

FRANCHISE AGREEMENT
BETWEEN
CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY
AND
ALLIED WASTE SYSTEMS, INC.
FOR
FRANCHISED MATERIALS COLLECTION, TRANSFER, TRANSPORT,
PROCESSING, DIVERSION, AND DISPOSAL SERVICES

MAY 14, 2014

{Page intentionally blank}

TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 DEFINITIONS	3
ARTICLE 2 GRANT AND ACCEPTANCE OF FRANCHISE.....	17
2.1 Scope of Agreement	17
2.2 Limitations to Scope	18
2.3 Change in Marketability of Materials	21
2.4 Change in Scope.....	21
2.5 Payment of Procurement Expenses	22
2.6 Obligation to Provide Service	22
2.7 No Guarantees of Materials Volume or Composition	23
2.8 References to Franchised Materials.....	24
ARTICLE 3 REPRESENTATIONS AND WARRANTIES	24
3.1 Of Contractor.....	24
3.2 Of CCCSWA	26
3.3 Of the Parties	26
ARTICLE 4 TERM OF AGREEMENT	27
4.1 Term and Option to Extend	27
4.2 Extension Conditions	27
ARTICLE 5 COLLECTION SERVICES	28
5.1 Single-Family Collection Services	28
5.2 Multi-Family Collection Services	36
5.3 Commercial Collection Services.....	37
5.4 Member Agency Facility Services	40
5.5 Special Events	41
5.6 Public Schools.....	43
5.7 High Diversion Services	43
ARTICLE 6 PROCESSING AND DISPOSAL SERVICES	43
6.1 Processing of Collected Materials	43
6.2 Solid Waste Disposal	54
ARTICLE 7 OTHER RELATED SERVICES	54
7.1 Public Education and Outreach.....	54
7.2 Technical Assistance	55
7.3 Billing	55
7.4 Customer Service Program	58
7.5 CCCSWA Web-Based Access to Information	60
7.6 AB 939 and AB 341.....	60
7.7 Provision of Emergency Services.....	60
7.8 Other Services	61

ARTICLE 8 STANDARD OF PERFORMANCE.....	63
8.1 General	63
8.2 Operating Hours and Schedules	63
8.3 Collection Standards	64
8.4 Vehicle Requirements	65
8.5 Container Requirements	66
8.6 Personnel	69
8.7 Unpermitted Materials Inspection and Handling	70
ARTICLE 9 CONTRACTOR PAYMENTS TO CCCSWA AND MEMBER AGENCIES	71
9.1 Franchise Payments and Other Payments	71
9.2 Source Reduction and Recycling Fee	71
9.3 Other Payments	71
9.4 Materials Marketing Revenue Share	72
9.5 Adjustment of Payments	72
9.6 Method of Payments	72
9.7 Timing of Payments and Penalties for Late Payments	72
9.8 Billing and Payment Audit	73
ARTICLE 10 CONTRACTOR REVENUE AND MAXIMUM RATES	73
10.1 Overview	73
10.2 Process for Setting Maximum Rates	74
10.3 Maximum Rate Application Process	75
10.4 Special Rate Review	77
10.5 Adjustment of Maximum Rates for Changes in Scope	79
10.6 Notice of Rate Adjustments	80
ARTICLE 11 REVIEW OF SERVICES AND PERFORMANCE	80
11.1 Performance Hearing	80
11.2 Performance Review	81
ARTICLE 12 RECORD KEEPING AND REPORTING	81
12.1 General Record Keeping Provisions	81
12.2 Review and Inspection	81
12.3 Retention of Records	82
12.4 Other Information Requirements	82
12.5 Reporting	82
12.6 CERCLA Reporting	82
ARTICLE 13 INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND	83
13.1 General Indemnification	83
13.2 Hazardous Substance Indemnification	83
13.3 AB 939 Indemnification	84
13.4 Insurance	84
13.6 Performance Bond	87

ARTICLE 14 BREACH, DEFAULT, REMEDIES, AND TERMINATION.....	87
14.1 Events of Breach	87
14.2 Contractor Rights to Remedy Breach	88
14.3 Acts Necessary to Perform Service	88
14.4 Event of Default	88
14.5 Event of Default Not Curable	89
14.6 CCCSWA's Remedies in the Event of Default	89
14.7 Specific Performance	91
14.8 CCCSWA's Remedies Cumulative	91
14.9 Liquidated Damages	91
14.10 Excuse from Performance	92
14.11 Right to Demand Assurances of Performance	92
14.12 Waiver of Defenses	93
14.13 Guaranty of Contractor's Performance	93
ARTICLE 15 RESOLUTION OF DISPUTES	93
15.1 Informal Resolution	93
15.2 Mediation	93
15.3 Valuation Items	94
15.4 Binding Arbitration	94
15.5 Pendency of Dispute	95
ARTICLE 16 OTHER AGREEMENTS OF PARTIES.....	95
16.1 Relationship of Parties	95
16.2 Compliance with Law	95
16.3 Governing Law	95
16.4 Jurisdiction	95
16.5 Notice to Parties	96
16.6 Assignment and Transfer of Agreement	96
16.7 Transition to Next Contractor	98
16.8 Compliance Audit	98
16.9 Binding on Successors	98
16.10 Non-Waiver	99
ARTICLE 17 MISCELLANEOUS PROVISIONS	99
17.1 Entire Agreement	99
17.2 Amendment	99
17.3 Section Headings	99
17.4 References to Laws	99
17.5 Interpretation	99
17.6 Severability	99
17.7 Further Assurance	100
17.8 Counterparts	100
17.9 Exhibits	100
17.10 Actions of CCCSWA in its Governmental Capacity	100

EXHIBITS

- A. Public Education and Outreach Plan
- B. Reporting Requirements
- C. Performance Standards and Liquidated Damages
- D. Index-Based Rate Adjustment Methodology
- E. Cost-Based Rate Adjustment Methodology
- F. Corporate Guaranty
- G. Cart Specifications
- H. Member Agency Services
- I. Map of Service Area
- J. Commercial Premises Located Nearby Residential Premises
- K. List of Franchised Recyclable Materials
- L. Contractor's Proposal
- M. Specialty Recyclable Materials
- N. Operating Assumptions and Cost Basis for Rate Year One Maximum Rates
- O. Hard-to-Serve Route List
- P. Approved Affiliates and Subcontractors
- Q. Labor Agreements for Drivers and Mechanics
- R. Performance Bond
- S. Transfer and Disposal Services
- T. Sharps Collection Program Schedule
- U. High Diversion Services and Cost Proposal
- V. Example Web-Based Reports
- W. Iran Contracting Certification

1 **FRANCHISE AGREEMENT**
2 **BETWEEN**
3 **CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY**
4 **AND**
5 **ALLIED WASTE SYSTEMS, INC.**
6 **FOR**
7 **FRANCHISED MATERIALS COLLECTION, TRANSFER, TRANSPORT,**
8 **PROCESSING, DIVERSION, AND DISPOSAL SERVICES**
9

10 This Agreement for Franchised Materials Collection, Transfer, Transport, Processing, Diversion, and
11 Disposal Services ("Agreement") is entered into on the 16 day of May, 2014, by and
12 between the Central Contra Costa Solid Waste Authority, a Joint Powers Authority (hereinafter,
13 "CCCSWA"), and Allied Waste Systems, Inc., a Delaware corporation, doing business as "Allied Waste
14 Services of Contra Costa County" and also doing business as "Republic Services of Contra Costa County"
15 (hereinafter, "Contractor") (collectively, the "Parties").

16 **RECITALS**

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

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

26 WHEREAS, only certain unincorporated areas of Contra Costa County are included in the
27 jurisdictional boundaries of the service area as defined herein; and

28 WHEREAS, the CCCSWA has the authority to enter into an exclusive agreement for handling
29 solid waste, recyclable materials, and organic materials, and to prescribe the terms and conditions of
30 such an agreement, including, but not limited to, the frequency and means of collection and
31 transportation, the level of services, charges and fees, and the nature, location, and extent of providing
32 materials handling services; and

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

36 WHEREAS, pursuant to California Public Resources Code § 40059(a)(1), the Board of Directors of
37 the CCCSWA has determined that the public health, safety, and well-being of its Member Agencies

requires the highest quality collection, transfer, transport, processing, diversion, and disposal services from a thorough, competent, and qualified company; and

WHEREAS, agencies like the CCCSWA have generally been held liable under federal superfund laws for costs of cleaning up of hazardous waste sites that accepted Solid Waste generated within municipalities' jurisdictions; therefore, the CCCSWA is prudent to provide for terms and conditions of its solid waste disposal in accordance with this Agreement; and

WHEREAS, pursuant to its police powers, obtaining a long-term commitment for transfer of solid waste, organic materials and recyclable materials and disposal of solid waste generated in the Service Area in accordance with this Agreement is in the best interests of the public health, safety and well being of the citizens of the Member Agencies and is fiscally prudent; and

WHEREAS, through enactment of AB 939, the State of California also recognizes the important health and safety consideration to long-term planning for local governments' adequate disposal needs. The State requires local governments to make adequate provision for at least fifteen (15) years of solid waste disposal capacity to preserve the health, safety and well being of the public; 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 such 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 collection, transfer, transport, processing, diversion, and disposal services in compliance with applicable law and the provisions of this Agreement; and

WHEREAS, pursuant to California Public Resources Code § 40191, "solid waste" is defined as "all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial waste, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes," and does not include hazardous waste as defined in California Public Resources Code § 40141, radioactive waste, or untreated medical waste; and

WHEREAS, this Agreement expressly limits the types and categories of solid waste that Contractor is authorized to collect, transport, process, divert, and dispose of; and

WHEREAS, the processing and diversion services contemplated in this Agreement generally refer to recycling, reusing, composting, and/or digestion of materials collected; and

WHEREAS, the CCCSWA Board of Directors has granted a franchise to Contractor for the collection, transfer, transport, processing, diversion, and disposal of selected materials as set forth herein, 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 the 16 day of May, 2014; and

WHEREAS, both the CCCSWA and Contractor are mindful of the provisions of the laws governing the safe collection, transfer, transport, processing, diversion, 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, 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 Delivered by Contractor to the Recyclables Contractor, as provided in Section 6.1.2.

"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 Franchised Materials Collection, Transfer, Transport, Processing, Diversion, and Disposal 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.

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

117 **"Anaerobic Digestion Facility"** means a permitted location in which Organic Materials are Processed
118 within an enclosed chamber using microorganisms to break down biodegradable material, normally in
119 the absence of oxygen, and converted into renewable energy by producing biogas and digestate.

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

124 **"Approved Affiliate"** means the Affiliates listed on Exhibit P that provide services, property, or other
125 support related directly or indirectly to this Agreement.

126 **"Approved Commercial Food Waste Pre-Processing Facility"** means the Contra Costa Transfer Station at
127 951 Waterbird Way, Martinez, CA selected by CCCSWA, which is owned and operated by Contractor dba
128 Contra Costa Transfer and Recovery Facility. Contractor shall utilize the Approved Commercial Food
129 Waste Pre-Processing Facility to perform grinding and other Processing activities required to prepare
130 Commercial Food Waste to be further Processed at the Designated Anaerobic Digestion Facility.

131 **"Approved Disposal Facility"** means the Keller Canyon Landfill at 901 Bailey Road, Pittsburg, CA,
132 selected by CCCSWA, which is owned and operated by Keller Canyon Landfill Company, Inc. (an
133 Approved Affiliate). The Approved Disposal Facility shall serve as the Disposal Site for all Franchise Solid
134 Waste Collected by Contractor.

135 **"Approved Facilities"** means the Approved Processing Facilities, the Approved Transfer Station, and the
136 Approved Disposal Facility. Upon commencement of High Diversion Services if implemented during the
137 Term, this Approved Facilities definition shall also include the Approved High Diversion Processing
138 Facility.

139 **"Approved High Diversion Processing Facility"** means Newby Island Recyclery, which is capable of
140 Processing a wide range of Mixed Materials including Wet and Dry Mixed Materials. It is located at 1601
141 Dixon Landing Road, Milpitas, CA and is owned and operated by BFI of California, Inc. (an Approved
142 Affiliate).

143 **"Approved Maintenance Yard"** means the vehicle and container maintenance yard at 441 N. Buchanan
144 Circle, Pacheco, CA, which is owned and operated by Contractor dba Allied Waste Systems of Contra
145 Costa County.

146 **"Approved Organic Materials Processing Facility"** means the West County Resource Recovery Facility
147 Composting Facility located at the foot of Parr Boulevard, Richmond, CA, which is owned and operated
148 by West County Resource Recovery, Inc. (an Approved Affiliate), and approved by the CCCSWA for
149 Processing of Green Materials and Home Food Scraps.

150 **"Approved Processing Facilities"** means the Approved Commercial Food Waste Pre-Processing Facility,
151 Approved Organic Materials Processing Facility, or other Processing Facility approved or designated by

the CCCSWA for the purpose of Processing Franchised Materials. If High Diversion Services are implemented during the Term, Approved Processing Facilities shall include the Approved High Diversion Processing Facility.

"Approved Transfer Station" means the Contra Costa Transfer Station at 951 Waterbird Way, Martinez, CA selected by CCCSWA, which is owned and operated by Contractor dba Contra Costa Transfer and Recovery Facility. The Approved Transfer Station shall serve as the Transfer Station for all Franchised Solid Waste and Organic Materials Collected by Contractor.

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

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

"Billings" means any and all statements of charges for services rendered, howsoever made, described, or designated by Contractor, or made by CCCSWA or others for Contractor, and presented to Subscribers that are serviced by Contractor pursuant to the terms and conditions of this Agreement.

"Bin(s)" means a Container with a capacity of one (1) to eight (8) cubic yards, with a hinged lid, which may have wheels, and that is serviced by a front-end loading Collection vehicle.

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

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

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

"Cart(s)" means a plastic Container with a hinged lid and wheels with varying capacities ranging from twenty (20) to ninety-six (96) gallons that is serviced by an automated or semi-automated Collection vehicle.

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

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980(42 U.S.C. Section 9600 *et. seq.*).

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

- 187 A. The enactment, adoption, promulgation, issuance, modification, elimination, or written change in
188 administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or
- 189 B. The order or judgment of any governmental body, on or after the Effective Date, to the extent
190 such order or judgment is not the result of willful or negligent action, error or omission, or lack of
191 reasonable diligence of the CCCSWA or the Contractor, whichever is asserting the occurrence of a
192 Chance in Law; provided, however, that the contesting in good faith or the failure in good faith to
193 contest any such order or judgment shall not constitute or be construed as such a willful or
194 negligent action, error or omission, or lack of reasonable diligence.
- 195 **"Closure"** means closure of the Approved Disposal Facility or portions of the Approved Disposal Facility
196 in accordance with Applicable Law, including all planning, design, regulatory approvals, plan
197 implementation, construction and monitoring.
- 198 **"Collect" or "Collection" (or any variation thereof)** means the act of removing Franchised Materials
199 from the place of generation within the Service Area, and Delivering such materials to an Approved
200 Facility or Designated Recyclables Trans-Load Facility.
- 201 **"Collection Premises"** means the Residential Premises, Non-Residential Premises, or both for which the
202 Contractor is authorized to provide Collection services.
- 203 **"Commencement Date"** means March 1, 2015, or the date when Contractor shall begin to provide all
204 services set forth in this Agreement.
- 205 **"Commercial Food Waste"**(or **"Franchised Commercial Food Waste"**) means discarded food, paper, and
206 other Organic Materials deemed acceptable for the Commercial Food Waste program that is generated
207 at Commercial Premises, and that is separately Collected and taken to an Approved Commercial Food
208 Waste Pre-Processing Facility. It does not include Home Food Scraps.
- 209 **"Commercial Premises"** means of, from, or pertaining to Non-Residential Premises where business
210 activity is conducted, including, but not limited to, retail sales, services, wholesale operations,
211 institutions, manufacturing and industrial operations, and including hotels, motels, and other similar
212 Premises, but excluding businesses conducted upon Residential Premises, which are permitted under
213 applicable zoning regulations and are not the primary use of the property.
- 214 **"Compactor"** means a mechanical apparatus that compresses materials to reduce the volume of
215 material.
- 216 **"Compost" or "Composting"** means a method of treatment in which Organic Materials are biologically
217 decomposed and/or putrefied under controlled aerobic conditions to produce a safe and nuisance-free
218 product.
- 219 **"Compost Product"** means the product resulting from the controlled biological decomposition of
220 Organic Materials that are Source Separated from Solid Waste, or which are separated at a centralized
221 Processing facility.
- 222 **"Construction and Demolition Debris, or C&D"** means used or discarded materials removed from
223 Premises during the construction or renovation of a structure as a result of construction, remodeling,
224 repair, or demolition operations on any Residential or Commercial building or other structure, including

225 pavement. Typically, building or other modification permits are required for Premises during
226 construction or renovation.

227 **"Container(s)"** means a receptacle for temporary storage of Discarded Materials. Containers include,
228 but are not limited to, Bins, Carts, Compactors, Drop Boxes, buckets, bags, or other storage instruments.

229 **"Contaminant(s)"** (or other variations thereof) means any materials not identified in Exhibit K excluding
230 Items 2 through 12 in the definition of Unpermitted Materials, which are offered for Collection in a
231 Franchised Recyclable Materials Container(s), or any materials other than Franchised Organic Materials
232 offered for Collection in a Franchised Organic Materials Container(s).

233 **"Contractor's Operations Cost"** means the Total Calculated Contractor Cost less Processing and Disposal
234 Costs.

235 **"Contractor Revenue"** means the total Contractor revenue comprised of Gross Receipts plus any
236 revenue received by Contractor for sale of Franchised Materials or their resulting by-products allowable
237 under this Agreement, less any revenue shared with the CCCSWA pursuant to Section 9.4.

238 **"Contractor"** means Allied Waste Systems, Inc. and any Approved Affiliates and Subcontractors.

239 **"Curb or Curbside** (or any variation thereof)" means the location of a Collection Container for pick-up,
240 where such Container is placed on the public or private street or alley against the face of the Curb, or
241 where no Curb exists, Container is placed not more than five (5) feet from the outside edge of the street
242 or alley nearest the property's entrance.

243 **"Days"** means calendar days, including Saturdays, Sundays, and holidays, except as otherwise
244 specifically provided herein.

245 **"Delivered"** or **"Delivery"** (or other variations thereof) means arrival of Franchised Materials in
246 Contractor's Collection vehicles at the entrance of an Approved Facility or Designated Recyclables Trans-
247 Load Facility during facility receiving hours for the purposes of Acceptance.

248 **"Designated Anaerobic Digestion Facility"** means the East Bay Municipal Utility District Site at 2020
249 Wake Avenue, Oakland, CA, which is owned and operated by East Bay Municipal Utility District and
250 designated by the CCCSWA for Processing of Commercial Food Waste through Anaerobic Digestion and
251 conversion into renewable energy.

252 **"Designated Facilities"** means the Designated Anaerobic Digestion Facility, Designated Recyclable
253 Materials Processing Facility, and Designated Recyclables Trans-Load Facility.

254 **"Designated Recyclable Materials Processing Facility"** means the Mt. Diablo Recycling Center at 1300
255 Loveridge Road, Pittsburg, CA, which is owned by Contra Costa Waste Services, Inc. (an Approved
256 Affiliate) and operated by Mt. Diablo Paper Stock, Inc. dba Mt. Diablo Recycling, and approved by the
257 CCCSWA for Processing of Recyclable Materials.

