contra Costa Solid Waste Authority
1991 1850 Mt. Diablo Blvd, Suite 320
1992 Walnut Creek, CA 94596

1993 To Contractor:
1994 Operations Manager
1995 Mt. Diablo Recycling Center
1996 1300 Loveridge Road
1997 Pittsburg, CA 94565
1998 and
1999 Chief Executive Officer
2000 Garaventa Enterprises, Inc.
2001 P.O. Box 5397
2002 Concord, CA 94524

2003 **13.6 Assignment and Transfer of Agreement**

2004 Neither Party shall assign its rights or delegate, subcontract, or otherwise transfer its obligations under this
2005 Agreement to any other Person without the prior written consent of the other Party. Any such assignment made
2006 without the consent of the other Party shall be void and the attempted assignment shall constitute a material
2007 breach of this Agreement.

2008 A. For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be
2009 limited to (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Contractor's assets
2010 dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of
2011 outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result
2012 in a change of control of Contractor; (3) any dissolution, reorganization, consolidation, merger, re-
2013 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,
2014 liquidation, subcontracting or lease-back arrangement, or other transaction to which results in a change of
2015 Ownership or control of Contractor; (4) any assignment by operation of law, including insolvency or
2016 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied
2017 against this Agreement, appointment of a receiver taking possession of Contractor's property; and (5) any
2018 combination of the foregoing (whether or not in related or contemporaneous transactions) which has the
2019 effect of any such transfer or change of Ownership, or change of control of Contractor.

2020 B. Notwithstanding the foregoing, it shall not be deemed to be an assignment, sale, transfer or change in
2021 control under this Agreement if ownership of Contractor or any Affiliate is transferred to either individuals
2022 in consanguinity with Mary C. Garaventa (hereinafter Garaventa Family), or trusts or other entities owned or
2023 controlled by a member or members of the Garaventa Family, provided that such trusts or other entities
2024 possess the business, professional, and technical expertise to manage, Transfer, Transport, Process, and
2025 Divert the Recyclable Materials, and possess the equipment, facilities, and employee resources required to
2026 perform this Agreement. Within sixty (60) Days prior to any such transfer of ownership within the
2027 Garaventa Family or to trusts or other entities owned by a member or members of the Garaventa Family,
2028 Contractor shall provide written notice to the CCCSWA Executive Director and provide the CCCSWA with an
2029 opportunity to meet and confer with the new owner to discuss matters related to this Agreement. Such
2030 sixty (60) Day notice shall not be required in the event of cases involving death or legal incapacity. In such
2031 case, notice shall be provided as soon as practical.

2032 Notwithstanding the foregoing, the skill, acumen, and relevant experience of the day-to-day management of
2033 Contractor shall remain satisfactory to the CCCSWA notwithstanding a change in ownership.

2034 C. Contractor acknowledges that this Agreement involves rendering a vital service to the Member Agencies'
2035 residents and businesses, and that CCCSWA has selected Contractor to perform the services specified herein
2036 based on (1) Contractor's experience, skill and reputation for conducting its materials management
2037 operations in a safe, effective and responsible fashion, at all times in keeping with Applicable Laws,
2038 regulations and good materials management practices, and (2) Contractor's financial resources to maintain