258 **"Designated Recyclables Trans-Load Facility"** means the trans-load facility at 4050 Mallard Drive,
259 Concord, CA, selected by CCCSWA, which is owned and operated by Recyclables Contractor and
260 designated by the CCCSWA for Transfer of Franchised Recyclable Materials.

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

266 **"Discarded Material"** means Franchised Materials placed by a Generator in a Container and/or
267 discarded by the Generator and/or placed by the Generator at a location that is designated for
268 Collection.

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

270 **"Disposal Site"** means a permitted location approved by CCCSWA for the ultimate Disposal of Solid
271 Waste.

272 **"Diversion"** means activities that reduce or eliminate the amount of Solid Waste from Disposal,
273 including, but not limited to, Delivering Franchised Recyclable Materials, Franchised Green Materials
274 and Home Food Scraps, and Franchised Commercial Food Waste to a Transfer Station, Processing
275 Facility, or Anaerobic Digestion Site.

276 **"Drop Box"** means an open-top Container with a capacity of eight (8) to forty (40) cubic yards that is
277 serviced by a roll-off Collection vehicle.

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

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

288 **"Event of Default"** means a default by Contractor as described in Section 14.4.

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

290 **"Facility"** means any plant or site, owned or leased and maintained and/or operated or used by
291 Contractor for purposes of performing under this Agreement.

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

294 **"Franchise"** means the right granted by CCCSWA to Contractor to provide Franchised Materials
295 Collection, Transfer, Transport, Processing, Diversion, and Disposal services within the Service Area in
296 accordance with the terms and conditions of this Agreement.

297 **"Franchise Payment"** means a commercially reasonable amount negotiated between Contractor and
298 CCCSWA and/or its Member Agencies, adjusted annually by the Parties during the Term, which
299 Contractor pays to CCCSWA and/or its Member Agencies in consideration for the value and benefits to
300 Contractor to exclusively provide Franchised Materials Collection services within the Service Area.

301 **"Franchised Green Materials"** means Green Materials that are typically Source Separated from, but may
302 be combined in Containers with other Franchised Materials, and offered for Collection for subsequent
303 Processing and Diversion.

304 **"Franchised Materials"** means collectively Franchised Solid Waste, Franchised Recyclable Materials,
305 Franchised Green Materials, Franchised Organic Materials, Franchised Commercial Food Waste,
306 Franchised Residential Organic Materials, Franchised Mixed Materials, and other materials and
307 substances generated at, discarded by or Collected from Residential Premises and Non-Residential
308 Premises.

309 **"Franchised Mixed Materials"** means materials generated at, discarded by or Collected from Residential
310 Premises and Non-Residential Premises, which include both Franchised Recyclable Materials and non-
311 Recyclable Materials.

312 **"Franchised Organic Materials"** means Franchised Green Materials, Franchised Residential Organic
313 Materials, and Franchised Commercial Food Waste typically Source Separated from, but may be
314 combined in Containers with other Franchised Materials, and offered for Collection for subsequent
315 Processing and Diversion.

316 **"Franchised Recyclable Materials"** means Recyclable Materials typically Source Separated from, but
317 may be combined in Containers with other Franchised Materials, and offered for Collection for
318 subsequent Processing, Recycling, and Diversion. Franchised Recyclable Materials include, at a
319 minimum, the materials listed in Exhibit K.

320 **"Franchised Residential Organic Materials"** means Franchised Green Materials and Home Food Scraps
321 comingled for Collection from Residential Premises.

322 **"Franchised Solid Waste"** means Solid Waste as defined in California Public Resources Code § 40191
323 placed in Containers and offered for Collection by Generators and/or placed by a Generator at a location
324 that is designated for Collection for subsequent Disposal except for the following:

- 325 A. Franchised Recyclable Materials;
- 326 B. Franchised Organic Materials;
- 327 C. Unpermitted Materials;
- 328 D. Abandoned automobiles;
- 329 E. By-products of sewage treatment including biosolids, ash, grit, and screenings;
- 330 F. Manure or animal solid and semi-solid wastes;
- 331 G. Construction and Demolition Debris;
- 332 H. Source Separated E-Materials, Source Separated U-Materials, and Source Separated Sharps;
- 333 I. Donated materials; and,
- 334 J. Self-hauled materials.

335 **"Generator"** means any Person that generates or produces Franchised Materials, or whose act first
336 causes Franchised Materials to become subject to regulation.

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

339 **"Gross Receipts"** means total cash receipts that Contractor collects and receives from Subscribers for
340 the provision of services pursuant to this Agreement. Gross Receipts do not include revenues from the
341 sale of Franchised Organic Materials or other Franchised Materials.

342 **"Guarantor"** means Republic Services, Inc., a State of Delaware Corporation, duly organized and existing
343 in good standing under the laws of the State of California.

344 **"Hard-to-Serve"** means those Premises within the Service Area, as identified in Exhibit O, which require
345 special service considerations resulting from one or more factors that affect vehicle operations, access
346 and safety, including narrow streets, steep streets, areas with overhanging plant growth, cul-de-sacs, or
347 other terrain or geography that may interfere with regular Collection.

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

349 A. Any substances defined, regulated, or listed (directly or by reference) as "Hazardous
350 Substances," "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant," or
351 "toxic substances," or similarly identified as hazardous to human health or the environment,
352 in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability
353 Act (CERCLA) of 1980, 42 U.S.C. § 9601 et seq.; (ii) the Hazardous Materials Transportation
354 Act, 49 U.S.C. § 1802 et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. §
355 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (v) the Clean Air Act, 42 U.S.C.
356 § 7401 et seq.; (vi) California Health and Safety Code §§ 25115-25117, 25249.8, 25281, and
357 25316; and (vii) California Water Code § 13050;

358 B. Any amendments, rules, or regulations promulgated thereunder to such enumerated statutes
359 or acts currently existing or hereafter enacted; and,

360 C. Any other hazardous or toxic substance, material, chemical, waste, or pollutant identified as
361 hazardous or toxic or regulated under any other applicable federal, State, or local
362 environmental laws currently existing or hereinafter enacted, including, without limitation,
363 friable asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel
364 products, and by-products.

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

371 **"High Diversion Services"** means relating to the services described in Exhibit U.

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

373 **"Home Food Scraps"** means discarded food, other than Commercial Food Waste, from Residential and
374 Multi-Family Premises that is typically Source Separated from, but may be combined in Containers with
375 other Franchised Materials, and offered for Collection for subsequent Processing and Diversion. Home
376 Food Scraps includes discarded food and food-soiled, wet, and/or waxed cardboard; food-soiled, non-
377 recyclable mixed paper; paper gable cartons, such as are used for milk and juice; and Contractor-
378 approved bio-plastics including compostable bags.

379 **"Household Hazardous Waste"** means, as defined in California Health and Safety Code Section
380 25218.1(e), any Hazardous Waste generated incidental to owning or maintaining a place of residence,
381 but does not include any waste generated in the course of operating a business at a residence.

382 **"Implementation Period"** means the period between the Effective Date and the Commencement Date
383 during which Contractor makes the necessary preparations in order to implement all Contractor services
384 and obligations set forth herein.

385 **"Indemnities" or "Indemnification"** means all defense and indemnities under this Agreement.

386 **"Liquidated Damages"** means the amounts agreed upon by Contractor and CCCSWA as fair and
387 reasonable damages for Contractor's failure to meet specific quantifiable standards of performance as
388 described in Section 14.9 and Exhibit C.

389 **"Litter"** means any quantity of Discarded Material that Contractor has attempted to Collect but does not
390 reach an Approved Facility or Designated Facility.

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

392 **"Maximum Rates"** means those rates or charges approved from time-to-time by the CCCSWA Board,
393 which set forth the maximum amount that Contractor may charge Subscriber for services under this
394 Agreement.

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

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

404 **"Mixed Materials"** means materials from Residential Premises and Non-Residential Premises, which
405 include both Recyclable Materials and non-Recyclable Materials.

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

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

413 **"Occupant"** means a Person who may or may not hold the legal title to the real property constituting
414 the Premises, including businesses or other entities, and who permanently or temporarily lives or works
415 at the Premises.

416 **"On-Property Service"** means a level of service different than the standard Curbside service. For On-
417 Property Service, Contractor's employee shall enter the property of the Subscriber, either on foot or by
418 vehicle, in order to service Collection Containers at a suitable location near the Collection Premises,
419 accessible from the driveway. Such location may be on a private street and may, for example, be
420 adjacent to the garage or in a side yard, but shall not be behind a locked gate or a substantial distance
421 from the driveway. The service shall include both obtaining and returning the Container(s) to the
422 suitable Collection location.

423 **"Operating Assets"** means real and personal property of any kind, which is owned, leased, managed, or
424 operated by or under contract to the Contractor for providing the services required by this Agreement,
425 including without limitation Containers, vehicles, Transfer Stations, Processing Facilities, Disposal Sites,
426 maintenance and storage facilities, administrative facilities, and other equipment, machinery, parts,
427 supplies, and tools.

428 **"Organic Materials"** means Green Materials, Food Scraps, and other organic matter that can biologically
429 decompose into a specific mixture of decayed organic matter.

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

431 **"Permits"** means all federal, State, county, CCCSWA, other local and any other governmental unit
432 permits, orders, licenses, approvals, authorizations, consents and entitlements that are required under
433 Applicable Law to be obtained or maintained by any Person with respect to services performed under
434 this Agreement, as renewed or amended from time to time.

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

438 **"Post-Closure"** means post-closure of an Approved Disposal Facility or portions of an Approved Disposal
439 Facility in accordance with Applicable Law, including all maintenance and monitoring.

440 **"Premises"** means any land or building in the Service Area where Franchised Materials are generated or
441 accumulated.

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

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

445 **"Rate"** means the dollar unit to be charged a Subscriber by Contractor for providing Franchised
446 Materials Collection services and related Transportation, Transfer, Processing, and Disposal services; and
447 for providing other extra services.

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

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

452 **"Recovered Material"** means Recyclable Materials and Organic Materials that are Recovered.

453 **"Recovery"** (or **"Recover," "Recovered"** or other variations thereof) means the picking, pulling, sorting,
454 separating, classifying and recovery of Recyclable Materials or Organic Materials from Solid Waste
455 whether by manual or mechanical means, after Acceptance of the materials and before marketing of
456 Recovered Materials, including Recycling, material reuse and recovery, mulching, Composting, land
457 application or transformation.

458 **"Recyclable Materials"** means materials, by-products, or components of such materials that are set
459 aside, handled, or packaged for the purpose of being Recycled. Recyclable Materials include glass,
460 paper, cardboard, wood, concrete, plastic, ferrous and non-ferrous metal, aluminum and any other
461 materials that are capable of being Recycled.

462 **"Recyclables Contractor"** means Mt. Diablo Paper Stock, Inc. dba Mt. Diablo Recycling) that entered into
463 an agreement with the CCCSWA, entitled "Agreement between Central Contra Costa County Solid Waste
464 Authority and Mt. Diablo Paper Stock, Inc. dba Mt. Diablo Recycling for Recyclable Materials Transfer,
465 Transport, Processing, and Diversion Services" dated May 2014.

466 **"Recycled" or "Recycling" (or any variation thereof)** means the process of collecting, sorting, cleansing,
467 treating, reconstituting, or otherwise Processing materials that are or would otherwise become Solid
468 Waste and returning them to the economic mainstream in the form of raw material for new, reused, or
469 reconstituted products. Recycling does not include the use of Franchised Materials for conversion to
470 energy except Franchise Commercial Food Waste Processed at an Anaerobic Digestion Facility.

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

474 **"Residue"** means materials that remain after Processing Franchised Materials that require Disposal.

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

478 **"Reuse Contractor"** means Person authorized by the CCCSWA to collect Reusable Items and Recyclable
479 Materials as part of the Curbside reuse and cleanup days programs described in Section 5.1.H.

480 **"Service Area"** means the physical area encompassed by the jurisdiction of the CCCSWA's Member
481 Agencies, in which Contractor provides Collection service as presented in the map attached as Exhibit I

482 noting that only a portion of Contra Costa County unincorporated area is included in the CCCSWA
483 Service Area. Should other political jurisdictions become members of the CCCSWA during the Term of
484 this Agreement and choose to receive Collection services from the Contractor, then the Service Area will
485 be expanded to include these additional jurisdictions.

486 **"Service Level"** refers to the number and size of a Subscriber's Container(s), type of material(s)
487 Collected, and the frequency of Collection service.

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

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

494 **"Solid Waste"** means and refers to the definition of "solid waste" in California Public Resources Code §
495 40191: "All putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash,
496 refuse, paper, rubbish, ashes, industrial waste, demolition and construction wastes, abandoned vehicles
497 and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed
498 sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes,
499 and other discarded solid and semisolid wastes," but does not include hazardous waste as defined in
500 California Public Resources Code § 40141, radioactive waste, or untreated Medical Materials.

501 **"Source Separated"** means the Generator segregates the Franchised Materials into separate Containers
502 for Collection, such that all Franchised Solid Waste will be placed into any one Container, all Franchised
503 Recyclable Materials will be placed in another Container, and all Franchised Organic Materials will be
504 placed in a different Container, but where Home Food Scraps, Franchised Commercial Food Waste, and
505 Franchised Green Materials may or may not be combined into the same Container for Franchised
506 Organic Materials.

507 **"Special Rate Adjustment"** means when Contractor seeks an adjustment to the Maximum Rates in
508 addition to or at a time other than when periodic adjustments of Maximum Rates are required under
509 this Agreement pursuant to Section 10.4.

510 **"Special Service"** means extra Collection services not otherwise offered by Contractor as its basic level
511 of service, offered to the Subscriber at an additional cost approved by CCCSWA, and may include, but
512 not be limited to, Bulky Items that require at least two Persons to Collect, On-Property Service, or extra
513 Collections.

514 **"Specialty Recyclable Materials"** means those materials identified in Exhibit M, which may be Recycled
515 using special handling or unique Processing services.

516 **"Standard Industry Practice"** means (1) the then-current development and operations practices and
517 standards of the northern California solid waste and materials management industry with respect to
518 Collection, Recovery, Diversion, Transfer, Transport, and Disposal services, and (2) the then-current
519 development, operations, Closure, and Post-Closure practices and Solid Waste Association of North
520 America (or any successor organization) Manager of Landfill Operations standards in meeting
521 Contractor's obligations under this Agreement for Recovery, Diversion, and Disposal services.

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

523 **"Subcontractor"** means a Party who has entered into a contract, express or implied, with the Contractor
524 for the performance of an act that involves Collection, Processing, Transport, Transfer, Disposal and/or
525 other handling of the Franchised Materials or that involves communications with or interactions with
526 Subscribers that is necessary for the Contractor's fulfillment of its obligations for providing service under
527 this Agreement. Vendors providing materials and supplies to Contractor shall not be considered
528 Subcontractors.

529 **"Subscriber"** means a Person who voluntarily orders, receives, and pays for services from Contractor.

530 **"Subscriber Type"** means the Subscriber's category including, but not limited to, Single-Family, Multi-
531 Family, Commercial, and governmental entities. The Subscriber Types shall be used for the purposes of
532 record keeping and reporting and shall be approved by CCCSWA.

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

535 **"Tipping Fee"** is the per-Ton cost assessed by an Approved Facility or Designated Facility for Transfer,
536 Processing, and/or Disposal services.

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

539 **"Total Calculated Contractor Costs"** means the Contractor's costs of providing all services required by
540 this Agreement excluding Member Agency and CCCSWA fees. The Total Calculated Contractor Costs do
541 not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by
542 the Contractor.

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

546 **"Transfer(ring)"** (or other variations thereof) means receiving Solid Waste or Organic Materials at the
547 Approved Transfer Station from Franchise Collection Contractor's vehicles and loading the material into
548 Transfer Vehicles.

549 **"Transfer Vehicle"** means a tractor and trailer designed to haul Solid Waste or Organic Materials from
550 the Approved Transfer Station to the Approved Disposal Facility or a Designated Anaerobic Digestion
551 Facility.

552 **"Transfer Station"** means a Facility that receives and temporarily stores materials, and then transfers
553 the materials into larger trailers for Transport to a Processing Facility or Disposal Site.

554 **"Transport" (or any variation thereof)** means the conveyance of Franchised Materials Collected from
555 the point of Collection to an Approved Processing Facility, Designated Recyclables Trans-Load Facility, or
556 Approved Transfer Station or from the Approved Transfer Station to an Approved Processing Facility or
557 to the Approved Disposal Facility.

558 **“Uncontrollable Circumstance”** means, except as otherwise provided in 14.10 of this Agreement:

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

564 B. A Change in Law (as defined herein).

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

568 **“Unpermitted Waste”** means wastes or other materials that the Approved Facilities or Designated
569 Facilities may not receive under their Permits, including:

570 (1) All materials that the Approved Facilities or Designated Facilities are not permitted to
571 accept;

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

576 (3) Ash residue from the incineration of solid wastes, including Solid Waste, infectious
577 waste described in Item (8) below, wood waste, sludge not meeting at a minimum Class
578 B standards as defined by Title 40 of the Code of Federal Regulations, Part 503 (The
579 Standards for the Use or Disposal of Sewage Sludge) and agricultural wastes;

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

582 (5) Dead animals larger than 100 pounds;

583 (6) Hazardous Substances and Hazardous Waste;

584 (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the
585 Approved Facilities or Designated Facilities, including cement kiln dust, or process
586 residues;

587 (8) Medical Materials including infectious wastes that have disease transmission potential
588 and are classified as Hazardous Wastes by the State Department of Health Services,
589 including pathological and surgical wastes, medical clinic wastes, wastes from biological
590 laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as
591 linen or personal or food service items from contaminated areas, chemicals, personal
592 hygiene wastes, and carcasses used for medical purposes or with known infectious
593 diseases;

- 594 (9) Liquid wastes that are not spadeable, usually containing less than 50% solids, including
595 cannery and food processing wastes, landfill leachate and gas condensate, boiler
596 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank
597 pumpings, rendering plant byproducts, sewage sludge not meeting certain quality
598 criteria (i.e. unclassified sludge less than B), and those liquid wastes that may be
599 Hazardous Wastes;
- 600 (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20
601 of the State Health and Safety Code, and any waste that contains a radioactive material,
602 the storage or disposal of which is subject to any other state or federal regulation;
- 603 (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings,
604 removed from a wastewater treatment facility or septic tank, whether in a dry or semi-
605 dry form not meeting certain quality criteria (i.e. unclassified sludge less than "B");
- 606 (12) Designated Waste if not permitted at the Approved Facilities or Designated Facilities
607 under Applicable Law, including Permits; or,
- 608 (13) Single Loads with an excessive level of Contaminants based on visual inspection.
- 609 This definition shall be promptly amended to reflect any applicable changes in permits or
610 Applicable Law.
- 611 **"Used Motor Oil and Filter"** means motor oil and the subsequent oil filter that has been used in a
612 vehicle.
- 613 **"Used Oil Recovery Kit"** means a kit containing: one (1) reusable plastic jug of at least one (1) gallon
614 capacity with a watertight screw-on top to contain Used Motor Oil; one (1) plastic disposable resealable
615 bag of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other
616 informational media approved by the CCCSWA intended to educate Subscribers about the Used Motor
617 Oil and Filter Collection program and the benefits resulting from the proper handling of Used Motor Oil
618 and Filters. The Used Oil Recovery Kit is to be provided to Subscribers by Contractor to recover Used
619 Motor Oil and Filters from Single-Family and Multi-Family residents.

620 **ARTICLE 2**

621 **GRANT AND ACCEPTANCE OF FRANCHISE**

622 **2.1 Scope of Agreement**

623 Through this Agreement, the CCCSWA grants to Contractor an exclusive Franchise, right, and privilege to
624 Collect and Transport all Franchised Materials, to Transfer, Transport, Process, and Divert Franchised
625 Organic Materials, and to Transfer, Transport, and Dispose of Franchised Solid Waste generated within
626 the Service Area. Subject to the limitations in Section 2.2, and except where otherwise prohibited by
627 federal, State, and local laws and regulations, Contractor shall exclusively be responsible for the
628 following:

- 629 A. Collecting Franchised Materials generated at Residential and Non-Residential Premises in the
630 Service Area;
- 631 B. Transporting Franchised Materials to the Approved Facilities or Designated Facilities;
- 632 C. Cooperating with CCCSWA contractors responsible for operating the Designated Recyclables
633 Trans-Load Facility and Designated Anaerobic Digestion Facility.
- 634 D. Disposing or arranging for Disposal of Franchised Solid Waste Collected in the Service Area;
- 635 E. Processing and marketing, or arranging for Processing and marketing of Franchised Organic
636 Materials Collected in the Service Area;
- 637 F. Providing public education and outreach to residents and businesses located in the Service Area;
- 638 G. Providing customer service and Billing service to Subscribers to the satisfaction of CCCSWA, and as
639 necessary to fulfill its obligations under this Agreement;
- 640 H. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all
641 other items and services necessary to perform its obligations under this Agreement;
- 642 I. Paying all expenses related to provision of services required by this Agreement including, but not
643 limited to, taxes, regulatory fees, and payments to Member Agencies or CCCSWA, etc.;
- 644 J. Performing all services in substantial accordance with the Contractor's Proposal and in full
645 accordance with this Agreement at all times using best industry practice for comparable
646 operations. If the Contractor's Proposal and Agreement conflict, the terms and provision of the
647 Agreement shall prevail;
- 648 K. Complying with Applicable Law;
- 649 L. Providing reports in a timely manner;
- 650 M. Providing all services required by this Agreement in a thorough and professional manner so that
651 residents, businesses, and the Member Agencies are provided timely, reliable, courteous, and
652 high-quality service at all times; and,
- 653 N. Performing or providing all other services necessary to fulfill Contractor's obligations under this
654 Agreement.

655 **2.2 Limitations to Scope**

- 656 A. **Collection and Transportation of Non-Franchised Materials.** Except as otherwise provided, the
657 award of this Franchise shall not preclude the materials listed below from being delivered to and
658 collected and transported by others, provided that nothing in this Agreement is intended to or
659 shall be construed to excuse any Person from obtaining any authorization from the CCCSWA which
660 is otherwise required by law:

- 661 1. Recyclable and Organic Materials Hauled by Other Persons. Other Persons shall maintain
662 the right to collect Recyclable and Organic Materials from service recipients, but only if such
663 Persons: (a) do not directly or indirectly charge the service recipient a monetary sum or
664 other consideration for provision of such service; (b) pay the service recipient a net payment
665 for the receipt of such Recyclable or Organic Materials or accept such materials as a
666 donation; and (c) provide written documentation to the CCCSWA upon its request that
667 such Persons meet the foregoing requirements.
- 668 2. Construction and Demolition Debris. C&D and incidental Green Materials may be removed
669 from Premises by a company providing construction and demolition services to the
670 Premises, provided that such company is licensed and permitted to provide such services
671 within the Service Area, and for which building or other modification permits are required
672 and have been obtained, and that such materials are managed in a manner consistent with
673 the CCCSWA's requirements and with the municipal code(s) of the applicable Member
674 Agencies that may require Diversion of a minimum amount of such materials;
- 675 3. Dirt. Loose soil or earth from the ground may be transported by other Persons;
- 676 4. Self-Hauled Materials. Occupants may transport materials generated solely in or on their
677 own Premises using their own equipment and employees for the purposes of delivery to a
678 Transfer Station, Processing Facility, or Disposal Site;
- 679 5. Donated Materials. Any items that are donated by the Subscriber or Generator to youth,
680 civic, or other charitable organizations may be transported by other Persons, provided that
681 the service recipient is not charged any monetary sum or other consideration for such
682 services;
- 683 6. Beverage Containers. Beverage containers with redemption value delivered for Recycling
684 under the California Beverage Container Recycling Litter Reduction Act, California Public
685 Resources Code Section 14500 et seq. may be transported by other Persons;
- 686 7. Materials Removed as Incidental Part of Services. Solid Waste, Recyclable Materials, and/or
687 Organic Materials may be removed from a Premises by a contractor (e.g. gardener,
688 landscaper, tree-trimming service, construction contractor, Residential on-property clean-
689 out service) as an incidental part of the service being performed and provided that such
690 contractor is providing a service that is not included in the scope of this Agreement and is
691 complying with any and all requirements established by the CCCSWA;
- 692 8. Specialty Recyclable Materials. Other Persons may collect and transport Specialty
693 Recyclable Materials that require special handling or unique Processing services including
694 materials listed in Exhibit M hereto, provided that the provision of such service is not
695 included in the scope of this Agreement and that such Person is complying with any and all
696 requirements established by the CCCSWA. Should the CCCSWA wish to add additional
697 materials to the list of Specialty Recyclable Materials in Exhibit M, the CCCSWA shall notify
698 Contractor in writing of its desire to do so, and if Contractor requests, the Parties shall meet
699 and confer to discuss the proposed addition of materials to the list. If the CCCSWA staff and
700 the Contractor are unable to agree on the proposed addition, the matter will be referred to
701 the CCCSWA Board for final determination.

- 702 9. Reusable Items and Recyclable Materials Collected during Reuse and Cleanup Days Program
703 Events. Reusable Items and Recyclable Materials, which are not part of Commercial or
704 Residential Franchised Recyclable Materials Collection services as described in this
705 Agreement, may be collected by the Reuse Vendor pursuant to Section 5.1.H;
- 706 10. Manure, Grease Waste, and Used Cooking Oil. Manure and remains from slaughterhouse or
707 butcher shops, grease, or used cooking oil may be transported by other Persons;
- 708 11. Sewage Treatment By-Product. By-products of sewage treatment, including biosolids, ash,
709 grit, and screenings may be transported by other Persons;
- 710 12. Hazardous Waste, Untreated Medical Materials, and Designated Waste. Hazardous Waste,
711 untreated Medical Materials, and Designated Waste (as defined in California Water Code
712 Section 13173 as may be amended or renumbered from time to time), regardless of its
713 source, may be transported by other Persons;
- 714 13. Source Separated E-Materials and Source Separated U-Materials. Source Separated E-
715 Materials and Source Separated U-Materials regardless of its source, may be transported by
716 other Persons; and,
- 717 14. Materials Generated by Public Schools, State, County, and Federal Facilities. Materials
718 generated by public schools, State, county, and federal facilities located in the Service Area
719 may be transported by other Persons, provided that the Generator has arranged services
720 with such other Persons or has arranged services with the Contractor through a separate
721 agreement.
- 722 Contractor acknowledges and agrees that CCCSWA may permit other Persons besides Contractor
723 to Collect any and all types of materials excluded from the scope of this Franchise, as set forth
724 above, without seeking or obtaining approval of Contractor. If Contractor can produce evidence
725 that other Persons are performing any services within the scope of this Agreement identified in
726 Section 2.1 and not excluded from such scope under Section 2.2, including servicing Collection
727 Containers, or Collecting and Transporting Solid Waste, Recyclable Materials, and/or Organic
728 Materials in a manner that is not consistent with the Member Agencies' Municipal Codes,
729 CCCSWA Resolutions, or the requirements of this Agreement, Contractor shall report the location,
730 name, and phone number of the Person or company to the CCCSWA along with Contractor's
731 evidence of the violation of this Franchise.
- 732 B. **Processing of Franchised Recyclable Materials**. Contractor shall not engage in the Transfer or
733 Processing of Franchised Recyclable Materials to the extent that this service is managed under a
734 separate agreement between the CCCSWA and the Recyclables Contractor.
- 735 C. **Processing of Commercial Food Waste**. Contractor shall not engage in Processing of Franchised
736 Commercial Food Waste (beyond the Commercial Food Waste pre-Processing activities at the
737 Approved Commercial Food Waste Pre-Processing Facility) to the extent that this service is
738 managed under a separate agreement between the CCCSWA and the operator of the Designated
739 Anaerobic Digestion Facility.

2.3 Change in Marketability of Materials

Should any materials, by-products, or components of such materials listed in Section 2.2 above, or any other materials not currently designated as Franchised Materials, develop economic value over time, CCCSWA reserves the right to add such materials to this exclusive Franchise and may have Contractor Collect, Transfer, Transport, Process, Divert, or Dispose of such materials under this exclusive Franchise.

2.4 Change in Scope

CCCSWA may, by written notice, direct Contractor to perform additional services or modify existing services under this Agreement, but no change in scope shall be constructed so as to materially impair the exclusive rights of Contractor granted hereunder.

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

1. Change in marketability of materials, as provided above in Section 2.3;
2. Inclusion of new Diversion programs and/or High Diversion Services;
3. Research, development, and implementation of innovative services, which may entail different Collection and/or Processing methods, targeted routing, different kinds of services, different types of Collection vehicles or Containers, and/or new requirements for Generators;
4. Expansion of public education and outreach activities;
5. Elimination of programs;
6. Research, development, and performance of pilot programs;
7. Modification of the manner in which Contractor performs existing services; and,
8. Implementation of other program or service adjustments as may be determined.

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

1. Collection methodology to be employed (equipment, staffing requirements, etc.).
2. Equipment to be used (vehicle number, types, capacity, age, etc.).
3. Labor requirements (number of employees by classification; estimated hours per year per employee).
4. Estimated Subscriber participation level.
5. Type of materials to be Collected and/or Processed Containers to be used and estimated volumes per week and per year.

- 771 6. Provision for program publicity/education/marketing.
- 772 7. Five-year projection of the financial results of the program's operations in a balance sheet
773 and operating statement format including documentation of the key assumptions
774 underlying the projections and the support for those assumptions, giving full effect to the
775 savings or costs to existing services.
- 776 8. Plans and schedule for implementing the service change.
- 777 9. Other information reasonably requested by the CCCSWA.
- 778 C. CCCSWA shall review Contractor's proposal for the change in scope of services. CCCSWA may
779 negotiate with Contractor to amend the Agreement to reflect the change in scope, or CCCSWA
780 may choose not to negotiate with Contractor.
- 781 D. Contractor shall not be compensated for the proposal preparation costs or costs incurred during
782 the negotiation of its proposal for the change in scope. However, Contractor may seek a Special
783 Rate Adjustment in the event the scope of services is modified in accordance with this Section.
- 784 E. If the CCCSWA chooses to negotiate with the Contractor and the Contractor and CCCSWA cannot
785 agree on terms and conditions of such services within one hundred twenty (120) Days from the
786 date when CCCSWA first requests a proposal from Contractor to perform such services, Contractor
787 acknowledges and agrees that CCCSWA may permit other Persons besides Contractor to provide
788 additional Collection and Diversion services not otherwise contemplated by this Agreement.
- 789 F. **Contractor-Initiated Change in Scope to Reduce Costs.** At its option, Contractor may present a
790 proposal to the CCCSWA that introduces a change in scope that results in a cost savings and
791 reduction in the Total Calculated Contractor Costs. The review and approval process for this
792 change in scope shall be handled in the same manner as that described for a CCCSWA-initiated
793 change in scope pursuant to Sections 2.4.B through 2.4.D with the exception that Contractor may
794 submit its proposal at any time (rather than in response to the CCCSWA's written request). The
795 CCCSWA shall consider such proposal and, if accepted, Parties shall agree to share cost savings
796 equally for a minimum of three (3) years and potentially through the remaining Term of the
797 Agreement depending on the nature and amount of the savings.

798 **2.5 Payment of Procurement Expenses**

799 In exchange for the grant of this Franchise, Contractor agrees to pay nine hundred fifty-seven thousand
800 four hundred ninety-three dollars and seventy cents (\$957,493.70) to the CCCSWA to reimburse the
801 CCCSWA for its Franchise procurement costs and expenses. Contractor shall make payment to CCCSWA
802 by check within fifteen (15) Days of the Effective Date of this Agreement.

803 **2.6 Obligation to Provide Service**

804 CCCSWA and Contractor agree, as more fully set forth in the Recitals to this Agreement, that proper
805 Collection, Transfer, Transport, Processing, Diversion, and Disposal of Franchised Materials is
806 fundamental to the protection of the public health, safety and the well-being of CCCSWA's residents,
807 businesses, and Member Agencies. CCCSWA's responsibility for ensuring the adequacy of these services

in part provides the justification for the granting of a Franchise to Contractor. This Franchise 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. For example:

A. Should a court of competent jurisdiction or other regulatory agency set aside, invalidate or stay all or a portion of the Maximum Rates approved by CCCSWA, Contractor agrees to continue to perform its obligations as otherwise set forth herein, and CCCSWA and/or Contractor shall take such urgency actions necessary to facilitate Contractor's continuation of service.

B. Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but not limited to, Articles XIII C and D of the California Constitution which impacts the Maximum Rates for the Collection services established in accordance with this Agreement, Contractor agrees to meet and confer with CCCSWA to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.

C. If, as a result of a legal action, Contractor is unable to include Franchise Payments, other Member Agency fees, CCCSWA fees or expenses, governmental fees or charges in the Rates it charges Subscribers for its services, then Contractor agrees, upon direction from CCCSWA, to reduce its Rates in an amount corresponding to the disallowed fee or charge, and shall thereafter not be required to remit the amount of the disallowed fee or charge, provided it is not collected from Subscribers.

1. Nothing herein is intended to imply that California Constitution Articles XIII(C) or (D) apply to the Maximum Rates established for services provided under this Agreement. The foregoing paragraphs are merely intended as a contractual allocation of risks between the Parties.

2. This Section shall survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by CCCSWA to contribution or indemnity from third parties.

3. This provision is intended to be consistent with and limited by California Public Resources Code Section 40059.2.

D. **Allocation of Risk.** Neither CCCSWA nor Contractor shall have the right to obtain payment from the other Party for losses either may sustain due to a court of competent jurisdiction or other regulatory agency invalidating, setting aside, or staying the collection of all or a portion of the Maximum Rates authorized hereunder. 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 or its Member Agencies during any period where Contractor cannot lawfully collect those payment amounts from Subscribers.

2.7 No Guarantees of Materials Volume or Composition

The CCCSWA does not guarantee the quantity or composition of Franchised Materials Collected, Transported, Processed, Transferred, and/or Disposed by Contractor during the Term of the Agreement.

The Parties acknowledge that the quantity and composition of Franchised 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;
- 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.

2.8 References to Franchised Materials

From this point forward in this Agreement, references to Franchised Solid Waste, Franchised Recyclable Materials, Franchised Organic Materials, and Franchised Green Materials may hereinafter be referred to as either their defined name, or simply as "Solid Waste," "Recyclable Materials," "Organic Materials," and "Green Materials." Use of the latter term does not change the definition; for example, any future reference to "Solid Waste" means and refers to "Franchised Solid Waste," except as otherwise provided herein.

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.

- 881 B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and
882 perform its obligations under this Agreement. Contractor has taken all actions required by law or
883 otherwise to authorize the execution of this Agreement. The person(s) signing this Agreement on
884 behalf of Contractor have authority to do so, and this Agreement constitutes the legal, valid, and
885 binding obligation of Contractor enforceable against Contractor under its terms.
- 886 C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written
887 submittals made in connection with Contractor's services, including Contractor's Proposal and any
888 other supplementary information submitted to the CCCSWA, which the CCCSWA has relied on in
889 awarding and entering this Agreement, is true, accurate, and complete, and does not contain
890 material omissions or misleading statements. Contractor will inform CCCSWA of any change in
891 that information within one week of discovering any untruth or inaccuracy.
- 892 D. **Contractor's Due Diligence.** Contractor has made an independent investigation and examination
893 (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work
894 to be performed hereunder. Relying solely upon its own investigation, advice, and counsel,
895 Contractor has taken such matters into consideration in entering this Agreement to provide
896 services in exchange for the Contractor Revenue provided for under the terms of this Agreement.
- 897 E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
898 manage, Collect, Transfer, Transport, Process, Divert, and Dispose of the Franchised Materials, and
899 Contractor possesses the equipment, facilities, and employee resources required to perform this
900 Agreement.
- 901 F. **Voluntary Use of Approved Facilities and Designated Facilities.** Contractor, without constraint
902 and as a free-market business decision in accepting this Agreement, agrees to use the Approved
903 Facilities, Designated Facilities, or other location approved by CCCSWA, for the purposes of
904 Transferring, Processing, Diverting, or Disposing of all Franchised Materials Collected. Such
905 decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in
906 Law regarding flow control limitations or any definition thereof.
- 907 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that CCCSWA
908 expressly disclaims any warranties, either express or implied, as to the volume, type,
909 merchantability or fitness for any particular purpose of Franchised Materials Collected by
910 Contractor.
- 911 H. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor,
912 its officers, employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against the
913 CCCSWA or the Recyclables Contractor that alleges any claims related to, arising out of, or in
914 connection with the CCCSWA's Request for Proposals process for the Contractor's Services or the
915 Recyclables Contractor's services, including the award of any agreement or contract thereunder.
- 916 I. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance
917 with and has completed all requirements necessary to become certified under the Iran
918 Contracting Act (Public Contract Code Sec. 2200). Proof of certification shall be included as Exhibit
919 W of this Agreement.

3.2 Of CCCSWA

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

- A. **Existence and Powers.** CCCSWA is a Joint Powers Authority duly organized and validly existing under the laws of the State of California, with full legal right, power, and authority to enter into and perform its 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 Franchised Materials Collected 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, the execution or delivery of this Agreement, as well as 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.

ARTICLE 4 TERM OF AGREEMENT

4.1 Term and Option to Extend

The Term of this Agreement shall commence March 1, 2015 (Commencement Date) and continue in full force for a period of ten (10) years, through and including February 28, 2025, unless the Agreement is extended in accordance with this Section or terminated pursuant to Article 14. Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing services required by this Agreement on the Commencement Date.

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

Prior to extending the Term, the Parties shall meet and confer to discuss depreciation of Collection vehicle and Containers in service and future acquisition needs and related costs, if any. The Parties shall agree on how depreciation and interest expenses shall be treated during the extension period. Parties shall analyze whether, and if so, how much the depreciation and interest expenses may be reduced for equipment that is fully depreciated and how to address depreciation and interest expense of any equipment that will need to be purchased during the extension period under consideration. The CCCSWA Executive Director shall make the final determination in the event any disputes arise regarding depreciation and interest expenses during the extension period.

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

4.2 Extension Conditions

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

- A. **Diversion Performance.** Contractor has maintained a 75% Diversion Level for the most recent three (3) years. The Diversion Level shall be calculated for each Rate Year, and shall equal the sum of Franchised Recyclable Materials and Franchised Organic Materials Tonnage Collected less Processing Residue divided by the Total Franchise Materials Collected.