- 2039 the required equipment and to support its indemnity obligations to CCCSWA under this Agreement.
2040 CCCSWA has relied on each of these factors, among others, in choosing Contractor to perform the services
2041 to be rendered by Contractor under this Agreement.
- 2042 D. If Contractor requests CCCSWA's consideration of and written consent to an assignment, CCCSWA may deny
2043 or approve such request in its complete discretion.
- 2044 E. No request by Contractor for consent to an assignment need be considered by CCCSWA unless and until
2045 Contractor has met the following requirements. However, CCCSWA may, in its sole discretion, waive one or
2046 more of these requirements:
- 2047 (1) Contractor shall undertake to pay CCCSWA its reasonable expenses for consultants' fees, attorneys'
2048 fees, and investigation costs necessary to investigate the suitability of any proposed assignee, and to
2049 review and finalize any documentation required as a condition for approving any such assignment;
- 2050 (2) Contractor shall furnish CCCSWA with audited financial statements of the proposed assignee's
2051 operations for the immediately preceding three (3) operating years;
- 2052 (3) Contractor shall furnish CCCSWA with satisfactory proof that: (1) the proposed assignee has at least
2053 ten (10) years of Recyclable Materials Transfer, Transportation, Processing, and Diversion experience
2054 on a scale equal to or exceeding the scale of operations conducted by Contractor under this
2055 Agreement; (2) in the last five (5) years, the proposed assignee has not suffered any citations or other
2056 censure from any federal, State or local agency having jurisdiction over its Transfer, Transportation,
2057 Processing, and materials management operations due to, in CCCSWA's sole and reasonable
2058 discretion, any material or significant failure to comply with State, federal or local materials
2059 management laws and that the assignee has provided CCCSWA with a complete list such citations and
2060 censures; (3) the proposed assignee has at all times conducted its operations in an environmentally
2061 safe and conscientious fashion; (4) the proposed assignee conducts materials management practices
2062 in full compliance with all federal, State and local laws regulating the Transfer, Transportation,
2063 Processing, and Diversion of all Recyclable Materials;; and (5) any other information required by
2064 CCCSWA to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe,
2065 and effective manner.
- 2066 F. Contractor shall provide CCCSWA with any and all additional records or documentation which, in CCCSWA's
2067 sold determination, would facilitate the review of the proposed assignment. CCCSWA shall not
2068 unreasonably withhold its consent to any such assignment.
- 2069 G. On the date CCCSWA approves Contractor's written request for an assignment, Contractor shall pay
2070 CCCSWA a transfer fee in the amount of \$20,000. CCCSWA's approval of such an assignment shall be
2071 conditioned on the receipt of the transfer fee.
- 2072 H. **CCCSWA Assignment.** Any assignment by CCCSWA, may be only to a different or successor joint powers
2073 agency, a Member Agency or Agencies, or similar public corporation. While nothing in this Agreement is
2074 intended to prevent CCCSWA from assigning its rights and obligations under this Agreement to a different or
2075 successor joint powers authority organized for the purpose of dealing with materials management matters
2076 on a county-wide or regional basis, such an assignment may occur without prior written consent of
2077 Contractor only where CCCSWA or all of its Member Agencies become members of that successor or new
2078 authority or joint powers agency. If CCCSWA requests consideration of and consent to an assignment (other
2079 than to a different or successor county-wide or regional joint powers agency), Contractor may deny or
2080 approve such request. Contractor shall receive upon written request to CCCSWA that the proposed assignee
2081 of the CCCSWA provide such documents, resolutions and ordinances that may be necessary for Contractor
2082 to properly evaluate assignment to the proposed assignee. Nothing in this Section is intended to limit
2083 CCCSWA's discretion in allowing for new Member Agencies or altering the present composition of the

2084 CCCSWA, however, such changes in composition or membership shall not affect the Service Area or mode of
2085 operation to which this Franchise Agreement applies.

2086 I. **Assignment by Member Agency Withdrawal.** In the event a Member Agency seeks to withdraw from
2087 CCCSWA before the end of the Agreement's Term, the Member Agency's withdrawal is conditioned upon its
2088 consent to Assignment of this Agreement as well as the respective obligations of CCCSWA as it pertains to
2089 the Member Agency's jurisdictional area. The act of withdrawal shall also operate as the Authority's
2090 consent to Assignment of its respective rights and obligations under this Agreement to the withdrawing
2091 Member Agency. Any additional terms and conditions of withdrawal as well as the details of assuming the
2092 specific obligations of this Agreement shall be governed by the provisions of CCCSWA Joint Powers
2093 Agreement as amended, and the decisions of the CCCSWA Board of Directors.