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

992 Contractor's achievement of the conditions shall be determined by the CCCSWA through review of
993 reports provided pursuant to Article 12. For the purpose of this Section, the most recent three (3) years
994 shall be defined as the most-recently completed thirty-six (36) months ending one year in advance of
995 the then-current end date of the Term. For example, if the CCCSWA is considering an extension beyond
996 the initial ten- (10-) year Term, the most-recently completed three- (3-) year period would be March
997 2021 through February 2024.

998 **ARTICLE 5**
999 **COLLECTION SERVICES**

1000 This Article 5 describes the general requirements for the Collection services to be provided by
1001 Contractor including the types and sizes of Containers to be provided by Contractor, frequency of
1002 Collection, various Service Levels to be offered to Subscribers, and other Collection program details.
1003 Residents and businesses in the Service Area are not required to arrange for Collection service; if
1004 however, a Person chooses to have Collection service such Person is required to use the Contractor's
1005 Collection service for Franchised Materials.

1006 **5.1 Single-Family Collection Services**

1007 Contractor shall provide the services described in this Section 5.1 to any Single-Family Subscriber within
1008 the Service Area who subscribes with Contractor for such service.

1009 A. **Franchised Solid Waste Collection.** Contractor shall Collect Franchised Solid Waste in Contractor-
1010 provided Carts one (1) time per week from Single-Family Subscribers and Transport all Franchised
1011 Solid Waste to the Approved Transfer Station for Transfer and Disposal at the Approved Disposal
1012 Facility. Contractor shall charge Subscribers for Solid Waste Collection at a Rate not to exceed the
1013 Maximum Rate.

1014	Containers:	Carts
1015	Container Sizes:	Contractor shall offer 32-gallon Carts as the standard Container size;
1016		and shall provide 20-, 64-, and 96-gallon Carts to Subscribers upon
1017		Subscribers' request
1018	Service Frequency:	One (1) time per week
1019	Service Location:	Curbside service shall be provided to all Single-Family Subscribers
1020		(including Subscribers considered Hard-to-Serve). Contractor shall
1021		provide On-Property Service upon Subscriber request and shall charge a
1022		Rate not to exceed the Maximum Rate with the exception that On-
1023		Property Service shall be provided at no charge to disabled Subscribers
1024		in accordance with Section 5.1.J.
1025	Acceptable Materials:	Franchised Solid Waste
1026	Additional Service:	• Contractor shall establish an "overages" program that allows Single-
1027		Family Subscribers to place additional Franchised Solid Waste
1028		contained in Subscriber-provided bags Curbside, adjacent to the

1029 Franchised Solid Waste Cart, on their regularly scheduled Collection
 1030 day. Contractor may charge Subscribers a Rate not to exceed the
 1031 Maximum Rate for "Solid Waste Overage."

1032 • Contractor's standard method of Collection shall be automated
 1033 Collection; however, in certain parts of the Service Area considered
 1034 Hard-to-Serve, Contractor may provide non-automated Collection
 1035 or other special Collection service not typical of the majority of the
 1036 Service Area to accommodate those residents where terrain or
 1037 geography interferes with regular automated Collection.

1038 B. **Franchised Recyclable Materials Collection.** Contractor shall Collect Franchised Recyclable
 1039 Materials in Contractor-provided Containers one (1) time per week from Single-Family Subscribers
 1040 and Transport all Franchised Recyclable Materials to the Designated Recyclables Trans-Load
 1041 Facility for transfer and Processing by the Recyclables Contractor. This service shall be provided
 1042 by Contractor at no charge to the Subscriber as the cost for Franchised Recyclable Materials
 1043 Collection service shall be included in the Single-Family Rate for Solid Waste Collection Service.

1044 **Containers:** Carts
 1045 **Container Sizes:** Contractor shall offer 96-gallon Carts as the standard Container size
 1046 unless a different standard size is approved by the CCCSWA Executive
 1047 Director; and shall provide 32- and 64-gallon Carts to Subscribers upon
 1048 Subscribers' request
 1049 **Service Frequency:** One (1) time per week on the same day as Franchised Solid Waste
 1050 Collection
 1051 **Service Location:** Curbside service shall be provided to all Single-Family Subscribers
 1052 (including Subscribers considered Hard-to-Serve). Contractor shall
 1053 provide On-Property Service upon Subscriber request and shall charge a
 1054 Rate not to exceed the Maximum Rate with the exception that On-
 1055 Property Service shall be provided at no charge to disabled Subscribers
 1056 in accordance with Section 5.1.J.
 1057 **Acceptable Materials:** Franchised Recyclable Materials
 1058 **Additional Service:** • Contractor shall provide each Single-Family Subscriber with one Cart
 1059 for Franchised Recyclable Materials and, upon request, shall provide
 1060 additional Franchised Recyclable Materials Carts to Single-Family
 1061 Subscribers at a Rate not to exceed the Maximum Rate for the
 1062 "Additional Recycling Cart".

1063 • Contractor's standard method of Collection shall be automated
 1064 Collection; however, in certain parts of the Service Area considered
 1065 Hard-to-Serve, Contractor may provide non-automated Collection
 1066 or other special Collection service not typical of the majority of the
 1067 Service Area to accommodate those residents where terrain or
 1068 geography interferes with regular automated Collection.

1069 • Contractor shall Collect discarded Batteries and cell phones placed
 1070 for Collection in Subscriber-provided, clear, zip-lock or tie-close
 1071 plastic bags on top of the Franchised Recyclable Materials Carts,
 1072 and compact fluorescent bulbs (CFLs) placed for Collection in

1073 Subscriber-provided, clear, zip-lock or tie-close bags next to the
1074 Franchised Recyclable Materials Cart.

- 1075 • Contractor shall Transport all Batteries and CFLs to the Approved
1076 Maintenance Yard where Contractor shall arrange for proper
1077 Recycling of Batteries and Disposal or Recycling of CFLs.

1078
1079 C. **Franchised Residential Organic Materials Collection.** Contractor shall Collect Franchised
1080 Residential Organic Materials in Contractor-provided Containers one (1) time per week from
1081 Single-Family Subscribers, with the exception of Townhouse Subscribers, who shall receive
1082 Franchised Residential Organic Materials Collection service only upon Subscribers' request. In the
1083 event that a Townhouse Subscriber requests Residential Organic Materials Collection service,
1084 Contractor shall treat Subscriber as a regular Single-Family Subscriber for the purposes of Billing,
1085 and shall not offer Subscriber the reduced Townhouse Rate. This service shall be provided by
1086 Contractor at no charge to the Single-Family Subscribers as the cost for Franchised Residential
1087 Organic Materials Collection service shall be included in the Single-Family Rate for Solid Waste
1088 Collection Service, with the exception of Townhouse Subscribers whose Rate shall exclude
1089 Franchised Residential Organic Materials Collection. Contractor shall Transport all Franchised
1090 Residential Organic Materials to the Approved Transfer Station for Transfer and Processing at the
1091 Approved Organic Materials Processing Facility.

1092 **Containers:** Carts
1093 **Container Sizes:** Contractor shall offer 96-gallon Carts as the standard Container size,
1094 unless a different standard size is approved by the CCCSWA Executive
1095 Director; and shall provide 32- and 64-gallon Carts to Subscribers upon
1096 Subscribers' request
1097 **Service Frequency:** One (1) time per week on the same day as Franchised Solid Waste
1098 Collection
1099 **Service Location:** Curbside service shall be provided to all Single-Family Subscribers
1100 (including Subscribers considered Hard-to-Serve). Contractor shall
1101 provide On-Property Service upon Subscriber request and shall charge a
1102 Rate not to exceed the Maximum Rate with the exception that On-
1103 Property Service shall be provided at no charge to disabled Subscribers
1104 in accordance with Section 5.1.J.
1105 **Acceptable Materials:** Franchised Residential Organic Materials
1106 **Additional Service:**

- 1107 • Contractor shall provide each Single-Family Subscriber with one (1)
1108 Cart for Franchised Residential Organic Materials and, upon request,
1109 shall provide additional Franchised Residential Organic Materials
1110 Carts to Single-Family Subscribers at a Rate not to exceed the
1111 Maximum Rate for "Additional Residential Organics Cart".
- 1112 • Contractor's standard method of Collection shall be automated
1113 Collection; however, in certain parts of the Service Area considered
1114 Hard-to-Serve, Contractor may provide non-automated Collection
1115 or other special Collection service not typical of the majority of the
1116 Service Area to accommodate those residents where terrain or
1117 geography interferes with regular automated Collection.
- 1118 • Contractor shall provide kitchen pails to: (i) all new Home Food
Scrap Collection Subscribers, including existing Townhouse

1119 Subscribers, (ii) Subscribers in the Town of Danville or
1120 unincorporated Contra Costa County areas upon Subscriber
1121 request, prior to the Commencement Date and during the Term,
1122 and (iii) Subscribers requesting a kitchen pail to replace a lost or
1123 broken pail provided that Contractor is only obligated to provide
1124 one kitchen pail every two years upon Subscriber request. Kitchen
1125 pail specifications shall be approved by the CCCSWA prior to
1126 ordering and distribution.
1127

1128 D. **Curbside On-Call Solid Waste Only Clean-Ups.** Contractor shall Collect Franchised Solid Waste
1129 from Single-Family Subscribers that have scheduled an extra Franchised Solid Waste Collection
1130 one (1) time per Rate Year, at no charge to Subscriber, and shall Transport all materials to the
1131 Approved Transfer Station for Transfer and Disposal at the Approved Disposal Facility.

1132 **Containers:** Subscriber-provided Containers, boxes or bags
1133 **Service Level:** Up to two (2) cubic yards of Franchised Solid Waste per on-call pick-up
1134 **Service Frequency:** One (1) time per Rate Year (as requested by Subscriber)
1135 **Service Location:** Curbside
1136 **Acceptable Materials:** Franchised Solid Waste
1137 **Prohibited Materials:** Unpermitted Materials, large furniture, appliances, any single bag, box,
1138 or container that exceeds fifty (50) pounds, or any single item that
1139 exceeds two hundred (200) pounds.

1140 **Additional Service:**

- As requested by Subscriber, Contractor shall Collect additional
1141 materials beyond the two (2) cubic yard limitation and Bulky Items
1142 for which a Maximum Rate has been defined, and may charge the
1143 applicable additional item Rate not to exceed the Maximum Rate.
- Contractor shall provide additional On-call Solid Waste only clean-
1144 up Collection events for a Subscriber beyond one (1) per Rate Year
1145 and may charge an "Additional On-Call Solid Waste Only Clean-Up"
1146 Rate not to exceed the Maximum Rate.

1147
1148
1149 **Other Requirements:**

- Contractor shall provide the service to the Subscriber on the
1150 Subscriber's next regularly scheduled Franchised Solid Waste
1151 Collection day within seven (7) Business Days of the Subscriber's
1152 requested service date, and such date shall be mutually agreed
1153 upon by the Subscriber and Contractor.

1154

- Contractor shall notify Subscribers that materials shall not be placed
1155 Curbside more than twenty-four (24) hours in advance of the
1156 scheduled Collection day.

1157

- Contractor shall tag any items not Collected and such tag shall
1158 indicate the reason the item(s) were not Collected and describe
1159 how to arrange for prompt and proper Reuse, Recycling, or
1160 Disposal. Within twenty-four (24) hours of tagging item(s), the
1161 Contractor shall notify the CCCSWA via email of the Premises where
1162 materials were not picked up, describing the type of material(s) and
1163 reason.
1164

1165 E. **Curbside On-Call Recyclable Materials and Organic Materials Only Clean-Ups.** Contractor shall
1166 offer up to four (4) on-call pick-ups for Franchised Recyclable Materials Only and/or Franchised
1167 Residential Organic Materials Only clean-ups at no additional cost to Single-Family Subscribers.
1168 Subscribers may box, bag, bundle, or set out in their own Containers up to two (2) cubic yards of
1169 Franchised Recyclable Materials or Franchised Organic Materials, and place materials Curbside for
1170 Collection. Subscribers may also set-out flattened and bundled cardboard no greater than four (4)
1171 feet by four (4) feet in size. Contractor shall Transport the Franchised Recyclable Materials to the
1172 Approved Recyclables Trans-Load Facility and the Franchised Organic Materials to the Approved
1173 Transfer Station for Transfer to and Processing at the Approved Organic Materials Processing
1174 Facility.

1175
1176 **Containers:** Subscriber-provided Containers, boxes, bags, or bundles
1177 **Service Level:** Up to two (2) cubic yards of Franchised Recyclable Materials or
1178 Franchised Residential Organic Materials per on-call pick-up
1179 **Service Frequency:** Four (4) times per Rate Year (as requested by Subscribers)
1180 **Service Location:** Curbside
1181 **Acceptable Materials:** Franchised Recyclable Materials, Franchised Organic Materials
1182 **Additional Service:**

- 1183 • Contractor shall provide additional on-call Franchised Recyclable
1184 Materials Only or Franchised Residential Organic Materials Only
1185 clean-ups Collection events for a Subscriber beyond four (4) per
1186 Rate Year and may charge an "Additional On-Call Recyclable or
1187 Organics Only Clean-Up" Rate not to exceed the Maximum Rate.

1188 **Other Requirements:**

- 1189 • Contractor shall provide the service to the Subscriber on the
1190 Subscriber's next regularly scheduled Franchised Recyclable
1191 Materials Collection day within seven (7) Business Days of the
1192 Subscriber's requested service date, and such date shall be mutually
1193 agreed upon by the Subscriber and Contractor.
- 1194 • Contractor shall notify Subscribers that materials shall not be placed
1195 Curbside more than twenty-four (24) hours in advance of the
1196 scheduled Collection day.
- 1197 • Contractor shall tag any items not Collected and such tag shall
1198 indicate the reason the item(s) were not Collected and describe
1199 how to arrange for prompt and proper Disposal. Within twenty-
1200 four (24) hours of tagging item(s), the Contractor shall notify the
1201 CCCSWA via email of the Premises where materials were not picked
1202 up, describing the type of material(s) and reason.

1203 F. **Curbside On-Call E-Materials Collection.** Contractor shall offer Single-Family Subscribers
1204 Collection of E-Materials on an on-call basis upon Subscriber request at a Rate not to exceed the
1205 Maximum Rate for "On-Call E-Materials Collection". Contractor shall Transport all E-Materials to
1206 the Approved Maintenance Yard where Contractor shall arrange for proper Recycling and/or
1207 Disposal of the E-Materials.

1208 **Containers:** Subscriber-provided containers, boxes, bags, or bundles
1209 **Service Level:** Up to one (1) cubic yard of assorted E-Materials per on-call pick-up

1210	Service Frequency:	On-Call, as requested by Subscriber
1211	Service Location:	Curbside
1212	Acceptable Materials:	E-Materials
1213	Other Requirements:	<ul style="list-style-type: none"> Contractor shall provide the service to the Subscriber on the Subscriber's next regularly scheduled Franchised Recyclable Materials Collection day within seven (7) Business Days of the Subscriber's requested service date, and such date shall be mutually agreed upon by the Subscriber and Contractor.
1214		
1215		
1216		
1217		
1218		<ul style="list-style-type: none"> Contractor shall notify Subscribers that materials shall not be placed Curbside more than twenty-four (24) hours in advance of the scheduled E-Materials Collection day.
1219		
1220		
1221		<ul style="list-style-type: none"> Contractor shall tag any items not Collected and such tag shall indicate the reason the item(s) were not Collected and describe how to arrange for prompt and proper Disposal. Within twenty-four (24) hours of tagging item(s), the Contractor shall notify the CCCSWA via email of the Premises where materials were not picked up, describing the type of material(s) and reason.
1222		
1223		
1224		
1225		
1226		
1227		<ul style="list-style-type: none"> To ensure that E-Materials are handled according to the highest environmental and safety standards available, Contractor shall, on or before the Commencement Date, become certified as an approved "e-Steward" through the Basal Action Network (BAN) or similar alternative CCCSWA-approved organization.
1228		
1229		
1230		
1231		
1232		
1233	G. Used Motor Oil and Filter Collection.	Contractor shall Collect Used Motor Oil and Filters in a Contractor-provided Used Oil Recovery Kit from Single-Family Subscribers, at no additional charge to Subscribers, and properly Dispose of or Recycle the Used Motor Oil and Filter. Contractor shall Transport all Used Motor Oil and Filters to the Approved Maintenance Yard where Contractor shall arrange for proper Recycling of such materials.
1234		
1235		
1236		
1237		
1238	Containers:	Used Oil Recovery Kit
1239	Container Sizes:	Various (as provided by Contractor and approved by CCCSWA)
1240	Service Frequency:	Up to one (1) time per week (as requested by Subscriber) on the same day as Franchised Solid Waste Collection
1241		
1242	Service Location:	Curbside (adjacent to Franchised Recyclable Materials Cart)
1243	Acceptable Materials:	Used Motor Oil and Filter
1244	Additional Service:	Not applicable
1245	Other Requirements:	Contractor shall provide a Used Oil Recovery Kit to a Subscriber on the next scheduled service day after such request is made by Subscriber at no additional cost to Subscriber. Upon Collection of Used Motor Oil and Filter from a Subscriber, Contractor shall leave a Used Oil Recovery Kit adjacent to the Franchised Recyclable Materials Cart. Contractor shall not be required to Collect more than two (2) Used Oil Recovery Kits per week from Single-Family Subscribers who request it.
1246		
1247		
1248		
1249		
1250		
1251		
1252		
1253	H. Curbside Reuse and Cleanup Days Program Collection.	Contractor and Reuse Contractor shall work cooperatively to provide the Curbside Reuse and Cleanup Days Program to all Single-Family Subscribers two (2) times per Rate Year, pursuant to the cooperative agreement between
1254		
1255		

1256 Contractor, the CCCSWA, the Reuse Contractor and participating charitable organizations, which
1257 shall govern the Reuse and Clean-Up Days Program. CCCSWA shall direct its Reuse Contractor to
1258 Collect Recyclable Materials and Reusable Items from Single-Family Subscribers and Transport all
1259 materials to the Approved Processing Facility. Contractor shall coordinate with the Reuse
1260 Contractor to ensure that on the same day as Reuse Contractor Collection, after Reuse Contractor
1261 Collection, Contractor shall Collect remaining materials that the Reuse Contractor was unable, or
1262 chose not to Collect, excluding Bulky Items, branches or wood longer than four (4) feet in length or
1263 twenty-four (24) inches in diameter, and Excluded Materials. Contractor shall haul these materials
1264 to the Approved Transfer Station.

1265 Contractor shall Collect up to two (2) cubic yards or about fourteen (14) 32-gallon bags from each
1266 Subscriber, which shall include any Reusable or Recyclable Materials that were not collected by
1267 the Reuse Vendor. Contractor shall not be required to Collect items that weigh more than two
1268 hundred (200) pounds, that are longer than four (4) feet, or bags that weigh more than fifty (50)
1269 pounds.

1270 I. **Holiday Tree Collection.** Contractor shall offer to each Single-Family Subscriber Curbside
1271 Collection of holiday trees beginning on the first Monday following New Year's Day at no charge.
1272 In the event New Year's Day is a Monday, holiday tree Collection shall commence on the first
1273 Tuesday following New Year's Day and continue for fifteen (15) Business Days. Holiday trees shall
1274 be Collected on the Subscriber's regular Collection day during the designated week(s). Contractor
1275 shall Collect holiday trees Curbside in Lafayette, Moraga, and Orinda, and the unincorporated
1276 areas adjacent to these Member Agencies during the week containing the first Monday of January
1277 during Rate Year One. Contractor shall Collect holiday trees Curbside in Danville, Walnut Creek,
1278 and unincorporated areas adjacent to both Danville and Walnut Creek and in the unincorporated
1279 areas known as Alamo, Diablo, and Blackhawk during the week containing the second Monday of
1280 January during Rate Year One. Contractor shall each year alternate the portion of the Service Area
1281 that is Collected the first Monday in January. Contractor shall Collect any remaining holiday trees
1282 placed at the Curb in the entire CCCSWA Service Area on Subscriber's regularly scheduled
1283 Collection day during the week containing the third Monday of each January. This provides
1284 Subscribers with two opportunities for Curbside holiday tree Collection. Subscriber notification
1285 requirements are specified in the public education plan, Exhibit A.

1286 J. **Alternative Service Location for Disabled Single-Family Subscribers.** Contractor shall allow for
1287 Persons that have a disability as defined by the Americans with Disabilities Act (which means
1288 Public Law 101-336, 104 Stat. 327, 42 U.S.C. §§ 12101-12213 and 27 U.S.C. §§ 225 and 611, and all
1289 federal rules and regulations relating thereto) that are Occupants of Single-Family Premises to
1290 receive Collection services at a location other than Curbside, such as On-Property Service, at no
1291 extra charge to the Subscriber. Contractor shall review all applications made by disabled
1292 Subscribers (which shall include statements from physicians) to determine conformance with this
1293 exemption provision and shall grant exemptions, if applicable. In the event of disputes between
1294 Contractor and Subscriber, the CCCSWA Executive Director shall make the final determination on
1295 the Subscriber's rights to Collection service at an alternative location. Contractor shall make
1296 reasonable accommodations with regard to provision of and servicing of Containers (e.g.,
1297 Container size and type, placement of Containers for Collection, etc.) at no additional cost to the
1298 Subscriber.

- 1299 K. **Vacation Holds.** Contractor shall provide temporary vacation holds at no cost to the Subscriber. In
1300 such case, Subscriber may suspend Collection service for a minimum of one (1) week, up to a
1301 combined time of three (3) weeks per Rate Year. Contractor shall not charge the Subscriber for
1302 service during that period.
- 1303 L. **Compost Certification Credit.** Contractor shall allow Single-Family Subscribers that conduct on-
1304 property Composting to receive a monthly credit to their Rates at an amount not less than the
1305 Maximum Rate credit. Contractor shall review all applications made by on-property composters to
1306 determine conformance with this provision, and shall certify composters and grant eligibility for
1307 the credit, if applicable. In the event of disputes between Subscriber and Contractor, the CCCSWA
1308 Executive Director shall make the final determination about Subscriber's classification as a home
1309 composter.
- 1310 M. **Hard-to-Serve Properties and Rates.** Contractor shall provide Curbside service to all Hard-to-Serve
1311 Subscribers located on the streets set forth in Exhibit O as the "Hard-to-Serve Route List". Except
1312 as otherwise reasonably requested by a Subscriber, such service shall remain classified as Hard-to-
1313 Serve throughout the Term of the Agreement. Contractor-initiated amendments to the "Hard-to-
1314 Serve Route List" from time to time shall be subject to approval by the CCCSWA Executive
1315 Director. In the event of disputes between Subscriber and Contractor, the CCCSWA Executive
1316 Director shall make a final determination about Subscriber's classification as a Hard-to-Serve
1317 Subscriber. This Hard-to-Serve service shall be provided on all public and private roads or lanes at
1318 the Collection locations appropriate for such service. Contractor shall charge Hard-to-Serve
1319 Subscribers a Rate not to exceed the Maximum Rate for Hard-to-Serve Subscribers.
- 1320 N. **Rural County Area Properties.** Contractor shall provide Solid Waste and Recyclable Materials
1321 Collection services to all Residential and Commercial Subscribers in the unincorporated area of
1322 southeastern Contra Costa County and shall charge Subscribers at Rural Area Rates not to exceed
1323 the Maximum Rates for Rural Subscribers. A map of this rural portion of the Service Area is
1324 included in Exhibit I. The Collection services that Contractor shall provide to these Subscribers are
1325 limited to the following services:
- 1326 1. Weekly Franchised Solid Waste Collection using Carts and one (1), two (2), or three (3) cubic
1327 yard Bins at Subscriber's request.
- 1328 2. Weekly Franchised Recyclable Materials Collection where Contractor shall Collect Recyclable
1329 Materials contained in Contractor-provided 64-gallon plastic bags in the same vehicle as the
1330 Solid Waste provided that it makes arrangements for the bagged Recyclables to be separated
1331 from the Solid Waste at the Approved Transfer Station and Transferred to the Designated
1332 Recyclables Trans-Load Facility. Quarterly, Contractor shall mail such bags for Recyclables
1333 Collection to rural Subscribers in a quantity that ensures each Subscriber has enough capacity
1334 to average one (1) 64-gallon bag per week.
- 1335 3. On-call Solid Waste, Recyclable Materials, and Bulky Item Collection services for Residential
1336 Premises in accordance with requirements described for Single-Family Customers in Sections
1337 5.1.D and 5.1.E.
- 1338 The CCCSWA reserves the right to require that the Contractor offers Franchised Residential
1339 Organic Materials Collection services to these rural accounts in the future. Such change will be
1340 treated as a Change in Scope in accordance with Section 2.4.

5.2 Multi-Family Collection Services

Contractor shall provide the services described in this Section 5.2 to any Multi-Family Subscriber within the CCCSWA Service Area who subscribes with Contractor for such service.

A. **Franchised Solid Waste and Franchised Recyclable Materials Collection.** Contractor shall Collect Franchised Solid Waste and Franchised Recyclable Materials from Multi-Family Subscribers in the same manner as it does for Commercial Subscribers pursuant to Section 5.3.

B. **Franchised Residential Organic Materials Collection.** Upon Subscriber request, Contractor shall provide Franchised Residential Organic Materials services to Multi-Family Subscribers in the same manner as it does for Single Family Subscribers pursuant to Section 5.1.C at a Rate not to exceed the Maximum Rate for Multi-Family Organic Materials Collection.

C. **Curbside On-Call E-Materials Collection.** Contractor shall offer Multi-Family Subscribers Collection of E-Materials on an on-call basis upon Subscriber request at a Rate not to exceed the Maximum Rate for "On-Call E-Materials Collection". The requirements of the program shall be the same as that provided for Single-Family Subscribers as described in Section 5.1.F; however, Contractor shall coordinate with property managers as needed to address Collection location and any other concerns or requests property managers may have.

D. **Used Motor Oil and Filter Collection.** Contractor shall Collect Used Motor Oil and Filters in a Contractor-provided Used Oil Recovery Kit from Multi-Family Subscribers and properly Dispose of or Recycle the Used Motor Oil and Filter. The requirements of the program shall be the same as that provided for Single-Family Subscribers as described in Section 5.1.G; however, Contractor shall coordinate with property managers as needed to address Collection location and any other concerns or requests property managers may have.

E. **Holiday Tree Collection.** Contractor shall offer to each Multi-Family Subscriber Collection of holiday trees beginning on the first Monday following New Year's Day at no charge. The requirements of the program shall be the same as that provided for Single-Family Subscribers as described in Section 5.1.I; however, Contractor shall coordinate with property managers as needed to address Collection location and any other concerns or requests property managers may have.

F. **Reusable Recyclable Storage Bags for Multi-Family Tenants.** Contractor shall provide Multi-Family Subscribers reusable bags for storage of Recyclable Materials that can be provided to each tenant unit at no cost to the Subscriber. Contractor shall distribute Recycling bags to all Multi-Family Premises during the first six (6) months of the Agreement and then shall promote the availability of the Recyclables storage bags during outreach efforts and site visits conducted during the Term of the Agreement with the Owner or property manager, and shall promote the availability of the bags through other Multi-Family public education materials required by Exhibit A.

Throughout the Term of the Agreement, Contractor shall purchase a sufficient number of Recyclable storage bags to maintain an inventory of bags so that upon a Multi-Family Subscriber's request, Contractor can deliver the bags to the Multi-Family Premises, and distribute the bags (if requested) to each tenant unit at Multi-Family Premises within three (3) weeks of request. Each bag shall be accompanied by a flyer describing the Recycling program requirements.

1382 The reusable Recyclable storage bags shall be made of 190 GM woven polypropylene made with
1383 100% recycled materials. The bag shall be approximately 15 inches by 7 inches by 16 inches and
1384 shall be equipped with two nylon handles capable of carrying 20 pounds. Contractor must submit
1385 the bag order (including material and design specifications, colors and identification marks) to
1386 CCCSWA Executive Director for written approval prior to submitting the order to the
1387 manufacturer.

1388 5.3 Commercial Collection Services

1389 Contractor shall provide the services described in this Section 5.3 to any Commercial Subscriber within
1390 the CCCSWA Service Area who subscribes with Contractor for such service, and Contractor shall charge a
1391 Rate not to exceed the Maximum Rate for requested service.

1392 A. **Franchised Solid Waste Collection.** Contractor shall Collect Franchised Solid Waste in Contractor-
1393 provided Containers and/or Subscriber-provided Compactors not less than one (1) time per week
1394 from Commercial Subscribers.

1395	Containers:	Carts, Bins, Drop Boxes, Compactors
1396	Container Sizes:	Contractor shall provide the following Container sizes to Subscribers at
1397		the request of the Subscriber:
1398		32-, 64-, and 96-gallon Carts
1399		1-, 2-, 3-, 4-, 5-, 6-, and 8-cubic yard Bins;
1400		8-, 10-, 12-, 14-, 15-, 20-, 25-, 30-, 32-, and 40-cubic yard Drop Boxes;
1401		and,
1402		1.5-, 2-, 3-, 4-, and 6-cubic yard Compactors.
1403	Service Frequency:	Up to five (5) times per week for Cart service; up to six (6) times per
1404		week for Bin, Drop Box or Compactor service; as requested by
1405		Subscriber
1406	Service Location:	Curbside or other Subscriber-selected service location at the
1407		Commercial Premises.
1408	Acceptable Materials:	Franchised Solid Waste
1409	Additional Service:	Upon Subscriber request and to accommodate periodic additional
1410		service needs, Contractor shall provide on-call Collection service at a
1411		greater frequency than the Subscriber's regularly scheduled service, up
1412		to the maximum service frequency listed above and Contractor may
1413		charge the Subscriber a Rate not to exceed the Maximum Rate for the
1414		on-call service.
1415		Upon Subscriber's request, Contractor shall replace Subscriber's Bin
1416		with a clean and functional Bin one (1) time each year if Subscriber
1417		requests such Bin cleaning or maintenance.
1418	Other Requirements:	At Subscriber's request, Contractor shall open and close gates, lock and
1419		unlock enclosures and Containers, or perform other services as
1420		reasonably necessary to access and empty Containers. Provision of such
1421		services shall be included in and shall not be in addition to the Rates
1422		Contractor charges for Commercial Franchised Solid Waste Collection
1423		service. Contractor shall push and/or pull Containers at Subscriber's

1424 request and shall charge the Subscriber a Rate not to exceed the
1425 Maximum Rate for the push/pull.

1426 B. **Franchised Recyclable Materials Collection.** Contractor shall Collect Franchised Recyclable
1427 Materials in Contractor-provided Containers not less than one (1) time per week from Commercial
1428 Subscribers and shall charge a Rate not to exceed the Maximum Rate for requested service (if
1429 Maximum Rates have been established for Recyclable Materials Collection services).

1430 **Containers:** Carts, Bins, Drop Boxes, Compactors
1431 **Container Sizes:** Contractor shall provide the same Container options as provided for
1432 Franchised Solid Waste (Section 5.3.A) and shall provide Subscriber with
1433 the Container(s) size(s) requested
1434 **Service Frequency:** Up to five (5) times per week for Cart service; up to six (6) times per
1435 week for Bin, Drop Box or Compactor service; as requested by
1436 Subscriber
1437 **Service Location:** Curbside or other Subscriber-selected service location at the
1438 Commercial Premises.
1439 **Acceptable Materials:** Franchised Recyclable Materials
1440 **Additional Service:** Upon Subscriber request and to accommodate periodic additional
1441 service needs, Contractor shall provide on-call Collection service at a
1442 greater frequency than the Subscriber's regularly scheduled service, up
1443 to the maximum service frequency stated above and Contractor may
1444 charge a Rate not to exceed the Maximum Rate for the on-call service.
1445 **Other Requirements:** At Subscriber's request, Contractor shall open and close gates, lock and
1446 unlock enclosures and Containers, or perform other services as
1447 reasonably necessary to access and empty Containers. Provision of such
1448 services shall be included in and shall not be in addition to the Rates
1449 Contractor charges for Commercial Franchised Recyclable Materials
1450 Collection service. Contractor shall push and/or pull Containers at
1451 Subscriber's request and shall charge the Subscriber a Rate not to
1452 exceed the Maximum Rate for the push/pull.
1453

1454 C. **Franchised Green Materials Collection.** Contractor shall Collect Franchised Green Materials in
1455 Contractor-provided Containers not less than one (1) time per week from Commercial Subscribers,
1456 upon Subscriber request and shall charge a Rate not to exceed the Maximum Rate for requested
1457 service.

1458 **Containers:** Carts
1459 **Container Sizes:** 32-, 64-, and 96-gallon Carts and Drop Boxes for permanent Subscribers
1460 **Service Frequency:** One (1) time per week, as requested by Subscriber
1461 **Service Location:** Curbside or other Subscriber-selected service location at the
1462 Commercial Premises
1463 **Acceptable Materials:** Franchised Green Materials
1464 **Additional Service:** Contractor shall provide each Commercial Subscriber with one (1) or
1465 more Carts for Franchised Green Materials.
1466 **Other Requirements:** At Subscriber's request, Contractor shall open and close gates, lock and
1467 unlock enclosures and Containers, or perform other services as
1468 reasonably necessary to access and empty Containers. Provision of such

1469 services shall be included in and shall not be in addition to the Rates
1470 Contractor charges for Commercial Franchised Green Materials
1471 Collection service. Contractor shall push and/or pull Containers at
1472 Subscriber's request and shall charge the Subscriber a Rate not to
1473 exceed the Maximum Rate for the push/pull.
1474

1475 D. **Franchised Commercial Food Waste Collection.** Contractor shall Collect Franchised Commercial
1476 Food Waste in Contractor-provided Containers not less than one (1) time per week from
1477 Commercial Subscribers and shall charge a Rate not to exceed the Maximum Rate for requested
1478 service (if Maximum Rates have been established for Commercial Food Waste Collection services).

1479 **Containers:** Carts, Bins
1480 **Container Sizes:** Contractor shall provide the same Cart and Bin options as provided for
1481 Franchised Solid Waste (Section 5.3.A) and shall provide Subscriber with
1482 the Container(s) size(s) requested with the exception that Contractor
1483 shall not offer 96-gallon Carts because the Commercial Food Waste can
1484 be too heavy for this Cart size

1485 **Service Frequency:** Up to five (5) times per week but not less than one (1) time per week, as
1486 requested by Subscriber

1487 **Service Location:** Curbside or other Subscriber-selected service location at the
1488 Commercial Premises

1489 **Acceptable Materials:** Franchised Commercial Food Waste that meets the specifications of the
1490 Approved Commercial Food Waste Processing Facility and Designated
1491 Anaerobic Digestion Facility

1492 **Additional Service:** Upon Subscriber request and to accommodate periodic additional
1493 service needs, Contractor shall provide on-call Collection service at a
1494 greater frequency than the Subscriber's regularly scheduled service, up
1495 to the maximum service frequency and Contractor shall charge a Rate
1496 not to exceed the Maximum Rate for the on-call service.

1497 **Other Requirements:** • At Subscriber's request, Contractor shall open and close gates, lock
1498 and unlock enclosures or Containers, or perform other services as
1499 reasonably necessary to access and empty Containers. Provision of
1500 such services shall be included in and shall not be in addition to the
1501 Rates Contractor charges for Franchised Commercial Food Waste
1502 Collection service. Contractor shall push and/or pull Containers at
1503 Subscriber's request and shall charge the Subscriber a Rate not to
1504 exceed the Maximum Rate for the push/pull.

1505 • Contractor shall make 23-gallon (or similar size) mini-containers
1506 available, at no charge, to all Subscribers receiving Commercial
1507 Food Waste Collection service, for the purpose of containing
1508 Commercial Food Waste indoors, prior to placement for Collection
1509 in the primary Commercial Food Waste Container.

1510 • Contractor shall ensure that employees operating Commercial Food
1511 Waste Collection routes thoroughly inspect the materials to identify
1512 Contaminants and conditions in Subscribers' Commercial Food
1513 Waste Containers prior to Collection that may prevent the

1514 Commercial Food Waste from meeting the standards required by
1515 the Approved Commercial Food Waste Pre-Processing Facility and
1516 Designated Anaerobic Digestion. Contractor's employees may not
1517 Collect materials that are Contaminated or do not meet the
1518 Commercial Food Waste standards and shall leave a non-Collection
1519 notice explaining the reason(s) for non-Collection.
1520

1521 E. **Large Commercial Accounts.** Prior to the Commencement Date, Contractor shall meet with
1522 CCCSWA to identify particularly large or otherwise atypical Commercial Subscribers that may pose
1523 unique obstacles to Contractor in terms of providing Collection and/or Billing services. On or
1524 before the Commencement Date, Contractor shall meet with the identified Subscribers to plan
1525 Collection services, agree on Billing arrangements, plan public education approach, and address
1526 other plans as needed to fit the Subscribers' unique circumstances.

1527 At a minimum, Rossmoor, the senior adult community in Walnut Creek that is home to
1528 approximately 9,600 people, shall be considered a large commercial account for the purposes of
1529 this Section. It includes approximately 6,700 dwelling units, two golf course, swimming pools,
1530 tennis courts, a fitness center, several clubhouses, and a restaurant. Housing includes a wide
1531 variety of stand-alone and attached dwellings including cooperatives, condominiums, Single-
1532 Family and Multi-Family homes spread out over 1,800 acres. Rossmoor is treated as single
1533 Commercial account, yet it requires a variety of Collection service arrangements ranging from
1534 Single-Family Cart service, Multi-Family Cart service, and Multi-Family and Commercial Bin service,
1535 and Drop Box service. Contractor shall provide Collection service to the Rossmoor community in a
1536 manner that meets the needs of the Rossmoor management, which may change over the Term of
1537 the Agreement. Contractor's Collection services shall include provision of Collection services for
1538 the Rossmoor Recycling center, which requires Collection of Drop Boxes containing Green
1539 Materials and Collection of various Recyclable Materials. Contractor shall Collect Green Materials
1540 from Drop Boxes at the Rossmoor Recycling center as frequently as the Rossmoor management
1541 requests and shall provide such service at no charge.

1542 F. **Rural County Area Properties.** Contractor shall provide Solid Waste and Recyclable Materials
1543 Collection services to all Commercial Subscribers in the unincorporated area of southeastern
1544 Contra Costa County in accordance with requirements of Section 5.1.N.