2094 **13.7 Transition to Next Contractor**

2095 If the transition of services to another contractor occurs, through expiration of Term, default and termination, or
2096 otherwise, then Contractor will cooperate with CCCSWA, and subsequent contractor(s), to assist in an orderly
2097 transition. Contractor may, but is not obligated, to sell its Facility(ies), Transfer Vehicles, or equipment to the next
2098 contractor.

2099 **13.8 Compliance Audit**

2100 If, in CCCSWA's sole determination, there is any doubt regarding the compliance of Contractor with this
2101 Agreement, CCCSWA may require an audit of Contractor's compliance and the costs of such an audit that
2102 demonstrates an error rate of less than three percent (3%) shall be borne by CCCSWA. The costs of such an audit
2103 that demonstrates an error rate equal to or greater than three (3%) shall be borne by the Contractor.

2104 **13.9 Binding on Successors**

2105 The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted
2106 assigns of the Parties.

2107 **13.10 Non-Waiver**

2108 Failure of either Party to exercise any of the remedies set forth herein within the time periods provided for shall
2109 not constitute a waiver of any rights of that Party with regard to that failure to perform or subsequent failures to
2110 perform, whether determined to be a breach, excused performance, or unexcused defaults, by the other Party.

2111 **ARTICLE 14** 2112 **MISCELLANEOUS PROVISIONS**

2113 **14.1 Entire Agreement**

2114 This Agreement, including the Exhibits and any attachments or appendices, represents the full and entire
2115 Agreement between the Parties with respect to the matters covered herein.

2116 **14.2 Amendment**

2117 Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by
2118 written agreement duly executed by both Parties.

2119 **14.3 Section Headings**

2120 The article and section headings in this Agreement are for convenience of reference only and are not intended to
2121 be used in the construction of this Agreement nor to alter or affect any of its provisions.

2122 **14.4 References to Laws**

2123 All references in this Agreement to laws shall be understood to include such laws as they may be subsequently
2124 amended or re-codified, unless otherwise specifically provided.

2125 **14.5 Interpretation**

2126 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless
2127 of the degree to which either Party participated in its drafting.

2128 **14.6 Severability**

2129 If any clause, provision, subsection, section, or article of this Agreement is for any reason deemed to be invalid and
2130 unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such portion shall not
2131 affect any of the remaining parts of this Agreement, which shall be enforced as if such invalid or unenforceable
2132 portion had not been contained herein.

2133 **14.7 Further Assurance**

2134 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or
2135 reasonably requested by the other in order to give full effect to this Agreement.

2136 **14.8 Counterparts**

2137 This Agreement may be executed in counterparts each of which shall be considered an original.

2138 **14.9 Exhibits**

2139 Each of the Exhibits identified as Exhibits A through J is attached hereto and incorporated herein and made a part
2140 hereof by this reference.

2141 **14.10 Actions of CCCSWA in its Governmental Capacity**

2142 Except as provided above in Section 3.1(J), nothing herein shall be interpreted as limiting the right of Contractor to
2143 bring any legal action against CCCSWA, not based on this Agreement, arising out of any act or omission of CCCSWA
2144 in its governmental or regulatory capacity.

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2147 IN WITNESS WHEREOF, CCCSWA and Contractor have executed this Agreement as of the day and year first above
2148 written.

2149 **CCCSWA**

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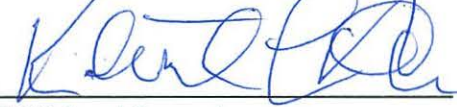
By:



CCCSWA Board Chairperson

Karen Stepper
Printed name

Approved as to Form:



CCCSWA Legal Counsel

Kent Alm
Printed name

Attest:



CCCSWA Board Secretary

Janna McKay
Printed name

**Mt. Diablo Paper Stock, Inc.
a California Corporation, dba
Mt. Diablo Recycling**

By:



Chairman of the Board of
Directors and President Emeritus

Mary C. Garaventa

By:



Chief Executive Officer

Joseph Garaventa

Approved as to Form:



Contractor Legal Counsel

Mike Bonnifield