1545 **5.4 Member Agency Facility Services**

1546 A. **Collection Services to Member Agency Facilities.** Contractor shall Collect Franchised Solid Waste,
1547 Franchised Recyclable Materials, Franchised Commercial Food Waste, and Franchised Green
1548 Materials from Member Agency facilities in the same manner as those services are provided to
1549 Commercial Subscribers. Contractor shall provide service to all Member Agency facilities identified
1550 in Exhibit H as well as any future Member Agency facilities at the Service Levels requested by the
1551 Member Agencies. Contractor shall provide these services at no cost to the Member Agencies.
1552 Member Agencies shall be responsible for maintaining public litter and public Recycling containers
1553 that Contractor services.

1554 Contractor shall designate an employee to work with the Member Agencies to provide Recycling
1555 technical assistance and assist with implementation and/or expansion of Franchised Recyclable
1556 Materials and Franchised Organic Materials Collection services.

1557 B. **On-Call Services.** Contractor shall provide on-call Collection services to Member Agencies above
1558 the regularly scheduled services specified in Exhibit H and shall charge the Member Agency at
1559 Rates not to exceed Maximum Rates for on-call services for Commercial Subscribers.

1560 C. **Review of Plans for Land Use or Property Development.** Contractor shall provide staff with the
1561 expertise to review building plans for new Residential and Commercial development projects
1562 during Member Agency permit review processes to verify the reasonableness of the space
1563 allocation and enclosure design for Franchised Solid Waste, Recyclable Materials, and Organic
1564 Materials Containers and the accessibility of such areas. For these plan reviews, the Contractor
1565 may be requested to visit the site and submit written recommendations for improvements to the
1566 design. Plan reviews shall be completed within two (2) weeks of the CCCSWA's request for such
1567 review.

1568 **5.5 Special Events**

1569 Contractor shall provide Collection of Franchised Solid Waste, Franchised Recyclable Materials, and
1570 Franchised Commercial Food Waste at up to two (2) special events per Rate Year as designated by each
1571 Member Agency, identified in Exhibit H, at no additional cost to the event sponsor, the CCCSWA, or its
1572 Member Agencies. Special event services include:

1573 A. **Coordination with CCCSWA and Event Organizer.** Contractor shall provide Collection of materials
1574 from special events under direction and supervision of the CCCSWA. At the CCCSWA's request,
1575 Contractor shall meet with the event organizer to coordinate and plan the Collection services for
1576 the event. For each special event, Contractor shall work with the CCCSWA to develop an event
1577 management plan, which will identify the appropriate level of staffing and number of "Event
1578 Collection Stations" and "Consolidation Containers" needed for the event. For the purpose of this
1579 Section 5.5, "Event Collection Stations" shall be Containers specifically designed for use by
1580 attendees at special events and shall be approved by CCCSWA. Typically, Event Collection Stations
1581 include a group of three (3) Containers with capacities of forty (40) to ninety-six (96) gallons,
1582 where Containers are designated for Solid Waste, Recyclable Materials, and Organic Materials.
1583 Consolidation Containers may be Carts, Bins, and/or Drop Boxes used of the purpose of
1584 aggregating all Discard Materials from the event including materials placed in the Event Collection
1585 Stations, which are then deposited in the Consolidation Containers.

1586 B. **Event Collection Stations for Special Events.** Contractor shall provide Solid Waste, Recyclable
1587 Materials, and Organic Materials Event Collection Stations. Contractor shall provide adequate staff
1588 for set-up and tear-down of the Event Collection Stations during the event hours, based on the
1589 event waste management plan. Contractor shall provide adequate storage for all Event Collection
1590 station materials when not in use. Contractor shall not be responsible for emptying materials
1591 placed in the Event Collection Stations during the event or transporting the materials from the
1592 Event Collection Stations to the Consolidation Containers provided by Contractor for aggregation
1593 of Franchised Solid Waste, Franchised Recyclable Materials, and Franchised Commercial Food
1594 Waste generated during the event.

- 1595 C. **Consolidation Containers.** Contractor shall provide clearly-marked Containers (displaying
1596 Contractor logo, CCCSWA logo, and materials accepted) for the aggregation of Discarded Materials
1597 generated during the event. Contractor shall provide Containers in any number of appropriate
1598 type(s) and size(s) for the needs of the event in accordance with the event's waste management
1599 plan, described in Section 5.5.A. Contractor shall Collect materials in the Consolidation Containers,
1600 as agreed upon in the event's waste management plan, and Deliver Collected materials to the
1601 appropriate Approved Processing Facility, Designated Recyclables Trans-Load Facility, or Approved
1602 Transfer Station for Processing and Disposal. Contractor shall provide sufficient security measures
1603 including, but not limited to locking Containers, to the extent practical, to prevent theft of
1604 Franchised Materials during events and/or overnight during multi-day events. Containers must be
1605 removed from the event grounds on the date agreed upon in the event waste management plan,
1606 or within twenty-four (24) hours of notification from the CCCSWA or event organizer.
- 1607 D. **Public Education Booth.** Upon request of either the CCCSWA Executive Director or the designee
1608 of the Executive Director, Contractor shall staff a CCCSWA-provided or Contractor-provided booth
1609 or exhibit at events for the purpose of educating the public about the services and programs
1610 provided by Contractor and the CCCSWA under this Agreement and the benefits of source
1611 reduction, reuse, Recycling, and Composting. Contractor shall supply equipment for the booth or
1612 exhibit, including, a table, 10'x10' canopy (with Contractor and CCCSWA logo) approved by
1613 CCCSWA, and chairs for CCCSWA and Contractor staff. Contractor shall provide adequate storage
1614 for all booth or exhibit equipment when not in use. Contractor shall provide and manage (with
1615 direction from CCCSWA) transportation of equipment to and from events, on dates/times
1616 determined by CCCSWA. Contractor's designated Recycling Coordinator(s), or other CCCSWA-
1617 approved Contractor employee(s), shall be available to provide CCCSWA-directed event services
1618 for the entire duration (agreed upon by CCCSWA, Contractor, and event organizer) of at least ten
1619 (10) events per Rate Year. Contractor shall follow CCCSWA's instructions when on-site at events
1620 regarding staffing, interfacing with the public, and provision of information and materials. At
1621 events, Contractor staff, or any other Persons acting on behalf of Contractor, shall wear
1622 appropriate clothing with Contractor's logo during the entire duration of the event. Contractor
1623 shall make available all booth equipment for use by CCCSWA upon request.
- 1624 E. **Reporting.** Within fourteen (14) Days of the end of the event, Contractor shall submit a report to
1625 the CCCSWA, applicable Member Agency, and event organizer. The report should include, at a
1626 minimum: the number of event collection stations deployed at the event, the number and sizes of
1627 Collection Containers used, the number of Contractor staff or volunteers staffing the event, the
1628 Tonnage of each material type (i.e., Solid Waste, Recyclable Materials, and Organic Materials)
1629 Collected, and a description of the public education provided at the event.
- 1630 F. **Coordination with Others.** Contractor may, at its sole expense, and subject to CCCSWA approval,
1631 coordinate with local youth, community, or charitable organizations to provide some or all of the
1632 required services. Regardless of Contractor's use of such an organization, Contractor shall be
1633 responsible for ensuring that service is provided at the event in a professional and timely manner
1634 and for coordinating with CCCSWA.
- 1635 G. **Service for Additional Events.** For special events not identified in Exhibit H, Contractor shall
1636 provide the above-described special event services at the request of the event organizer.
1637 Contractor may charge a Rate not to exceed the Maximum Rate for "Additional Special Event".

5.6 Public Schools

While public schools are not required to subscribe to Contractor's services, Contractor is required to offer Franchised Solid Waste, Franchised Recyclable Materials, and Franchised Organic Materials Collection services to public schools in the same manner it offers service to Commercial Subscribers. Upon school request, Contractor shall provide 96-gallon Carts to public schools for use on school property including indoor use. Contractor shall charge all schools that Subscribe to service the same Rates for Recyclable Materials and Green Materials Collection services. The Green Materials Rate shall be not more than the Maximum Rate less CCCSWA and Member Agency fees and payments identified in Article 9. CCCSWA may pay for the Green Materials Collection services provided to public schools. In such case, Contractor shall bill the CCCSWA for such service.

5.7 High Diversion Services

The Contractor proposed High Diversion Services to support the CCCSWA in reaching a Diversion goal of 75%. The High Diversion Services are described in Exhibit U. The CCCSWA has the right to direct Contractor to initiate the High Diversion Services in accordance with the procedures described in Exhibit U.

ARTICLE 6 PROCESSING AND DISPOSAL SERVICES

6.1 Processing of Collected Materials

6.1.1 General Processing Requirements

A. **Overview.** Contractor agrees to Transport and Deliver:(i) all Residential Organic Materials and Commercial Green Materials it Collects in the Service Area to the Approved Transfer Station for Transport to and Processing at the Approved Organic Materials Processing Facility, and (ii) Commercial Food Waste it Collects in the Service Area to the Approved Commercial Food Waste Pre-Processing Facility for pre-Processing and then Transport to and Processing at the Designated Anaerobic Digestion Facility. Contractor agrees to Transport and Deliver all Recyclable Materials it Collects in the Service Area to the Designated Recyclables Trans-Load Facility. Contractor shall pay all costs associated with Transferring, Transporting, Processing, Composting, and marketing Franchised Materials, with the exception of costs associated with Transfer, Processing, and marketing of Franchised Recyclable Materials, pursuant to Section 6.1.2 herein.

B. **Processing Capacity and Residue.** Contractor shall secure sufficient capacity to Process all Organic Materials Collected under this Agreement and shall cause the Approved Processing Facilities to Process and/or Compost, and market the Organic Materials. Contractor shall provide the CCCSWA, upon request, with documentation demonstrating the availability of such capacity. Contractor shall guarantee a Residue level of five percent (5%) or less for Franchised Residential Organic Materials. For the purpose of this Residue guarantee, the Residue level shall be equal to the monthly Tonnage of Processing Residue requiring Disposal divided by the total monthly Tonnage of Materials Collected. The Residue level shall be calculated separately for each material

1675 type. Residue from the Processing activities shall be Disposed of by Contractor or the Processing
 1676 Facility Subcontractor at a Disposal Facility selected by Contractor or its Subcontractor.

1677 C. **Facility Permits.** Contractor shall keep all existing Permits and approvals necessary for use of the
 1678 Approved Facility(ies), in full regulatory compliance or confirm that the owner or operator of such
 1679 facility does so. Contractor shall, upon request, provide copies of Permits and/or notices of
 1680 violation of Permits to the CCCSWA.

1681 D. **Contractor-Initiated Change in Facility.** With the exception of the Designated Anaerobic Digestion
 1682 Facility and the Designated Recyclables Trans-Load Facility, Contractor may change its selection of
 1683 one or more of the Approved Processing Facility(ies) following CCCSWA's written approval, but
 1684 Contractor shall not be compensated for any increased Transfer, Transportation and Processing
 1685 costs. Contractor shall bear any increased Transportation and Processing costs associated with a
 1686 Contractor-initiated change in the Approved Processing Facility(ies). In such case, Contractor shall
 1687 guarantee the same net Processing Cost specified in Exhibit N or shall increase the net Processing
 1688 Costs (if the amount is a net revenue) associated with the use of Processing Facility(ies) different
 1689 from the Approved Processing Facilities. If Contractor elects to use a Processing Facility(ies) that is
 1690 different than Approved Processing Facility(ies), it shall request written approval from the
 1691 CCCSWA sixty (60) Days prior to use of the site and obtain the CCCSWA's written approval no later
 1692 than ten (10) Days prior to use of the site.

1693 E. **Inability to Use Approved Processing Facility(ies) or Approved Transfer Station.** If Contractor is
 1694 unable to use an Approved Processing Facility or Approved Transfer Station due to an emergency
 1695 or sudden unforeseen closure of the Facility, Contractor may use an alternative Facility provided
 1696 that the Contractor provides verbal and written notice to the CCCSWA and receives written
 1697 approval from the CCCSWA at least twenty-four (24) hours prior to the use of an alternative
 1698 Facility. The Contractor's written notice shall include a description of the reasons the Approved
 1699 Processing Facility or Approved Transfer Station is not feasible and the period of time Contractor
 1700 proposes to use the alternative Facility. If the use of an alternative Facility is required due to an
 1701 Uncontrollable Circumstance, CCCSWA will reimburse Contractor for any resulting increase in
 1702 Transportation and Processing costs. In the event that an Uncontrollable Circumstance causes use
 1703 of an alternative Facility that results in a decrease in Transport or Processing costs, Contractor
 1704 shall remit the cost savings to the CCCSWA.

1705 F. **Transport.** Following Collection, Contractor is responsible for Transporting Collected Recyclable
 1706 Materials to the Designated Recyclables Trans-Load Facility using its Collection vehicles,
 1707 Transporting Residential Organic Materials to the Approved Transfer Station using its Collection
 1708 vehicles, and Transporting Commercial Food Waste to the Approved Commercial Food Waste Pre-
 1709 Processing Facility using its Collection vehicles. If the Contractor plans to change its Transport
 1710 method, Contractor shall obtain written approval from the CCCSWA prior to making the change;
 1711 pay all costs; and shall not be reimbursed for any additional costs. The CCCSWA shall approve the
 1712 Transport method, and the duration the Transport method is expected to remain in use.

1713 Contractor shall provide Transfer and Disposal services in accordance with Exhibit S. In accordance
 1714 with such Exhibit S, at the Approved Transfer Station, Contractor shall load Franchised Residential
 1715 Organic Materials into large-capacity trailers and Transport them to the Approved Organic
 1716 Materials Processing Facility. In addition, at the Approved Commercial Food Waste Pre-Processing

1717 Facility, Contractor shall pre-Process Commercial Food Waste prior to Transporting it to the
1718 Designated Anaerobic Digestion Facility.

1719 G. **Marketing.** The Contractor shall be responsible for marketing Organic Materials (excluding
1720 Commercial Food Waste) it Collects in the Service Area, and shall be compensated by the end
1721 users/market place for such materials at no less than fair market value. Contractor shall market
1722 the resulting Compost Product or other Organic products to agricultural growers or other
1723 interested parties. Contractor shall share revenues resulting from marketing materials with
1724 CCCSWA in accordance with Section 9.4.

1725 Upon request, Contractor shall provide proof to the CCCSWA that all Organic Materials (less
1726 Residue) Collected by Contractor are marketed for Composting, Recycling or reuse in such a
1727 manner that materials shall be considered as Diverted in accordance with the State regulations
1728 established by the AB 939 and AB 341. All Residue from the Processing activities that is not
1729 marketed shall be reported to the CCCSWA as Residue and accounted for as Disposal Tonnage at a
1730 permitted Disposal Facility. No Recyclable Materials or Organic Materials shall be Transported to
1731 a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

1732 Upon request, Contractor shall provide a summary of its marketing plan, end markets for Organic
1733 Materials, and average commodity value for each material and submit it to the CCCSWA for
1734 review and approval. Contractor shall provide CCCSWA with a list of broker/buyers it has used
1735 during the preceding twelve (12) months, if requested by CCCSWA. If Contractor becomes aware
1736 that a broker or buyer has illegally handled, Disposed of, or used material generated in the Service
1737 Area or elsewhere that is not consistent with Applicable Law, Contractor shall immediately inform
1738 the CCCSWA and terminate its contract or working relationship with such party.

1739 H. **Allocation Method.** Contractor shall develop a method of allocating Franchised Recyclable
1740 Materials and Franchised Organic Materials Collected and Diverted by material type and allocating
1741 Processing Residue to CCCSWA and individual Member Agencies. The allocation method shall be
1742 the same as that used to report Solid Waste Disposal to the State or a method reviewed and
1743 approved by the CCCSWA. Reports including Tonnage allocations shall be certified by an
1744 authorized person or officer of that Approved Facility.

1745 Periodically, the Contractor shall review its marketing records to calculate the volume of
1746 Franchised Organic Materials received at the Approved Organic Materials Processing Facility and
1747 marketed to determine the percentage of various Organic Materials (e.g., compost, mulch, soil
1748 amendment, etc.) and the CCCSWA's Residue level. The percentages determined from the review
1749 of marketing records shall be used to allocate the total Tonnage of Franchised Organic Materials
1750 Collected in the Service Area into various categories of Organic Materials and Residue.

1751 **6.1.2 Recyclable Materials Transfer and Processing**

1752 A. **General.** Contractor shall not be responsible for Processing Franchised Recyclable Materials.
1753 Contractor shall Transport and Deliver all Recyclable Materials it Collects in the Service Area
1754 directly to the Designated Recyclables Trans-Load Facility for Transfer and Processing at the
1755 Recyclables Contractor's Facilities. The Recyclables Contractor will transfer the Recyclable
1756 Materials for Processing to the Designated Recyclable Materials Processing Facility. CCCSWA shall
1757 manage the Recyclables Contractor and Contractor shall cooperate with the Recyclables
1758 Contractor. Contractor's costs for Rate Year One reflect Transporting Recyclable Materials to the

1759 Designated Recyclables Trans-Load Facility. In the event that CCCSWA designates a different
1760 Recyclable Materials Transfer or Processing Facility, Contractor and CCCSWA will act in accordance
1761 with Sections 2.4 and 10.5 to address any resulting changes in costs.

1762 Parties acknowledge that the Designated Recyclables Trans-Load Facility is operating under a City
1763 of Concord Permit that does not allow for Acceptance of Recyclable Materials with excessive
1764 Contamination. As a result, Contractor and CCCSWA agree to work cooperatively with the
1765 Recyclables Contractor to manage the Collection, Delivery, and Acceptance process in such a way
1766 that Loads Accepted by the Contractor do not include an excessive amount of Contaminants.

1767 B. **Facility Operating Hours.** At a minimum, Recyclables Contractor will Accept Deliveries of
1768 Recyclable Materials at the Designated Recyclables Trans-Load Facility from Contractor Monday
1769 through Friday from 5:00 a.m. to 7:00 p.m., excluding Holidays. Recyclables Contractor shall
1770 Accept Deliveries of Recyclable Materials at the Designated Recyclables Trans-Load Facility on the
1771 Saturday immediately following a Holiday. Contractor shall schedule its Deliveries within these
1772 operating hours.

1773 Upon request, no less than one (1) Business Day in advance or any other mutually agreed time
1774 period, or in event of emergencies such as truck breakdown, poor weather or road conditions, as
1775 soon as possible using Reasonable Business Efforts, Contractor may request that the Recyclables
1776 Contractor Accept Recyclable Materials at times other than the Facility hours listed in this Section.
1777 In such case, Contractor shall pay the Franchised Collector \$270 per hour (in 15 minute
1778 increments). This provision is intended to address temporary extension of Facility hours that may
1779 be needed from time to time to accommodate special circumstances.

1780 C. **Acceptance by Recyclables Contractor.** Recyclables Contractor will work diligently to visually
1781 inspect Loads and periodically shall manually characterize Loads to confirm that Recyclable
1782 Materials Delivered by Contractor conform to the list of Recyclable Materials in Exhibit K and do
1783 not contain Unpermitted Materials. Once the Contractor Delivers the Recyclable Materials,
1784 ownership transfers to Recyclables Contractor upon the earlier occurrence of either: (i) Processing
1785 the material by Recyclables Contractor, (ii) Recyclables Contractor's loading of the material into a
1786 vehicle or container for Transport to the Designated Recyclable Materials Processing Facility, or
1787 (iii) the end of the Day's defined hours for Acceptance of materials at the Designated Recyclables
1788 Trans-Load Facility which are specified in Section 6.1.2.B.

1789 D. **Vehicle Turnaround Time.** The Recyclables Contractor has guaranteed a maximum average
1790 vehicle turnaround time of twenty (20) minutes for vehicles delivering Recyclable Materials to the
1791 Designated Recyclables Trans-Load Facility, where the turnaround time for each vehicle is
1792 measured from the vehicle's arrival time, which shall be recorded at the motor vehicle scale when
1793 the inbound weight of the vehicle is recorded at the Designated Recyclables Trans-Load Facility
1794 property, until the vehicle's departure time, when it exits that Designated Recyclables Trans-Load
1795 Facility. This excludes driver personal time and mechanical problems of the Contractor.

1796 As of the Commencement Date of the Agreement, the arrival time shall be the time recorded for
1797 the vehicle at the motor vehicle scale when the inbound weight of the vehicle is recorded. An exit
1798 time shall not be recorded because the vehicle's tare weight will be recorded in the scale system
1799 allowing the vehicle to by-pass the scale when exiting the Facility. The Recyclables Contractor will
1800 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). If Contractor is concerned that vehicle turnaround times are in excess of this maximum average vehicle turnaround time, Contractor shall notice the CCCSWA and Recyclables Contractor with in twenty-four (24) hours of the incident identifying the date, time, and vehicle number and reported turnaround time. The Recyclables Contractor shall provide the CCCSWA and Contractor with the opportunity to review the video recordings of the inbound and outbound vehicles for the day in question and the preceding four (4) days during which Contractor delivered Recyclable Materials to the Approved Recyclables Trans-Load Facility to determine vehicle turnaround times based on documented entry time at the entry scale house and documented facility exit time. Based on this data, Parties may calculate the average vehicle turnaround time for the most-recently-completed week. If the average vehicle turnaround time for the week in question is in excess of the maximum average vehicle turnaround time, the Recyclables Contractor shall pay the Contractor 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.

At any time during the Term of the Agreement, Contractor may propose use of a global positioning system (GPS) or other form of automated tracking system that captures the inbound and outbound time for each vehicle and provides data in a format that allows for calculation of the average vehicle turnaround time. In such case, if Contractor provides notice to CCCSWA and Recyclables Collection of average turnaround times in excess of the twenty (20) minute average guaranteed for a given week, Contractor shall provide the Recyclables Contractor with access to the data for review and verification within twenty-four (24) hours of Contractor's notice.

Recyclables Contractor has contractual obligations to the CCCSWA to measure and record the tare weights of Contractor's vehicles on a semi-annual basis and to use such weights to determine the Tonnage of Franchised Recyclable Materials Delivered to and Accepted at the Designated Recyclables Trans-Load Facility. Contractor shall cooperate with the process of measuring tare weights.

E. **Contamination.** Contractor shall make all commercially reasonable efforts and follow Standard Industry Practices to ensure that Recyclable Materials Transported to the Designated Recyclables Trans-Load Facility do not have significant levels of Contaminants.

F. **Contaminated Load Monitoring and Rejection.** The objective of the Load monitoring and notification process is for the Recyclables Contractor to identify specific Contractor 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 Contractor with an opportunity to inspect the Loads and remedy the Contamination problem on a route-by-route basis. The Recyclables Contractor will monitor the Delivered Loads of Recyclable Materials at the Designated Recyclables Trans-Load Facility for excessive Contamination and will inform 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 Contractor 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 Subscribers on keeping non-Recyclable Materials out of the Recyclable Materials Collection Containers. The Recyclables

Contractor may reject Deliveries from Contractor's vehicle if its Contamination level is consistently excessive; however, in order to do so, the Recyclables 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 Contractor and CCCSWA shall have twenty four (24) hours to inspect the rejected Load. If Recyclables Contractor identifies a Load that is extremely Contaminated based on its visual inspection or which contains Unpermitted Materials characterized as Items (2) through (12) in the definition of the Unpermitted Materials, Recyclables Contractor shall have the right to reject the Load without following the five- (5-) step process described in this paragraph.

If the Recyclables Contractor rejects a Load, the Load shall be segregated from other Loads, and the Recyclables Contractor shall immediately notify the CCCSWA and the Contractor verbally and then follow verbal notifications with written notice identifying the date and time of occurrence; Recyclables 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 Contractor shall be given twenty-four (24) hours from receipt of written notice to inspect the Load. After twenty-four (24) hours of written notice, Recyclables Contractor shall Recycle or Dispose of the Load and shall bill the Contractor \$150.00 per Ton.

- G. **Holiday Schedule.** Contractor shall not provide Collection services on Holidays; therefore, it will not Deliver Recyclable Materials on Holidays to the Designated Recyclables Trans-Load Facility. Contractor shall adjust its Collection schedule around the Holiday, which will result in Deliveries of Recyclable Materials to the Designated Recyclables Trans-Load Facility on the Saturday immediately following the Holiday and which potentially will result in increased volumes of Recyclable Materials Delivered before or after the Holiday. Contractor agrees to work cooperatively with the CCCSWA and Recyclables Contractor to adjust its Delivery schedules.

- H. **Cooperation and Disputes with the Recyclables Contractor.** Contractor shall fully comply with its obligations to provide services under this Agreement including Delivery of Franchised Recyclable Materials to the Approved Recyclables Trans-Load Facility in a manner that meets the requirements of this Agreement. Contractor's operations shall allow for safe and efficient Delivery to and Acceptance of Recyclable Materials by the Recyclables Contractor. In the event of disputes between Contractor and the Recyclables Contractor, Contractor shall provide written notice of the dispute to the CCCSWA and Recyclables Contractor and Contractor agrees to meet and confer with the Recyclables Contractor in good faith to resolve the dispute. If at the end of thirty (30) Days following the initial notice to the CCCSWA, Contractor and Recyclables Contractor have not resolved the dispute, Contractor shall notify the CCCSWA and the CCCSWA and Contractor shall follow the dispute resolution procedure in Section 15.1, 15.2 and 15.5. In the event of a dispute, Contractor shall continue performance of Contractor's obligations under this Agreement (including payments due to the CCCSWA pursuant to Section 9) and shall attempt to continue to resolve that dispute in a cooperative manner, including but not limited to negotiating in good faith.

6.1.3 Green Materials and Home Food Scraps Processing

- A. **Approved Facility.** Contractor shall Process Franchised Green Materials and Home Food Scraps at the Approved Organic Materials Processing Facility. Below is information about the Approved

1888 Organic Materials Processing Facility approved by the CCCSWA for Processing of Green Materials
1889 and Home Food Scraps:

1890 Facility Name: West County Resource Recovery Facility

1891 Owner: Republic Services, Inc.

1892 Operator: Republic Services, Inc.

1893 Address: 101 Pittsburg Ave, Richmond, CA 94801

1894 Contact Person and telephone number: Peter Nuti, Division Manager (510) 231-4203

1895

1896 B. **Processing Standards.** The following Processing standards shall be met by the Approved Organic
1897 Materials Processing Facility that Processes Green Materials and Home Food Scraps:

1898 1. Pre-processing activities shall include, at a minimum, the inspection for and removal of
1899 Unpermitted Materials and removal of plastic bags.

1900 2. Composting shall be accomplished by the use of recognized Composting methods, which
1901 have been demonstrated to be able to consistently produce stable, mature Compost
1902 Product that is suitable for general purpose use, similar to the U.S. Composting Council's
1903 Class 1 rating.

1904 3. Post-Composting Processing activities shall include screening to remove plastics and
1905 other contaminants from the Compost Product.

1906 4. The Organic Materials Processing and Composting activities shall maintain an average
1907 quarterly Residue level less than one and a half percent (1.5%) by weight where the
1908 Residue level shall be equal to the quarterly Tonnage of Processing Residue and/or
1909 Composting Residue Disposed divided by the total quarterly Tonnage of Franchised
1910 Green Materials and Home Food Scraps Collected and Delivered to the Approved
1911 Organic Materials Processing Facility.

1912 5. The Organic Materials Processing and Composting activities shall maintain an average
1913 quarterly "Compost Overages" level less than ten percent (10%) by weight where
1914 Compost Overages are the larger materials removed from the finished Compost through
1915 a screening process. Compost Overages may include, but not limited to, woody
1916 materials and inerts. The Compost Overages level shall be equal to the quarterly
1917 Tonnage of Processing Overages divided by the total quarterly Tonnage of Franchised
1918 Green Materials and Home Food Scraps Collected and Delivered to the Approved
1919 Organic Materials Processing Facility. Contractor shall not Dispose of Compost
1920 Overages. Contractor may re-Process the Compost Overages or may use or market
1921 Compost Overages for Beneficial Reuse Purposes in such a manner that materials shall
1922 be considered as Diverted in accordance with the State regulations established by the
1923 AB 939 and AB 341; otherwise, use of Compost Overages for Beneficial Reuse Purposes
1924 shall be prohibited.

1925 6. All Franchised Green Materials and Home Food Scraps shall be Processed and marketed
1926 for use as Compost, mulch, or soil amendment and none shall be Disposed. Green
1927 Materials and Home Food Scraps may not be used as Alternative Daily Cover,
1928 Alternative Intermediate Cover, or for other Beneficial Reuse Purposes with the
1929 exception of Compost Overages pursuant to Section 6.1.3.B.5.

6.1.4 Commercial Food Waste Processing

- A. **Approved Facilities.** Contractor shall pre-Process Franchised Commercial Food Waste at the Approved Commercial Food Waste Pre-Processing Facility. Below is information for the Approved Commercial Food Waste Pre-Processing Facility for pre-Processing Franchised Commercial Food Waste:

Facility Name: Contra Costa Transfer Station

Owner: Republic Services, Inc.

Operator: Republic Services, Inc.

Address: 951 Waterbird Way, Martinez, CA

Contact Person and telephone number: Brian Jayne; Office: (925) 313-8987; Mobile: (925) 525-9362

Further Processing of Commercial Food Waste will be conducted at the Designated Anaerobic Digestion Facility. The pre-Processing services required under this Section 6.1.4 shall be focused on preparing the Commercial Food Waste Collected in the Service Area to conform to standards such that that they may be received and Processed at the Designated Anaerobic Digestion Facility.

- B. **Pre-Processing Standards.** The following pre-Processing standards shall be met by the Approved Commercial Food Waste Pre-Processing Facility, that Processes and prepares Commercial Food Waste to be further Processed at the Designated Anaerobic Digestion Facility:

1. Contractor's pre-Processing activities shall include, at a minimum, the inspection for and removal of Unpermitted Materials and other Contaminants such as plastic bags, and grinding materials into pieces approximately two inches square in size or smaller, through a hammermill or like equipment to meet the Processing standards established by the Designated Anaerobic Digestion Facility.
2. Contractor shall take reasonable steps to prevent Unpermitted Materials and other Contaminants from being included in Commercial Food Waste Transported to the Designated Anaerobic Digestion Facility, including education of Commercial Food Waste Subscribers, or termination of Commercial Food Waste Collection service to non-compliant Commercial Food Waste Subscribers.
3. In the event that the Designated Anaerobic Digestion Facility rejects materials Transported by Contractor due to the presence of Unpermitted Materials or other Contaminants, Contractor shall remove the rejected materials from the Facility and Dispose or Process the materials in a manner consistent with CCCSWA requirements and the provisions of this Agreement.
4. Further Commercial Food Waste Processing will be performed by the Designated Anaerobic Digestion Facility, under separate contract with the CCCSWA. CCCSWA shall manage the Anaerobic Digestion Facility contract, and Contractor shall cooperate with the owner and/or operator of the Designated Anaerobic Digestion Facility and pay all required costs at the per-Ton Processing rates defined through the CCCSWA's contract with the Designated Anaerobic Digestion Facility.

6.1.5 Insurance, Indemnifications and Performance Standards

If Contractor uses an Affiliate or Subcontractor to provide Transfer Station, Transport, Processing, and/or Disposal services, or enters into any contract, agreement or understanding with a third party for services related to Organic Materials Processing and marketing, Composting, Transfer Station services, or Disposal services, Contractor shall provide that terms and conditions (such as insurance requirements, indemnifications, and Processing, Composting, marketing performance, and Residue guarantees) of any contract, agreement, or other understanding Contractor has with such third party can be enforced by the CCCSWA as an additional insured or third party beneficiary thereof in the same manner provided in Article 13 and in a manner reasonably satisfactory to CCCSWA.

If Contractor, an Affiliate, or Subcontractor owns or operates the Approved Facility(ies), Contractor shall include CCCSWA as an additional insured on liability policies and defend and indemnify CCCSWA in the manner as set forth in Sections 13.1, 13.2, and 13.3 satisfactory to CCCSWA, and provide that any materials Recovery and marketing performance standards or guarantees made to any other Facility users are made to CCCSWA as well, including obligations such as Recovered Materials and Compost Product quality guarantees and limits on the Residue level.

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

6.1.6 Compliance with Applicable Law

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

6.1.7 Compliance with Facility Rules

Contractor shall observe and comply with all regulations in effect at the Approved Facilities and Designated Facilities and shall cooperate with the operators thereof with respect to Delivery of Solid Waste, Recyclable Materials, and Organic Materials, including directions to unload Collection and/or Transfer vehicles in designated areas, accommodating operations and maintenance activities, and complying with Unpermitted Materials exclusion programs.

6.1.8 Transportation and Processing Costs

All costs associated with Transferring and Transporting Franchised Materials to the Approved Processing Facilities and Processing Organic Materials at the Approved Processing Facilities shall be paid by Contractor.

6.1.9 Scale Operation

A. **Maintenance and Operation.** This Section 6.1.9 applies to motor vehicle scales at the Approved Facilities. Contractor shall maintain at least two State-certified motor vehicle scales at each Approved Facility in accordance with Applicable Law. Contractor shall provide documentary

2011 evidence of such certification within ninety (90) Days of the Commencement Date and within
2012 ten (10) Days of CCCSWA's request during the Term. Contractor shall link all scales to a
2013 centralized computer recording and billing system that shall be compatible with Contractor's
2014 systems. Such computerized system shall track pertinent data on all incoming and outgoing
2015 vehicles and materials as further described in Section 6.1.9.G. Contractor's licensed weigh
2016 master(s) shall operate those scales during Approved Facility open hours and during other hours
2017 as determined by the Contractor as needed to weigh all inbound and outbound Collection
2018 vehicles Delivering Franchise Materials and all Transfer Vehicles Transporting Franchised
2019 Materials. Contractor shall provide CCCSWA with access to weighing information at all times and
2020 copies thereof on the next Business Day following the CCCSWA's request there for.

2021 B. **Vehicle Tare Weights.** Upon request of the CCCSWA, Contractor shall promptly weigh
2022 Collection and Transport vehicles and determine the unloaded ("tare") weight(s) of the
2023 vehicle(s). Contractor shall record tare weight, and vehicle identification number. Within ten
2024 (10) Business Days of weighing, Contractor shall provide the CCCSWA with a report listing
2025 vehicle tare weight information. Contractor shall have the right to request re-determination of
2026 tare weights of vehicles twice each calendar year. If there is reasonable suspicion or evidence
2027 that tare weights are not accurate, CCCSWA may, at any time and without limitation, request re-
2028 determination of tare weights, in which case Contractor shall promptly re-determine tare
2029 weights for requested vehicles. Contractor may update tare weights, at Contractor's own
2030 initiative or, at the request of the CCCSWA, more frequently.

2031 C. **Substitute Scales.** If any scale at an Approved Facility is inoperable, being tested, or otherwise
2032 unavailable, Contractor shall use reasonable business efforts to weigh vehicles on the remaining
2033 operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise
2034 unavailable, Contractor shall substitute portable scales until the permanent scales are replaced
2035 or repaired. Contractor shall arrange for any inoperable scale to be repaired as soon as possible
2036 and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the
2037 permanent scale. If repairs to the permanent scale are projected to take more than twelve (12)
2038 hours, Contractor shall immediately obtain a temporary substitute scale(s).

2039 D. **Estimates.** Pending substitution of portable scales or during power outages, Contractor shall
2040 estimate the Tonnage of the Franchised Materials Delivered to and accepted at the Approved
2041 Facilities by utilizing the arithmetic average of each vehicle's recorded Tons of Franchised
2042 Materials Delivered on its preceding three (3) Deliveries, on the same day of the week, to the
2043 Approved Facility.

2044 During any period the scales are out of service, Contractor shall continue to record all
2045 information required by Section 6.1.9.G for each Delivery of Franchised Materials to the
2046 Approved Facilities and each Load Transported to the Designated Anaerobic Digestion Facility or
2047 Approved Disposal Facility.

2048 E. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at
2049 least every twelve (12) months or upon CCCSWA request.

2050 F. **Weighing Standards and Procedures.** At the Approved Facilities, Contractor shall weigh and
2051 record inbound weights of all vehicles Delivering Franchised Materials, when the vehicles arrive
2052 at the Approved Facility and weigh and record outbound weights of vehicles for which

2053 Contractor does not maintain tare weight information. Furthermore, Contractor shall weigh and
2054 record outbound weights of all Transfer Vehicles Transporting Franchised Materials from the
2055 Approved Transfer Station to the Approved Processing Facilities, Approved Disposal Facility, or
2056 Designated Anaerobic Digestion Facility. Contractor shall provide each driver a receipt showing
2057 the date, time, and quantity of materials that the vehicle Delivered to the respective Approved
2058 Facility or Designated Facility.

2059 G. **Records.** Contractor shall maintain computerized scale records and reports that provide
2060 information including date of receipt, inbound time, inbound and outbound weights of vehicles,
2061 vehicle identification number, jurisdiction of origin of materials Delivered, type of material,
2062 company/hauler identification, and classification, type, weight, and destination of material
2063 (where the destination of materials shall be the Approved Facilities, Designated Facilities, or
2064 market location where materials are Transported to from the Approved or Designated Facilities).

2065 H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
2066 cameras at the Approved Facilities, Contractor shall make those videos available for CCCSWA
2067 review during the Facility's operating hours, upon request of the CCCSWA, and shall provide the
2068 name of the driver of any particular Load if available.

2069 **6.1.10 Disposal of Recyclable and Organic Materials Prohibited**

2070 With the exception of Processing Residue which shall not exceed five percent (5%) of the Franchised
2071 Residential Organic Materials and Commercial Green Materials, Franchised Recyclable Materials and
2072 Franchised Organic Materials may not be Disposed of in lieu of Recycling or Processing the material,
2073 without the expressed written approval of the CCCSWA.

2074 If for reasons beyond its reasonable control, Contractor (or its Approved Affiliates or Subcontractor(s))
2075 believes that it cannot Divert the Franchised Recyclable Materials or Franchised Organic Materials from
2076 Disposal, then it shall prepare a written request for approval to Dispose of such material. Such request
2077 shall contain the basis for Contractor's belief (including, but not limited to, supporting documentation),
2078 describe the Contractor's efforts to arrange for the Diversion of such material, the period required for
2079 such Disposal, the incremental net cost increases or net cost savings (giving account to the value from
2080 the sale of the Recyclable Materials or Organic Materials) resulting from such Disposal, and any
2081 additional information supporting the Contractor's request.

2082 In addition, the request shall describe the Contractor's proposed interim plans for implementation while
2083 the CCCSWA is evaluating its request. If the CCCSWA objects to the interim plans, the CCCSWA shall
2084 provide written notice to the Contractor and request an alternative arrangement. The CCCSWA shall
2085 consider the Contractor's request and inform Contractor in writing of its decision within sixty (60) Days.
2086 If the CCCSWA approves such request, any difference in the net cost of such Disposal compared to
2087 Diversion shall be adjusted in accordance with Section 10.5. Depending on the nature of the
2088 Contractor's request, the CCCSWA may extend the sixty (60) Day period, at its own discretion, to provide
2089 more time for evaluation of the request and negotiation of an acceptable arrangement with the
2090 Contractor.

2091 **6.2 Solid Waste Disposal**

2092 Contractor shall Transport all Solid Waste Collected under this Agreement to the Approved Transfer
2093 Station, which is selected and approved by CCCSWA. Solid Waste received at the Approved Transfer
2094 Station shall be Transported to the Approved Disposal Facility. All costs associated with Transporting
2095 Solid Waste to the Approved Transfer Station shall be paid by Contractor and may be recovered through
2096 Contractor Revenue in accordance with Article 10.

2097 Exhibit S describes the Contractor's Transfer and Disposal obligations.

2098 **ARTICLE 7**
2099 **OTHER RELATED SERVICES**

2100 **7.1 Public Education and Outreach**

2101 The public education and outreach activities included in the scope of services provided by Contractor
2102 under this Agreement are described in Exhibit A. Contractor shall allow the CCCSWA seven (7) Business
2103 Days to review, request modifications to, and approve all public education materials including, but not
2104 limited to: print, radio, television, or internet materials/media before publication, distribution, and/or
2105 release. Following publication, distribution and/or release, Contractor shall provide copies or
2106 documentation of all final materials to the CCCSWA Executive Director and Member Agency
2107 representatives.

2108 Contractor's public education and outreach strategy shall focus on improving Subscriber understanding
2109 of the benefits of and opportunities for source reduction, reuse, Recycling, and Composting. In general,
2110 Contractor-provided public education and outreach should: (i) inform Subscribers about the services
2111 that are provided under this Agreement with specific focus on describing the methods and benefits of
2112 source reduction, reuse, Recycling, and Composting; (ii) instruct Subscribers on the proper method for
2113 placing materials in Containers for Collection and setting Containers out for Collection with specific
2114 focus on minimizing Contamination of Recyclable and Organic Materials; (iii) clearly define the
2115 Unpermitted Materials and educate Subscribers about the hazards of such materials and their
2116 opportunities for proper handling; and, (iv) address the multi-lingual diversity of the Service Area
2117 through use of visual images, translation into Spanish and/or other languages for select outreach pieces,
2118 and/or other techniques.

2119 Contractor, and its Subcontractors, shall cooperate and coordinate with the CCCSWA staff on public
2120 education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns.
2121 CCCSWA shall have the right to review and approve when the Contractor includes the CCCSWA name,
2122 other form of identification, and contact information on public education materials. CCCSWA may
2123 request inclusion of CCCSWA and/or Member Agency information on public education materials (subject
2124 to CCCSWA review and approval) and such request shall not be unreasonably withheld.

2125 As part of the Contractor's third quarterly report (required by Exhibit B of this Agreement) for the Rate
2126 Year, Contractor shall submit a plan outlining its public education efforts for the coming Rate Year. The
2127 plan shall list each public education piece (e.g., newsletters, bill inserts, flyers, newspaper
2128 advertisements, etc.) to be prepared, the purpose of the piece, the key subject(s) to be covered, and the

2129 anticipated date of issuance. In addition, the plan shall list all events the Contractor plans to attend and
2130 the public education it intends to provide at such event. The plan shall also identify revisions and
2131 enhancements that will be made to the Contractor's website to present CCCSWA service information
2132 and related materials and the time line for completing each task. The CCCSWA shall review and approve
2133 the public education plan.

2134 **7.2 Technical Assistance**

2135 Contractor shall provide comprehensive technical assistance to Multi-Family, Commercial and Member
2136 Agency Subscribers with the primary purpose of helping Subscribers increase Recycling and Organics
2137 Collection services and reduce Solid Waste Collection service. The technical assistance services shall
2138 include at least one (1) annual meeting with each property manager/owner and on-site assessments of
2139 the Multi-Family, Commercial and Member Agency premises to improve Recycling and Organics
2140 Collection program participation. During the site visits, Contractor shall be required to: (1) meet with the
2141 property manager to promote Recycling and Organics Collection and address questions and concerns of
2142 property manager, (2) provide and/or restock posters, service brochures, personal Recycling
2143 baskets/bags for Multi-Family tenants, and any other appropriate materials, and (3) provide new signage
2144 for the Recycling and Organics Containers if necessary. For Multi-Family Subscribers receiving Home
2145 Food Scraps Collection service and Commercial Subscribers receiving Commercial Food Waste Collection
2146 service, Contractor shall follow the initial site visit with as many subsequent meetings, training sessions
2147 for program participants, and/or on-site visits as deemed necessary by Contractor, or the CCCSWA, to
2148 ensure proper participation in the programs. This program shall also involve preparation and
2149 presentation of reports to the CCCSWA on the Contractor's efforts and results of the technical
2150 assistance efforts.

2151 **7.3 Billing**

2152 A. **General Requirements.** Contractor shall bill all Subscribers at Rates not to exceed Maximum
2153 Rates, and Contractor shall be solely responsible for collecting bill payments from Subscribers.
2154 Maximum Rates shall be set by the CCCSWA Board in accordance with Article 10. Billing shall be
2155 performed on the basis of services rendered and this Agreement shall create no obligation on the
2156 part of any Person on the sole basis of the ownership of property. Contractor shall charge
2157 Subscribers comparable Rates for comparable Service Levels.

2158 B. **Billing Frequency.** Contractor shall bill Single-Family Subscribers quarterly, in advance of provision
2159 of service, but no more than three (3) months in advance. Contractor shall bill Multi-Family and
2160 Commercial Subscribers monthly, in advance of provision of service, with the exception of Drop
2161 Box Subscribers, which shall be billed in arrears monthly. Contractor may require Drop Box
2162 Subscribers to provide a deposit prior to provision of service.

2163 C. **Bill Format.** The format of the Billing statements shall be reviewed and approved by the CCCSWA
2164 before the Commencement Date of this Agreement. Upon CCCSWA request, Contractor shall
2165 provide Subscribers with itemized Billing in a format to be approved by CCCSWA.

2166 D. **Subscriber Payment Options.** Contractor's website shall provide Subscribers with the ability (i) to
2167 pay their bills through an electronic check or credit card, (ii) to be automatically charged on a
2168 recurring basis, and (iii) to submit billing questions by email. Contractor shall prepare and mail bills

2169 and collect bill payments from Subscribers who decline to use such internet-based Billing system.
2170 Contractor shall make arrangements to allow Subscribers to pay bills by cash, check, electronic
2171 check, money order, and credit card. Contractor shall allow Subscribers to submit payments at the
2172 Contractor's office at 441 N. Buchanan Circle, Pacheco, CA from 8:00 a.m. to 5:00 p.m. Monday
2173 through Friday.

2174 E. **Change in Service Levels.** If Subscriber requests a change in Service Level that results in a lower
2175 Rate, Contractor shall adjust Subscriber's Billing amount within seven (7) Business Days of the date
2176 Subscriber requested the change regardless of whether or not Contractor delivers the appropriate
2177 Containers or modifies the Service Level within that timeframe. However, if Subscriber requests a
2178 change in Service Level that results in a higher Rate, Contractor shall adjust the Subscriber's Billing
2179 amount within seven (7) Business Days of the effective date of the actual change in Service Level.
2180 Contractor shall allow each Subscriber to authorize multiple individuals to make decisions
2181 regarding the account. Contractor shall keep on record the names of all individuals for each
2182 account that are authorized to make such decisions.

2183 F. **Refunds for Inaccurate Billings.** In the event that Contractor bills any Subscriber, at any time, for
2184 any reason, during the Term of this Agreement, an amount higher than appropriate for the Service
2185 Type or Service Level that the Subscriber is receiving or an amount higher than the appropriate
2186 Maximum Rate, Contractor shall promptly refund Subscriber the full amount that they were over-
2187 billed calculated from date the over Billing began to the date the over Billing was corrected.

2188 G. **Record Keeping.** Contractor shall maintain copies of all Billings and Gross Receipts, each in
2189 chronological order, for the Term of this Agreement and for three (3) years beyond the Term, for
2190 inspection and verification by the CCCSWA at any reasonable time but in no case more than thirty
2191 (30) Days after receiving a request to do so.

2192 Billing records shall include detailed Subscriber account database in electronic format that consists
2193 of the following information at a minimum: Subscriber identification number, Subscriber name,
2194 billing address, service location address, number of tenant units, number of Containers and size of
2195 Containers by material type and Collection frequency for each container, Rate, special services
2196 (hard-to-serve, on-property Collection, etc.). Within five (5) Business Days of CCCSWA's request,
2197 Contractor shall provide CCCSWA with an electronic copy of the database in a format that allows
2198 for CCCSWA to sort, group, and analyze the Subscriber data.

2199 For Multi-Family Subscribers, Contractor shall record the number of tenants at the premises. For
2200 Subscribers in the unincorporated area of Contra Costa County, Contractor shall use due care to
2201 accurately identify these Subscribers as Subscribers in the County area, as these Subscribers
2202 typically have city or town mailing addresses and can be misreported as a Subscriber of one of the
2203 other Member Agencies.

2204 Contractor shall compile a database or Excel spreadsheet that includes all mailing addresses for
2205 individual tenant units. These mailing addresses shall be used by Contractor to distribute the
2206 Multi-Family Tenant Recycling brochure and shall be provided to the CCCSWA upon request. The
2207 CCCSWA anticipates that the Contractor may obtain the addresses during the first six (6) months
2208 of the Term of the Agreement during multi-family site visits that are required pursuant to Section
2209 7.2.

2210

2211 H. **Bad Debt Collection**

2212 1. **General.** Contractor shall be responsible for collection of payment from Subscribers with
2213 past due accounts ("bad debt"). Contractor shall make reasonable efforts to obtain payment
2214 from delinquent accounts through issuance of late payment notices, telephone requests for
2215 payments, and assistance from collection agencies. Subject to this Section 7.3 and approval
2216 of the CCCSWA Executive Director, Contractor shall have the right to establish the policies,
2217 fees and procedures used to collect "bad debt".

2218 2. **Notice and Service Suspension.** Contractor shall send notices to sixty (60) Day delinquent
2219 Residential Subscribers notifying them that their service will be suspended when they are
2220 delinquent more than five (5) Business Days past the end of each quarterly Billing cycle.
2221 Contractor shall call thirty (30) Day delinquent Commercial Subscribers notifying them that
2222 their service will be suspended when they are more than five (5) Business Days past the end
2223 of each monthly Billing cycle. After such notice, Contractor may discontinue service to
2224 delinquent Residential and Commercial accounts. All notifications and correspondence
2225 issued by Contractor shall be directed to the Subscriber and the owner of the property if the
2226 owner is a different Person or entity than the Subscriber.

2227 3. **Notification to the CCCSWA.** If a Subscriber's service level is suspended, Contractor shall
2228 provide written notification to the CCCSWA within twenty-four (24) hours and shall include
2229 in the notice to CCCSWA the Subscribers' name and address, original date of Billing, date of
2230 delinquency notice, and amount due. The CCCSWA may involve their Member Agency code
2231 enforcement officers in the assessment of public health and safety concerns at a
2232 Subscriber's premises following a service suspension.

2233 4. **Restart of Service.** After service suspension, Contractor may charge the Subscriber a fee to
2234 restart service at a Rate not to exceed the Maximum Rate, and may require the Subscriber
2235 to pay all amounts due (including late payment fees, re-drop fees, reinstatement fees),
2236 and/or make a deposit in advance equal to two (2) months of service, as a condition to
2237 recommencing service.

2238 I. **Review of Billings**

2239 1. **General.** Contractor shall review its Billings to Subscribers. The purpose of the review is to
2240 determine that the amount which the Contractor is Billing each Subscriber is consistent with
2241 the Contractor's Rate schedule and that Rates do not exceed Maximum Rates approved by
2242 the CCCSWA Board.

2243 2. **Procedures.** Contractor shall review each Cart Service account at least once per Rate Year in
2244 such a manner that all accounts on a particular route are audited on the same day. The
2245 audits shall be scheduled so that Contractor completes audits of twenty-five percent (25%)
2246 of the Cart Service routes each quarter. Contractor shall review each Bin Service account
2247 and Drop Box/Compactor Service account at least once every other year. Audits shall be
2248 scheduled in a manner that all accounts on a particular route are audited on the same day
2249 and twelve and one half percent (12.5%) of the Bin Service and Drop Box/Compactor Service
2250 routes are audited each quarter.

2251 The review shall be performed by the Contractor's route supervisor(s) or other agent
2252 approved by the CCCSWA. The Person conducting the review shall compare a route report
2253 for the route under review and verify, through visual inspection of each Subscriber's
2254 Premises on the Subscriber's scheduled day of Collection, the Service Level actually provided
2255 to each Subscriber listed on the route report review and document the actual Service Level
2256 in writing on the route report. In addition, the Contractor's route supervisor or appropriate
2257 agent shall list any Subscribers receiving service (and the level of such service) that do not
2258 appear on the routing report. The Contractor shall reconcile the route report to the Billing
2259 report, noting all discrepancies. Any discrepancies should be marked clearly on the Billing
2260 report. Contractor shall verify if the discrepancies result from Subscriber's request for
2261 Special Services on the day of the route audit and shall provide documentation in such
2262 cases. Contractor shall issue correction notices to the Subscribers correcting any Billing
2263 inaccuracies within five (5) Business Days of the day the route audit was performed and shall
2264 provide such notices to CCCSWA along with the annotated Billing report.

2265 3. **Reporting Requirements.** Contractor shall include in each quarterly report (per Exhibit B) a
2266 written report to the CCCSWA that identifies the Cart Service, Bin Service and Drop
2267 Box/Compactor Service routes audited, the number of accounts on each route, the number
2268 of Billing inaccuracies per route, the percentage of Billing inaccuracies (where Billing
2269 inaccuracies are instances when service observed by route auditor differs from service listed
2270 on the route reports and/or Billing reports) per route (equal to the number of Billing
2271 inaccuracies divided by the number of accounts per route), and the estimated annual gross
2272 Billing impact associated with the Billing inaccuracies (which shall be calculated as the
2273 difference between the Billing amount shown on the Billing report on the date of the audit
2274 and the corrected Billing amount multiplied by 12). The written report shall also include
2275 copies of the route audits (i.e., Billing reports with handwritten notes identifying actual
2276 Service Level provided to each Subscriber and notes the Billing discrepancies), copies of the
2277 corrective notices sent to Subscribers, and any supporting calculations. The CCCSWA
2278 reserves the right to perform this review itself or through use of an agent at its expense.

2279 **7.4 Customer Service Program**

2280 **7.4.1 Program Requirements**

2281 A. **Availability of Representatives.** Contractor shall establish and maintain an office within the
2282 Service Area (or within close proximity to the Service Area subject to approval of the CCCSWA
2283 Executive Director) through which the Contractor's representatives may be contacted, unless
2284 otherwise approved by the CCCSWA. At the local office, a representative of the Contractor (who is
2285 knowledgeable of the Service Area, services, and Rates, and has a sufficient level of authority to
2286 authorize Service Level changes, communicate with route drivers, accept payments from
2287 Subscribers, and resolve Complaints) shall be onsite and available from 7 a.m. to 6 p.m. Monday
2288 through Friday to communicate with the public in person, via email, and by telephone. Contractor
2289 shall maintain a local or toll-free telephone number which it shall publicize. Contractor shall also
2290 maintain an after-hours telephone number allowing twenty-four (24) hour per day access to
2291 Contractor management by CCCSWA in the event of an emergency involving Contractor's
2292 equipment or services including, but not necessarily limited to, fires, blocked access, or property
2293 damage.

- 2294 B. **Telephone Service.** Contractor shall maintain a telephone system in operation from 7 a.m. to 6
2295 p.m. and shall have sufficient equipment in place and staff available to handle the volume of calls
2296 experienced on the busiest days and such telephone equipment shall be capable of recording the
2297 responsiveness to calls. Recording of Contractor's responsiveness to calls shall include, at a
2298 minimum, all items included in the performance standards listed in Exhibit C. An answering
2299 machine or voicemail service shall record Subscriber calls and voice messages between 6 p.m. and
2300 7 a.m. Contractor's telephone system and staff shall be set up to allow quick and simple transfer
2301 of calls to the CCCSWA office.
- 2302 C. **Website.** Contractor shall develop and maintain a website (or webpage) that is specifically
2303 dedicated to the CCCSWA to provide Subscribers with detailed service information and Rates. The
2304 website or webpage shall be accessible by the public. In addition, Contractor's website shall
2305 include all public education and outreach materials and capabilities required to be compliant with
2306 Exhibit A. Contractor's website shall provide the public the ability to e-mail Contractor questions,
2307 service requests, or complaints and to schedule on-call pick-ups. Contractor shall update the
2308 website regularly so that information provided is current.
- 2309 D. **Training.** All Persons involved in providing customer service and/or Billing support to Subscribers
2310 shall be well educated on and knowledgeable of all aspects of the CCCSWA's Collection services,
2311 Rates, and other relevant information. All Subscriber service representatives shall be fully trained
2312 in the use of Telecommunications Devices of the Deaf (TDD) services to communicate with
2313 hearing-impaired Subscribers. Contractor shall not use temporary staff for longer than one (1)
2314 month without providing them with the training necessary to address the full range of Subscriber
2315 service issues.
- 2316 E. **Live Web-Chats.** On a bi-annual basis, Contractor shall host live web-chats through which
2317 Subscribers may submit questions regarding AB 341 or other Recycling-related topics, and receive
2318 real-time responses from a member of Contractor's staff. Contractor and CCCSWA shall agree
2319 upon dates for the web-chats, and Contractor shall promote and advertise the events to
2320 Subscribers no less than two (2) weeks in advance of each scheduled web-chat.

2321 **7.4.2 Service Requests, Compliments, Complaints**

2322 Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable
2323 resolution of, all Subscriber service requests and complaints. Contractor shall record in a separate log,
2324 approved as to form by CCCSWA, all complaints, noting the name and address of complainant, date and
2325 time of complaint, nature of complaint, and nature and date of resolution. The Contractor shall retain
2326 this complaint log for the Term. Upon request by the CCCSWA, Contractor shall compile and submit a
2327 summary statistical table of the complaint log.

2328 Contractor shall respond to all complaints received within twenty-four (24) hours, weekends and
2329 Holidays excluded. In particular, if a complaint involves a failure to Collect Solid Waste, Recyclable
2330 Materials, or Organic Materials from a Premises in the Service Area, Contractor shall Collect the material
2331 in question within twenty-four (24) hours of receipt of the Complaint, provided that Generator has
2332 properly placed materials for Collection. The CCCSWA Executive Director shall make the final
2333 determination in the event of unresolved disputes between Subscriber and Contractor.

7.5 CCCSWA Web-Based Access to Information

Contractor shall establish a web-based system that enables the CCCSWA to have twenty-four (24-) hour access to Contractor's customer service and Billing system to view Subscriber records including Service Level information, Rate, call history, etc. Example web-based reports that the CCCSWA will be able to access are provided in Exhibit V.

7.6 AB 939 and AB 341

Contractor shall perform all education, outreach, monitoring, and reporting for all Commercial and Multi-Family properties as required by AB 939 and AB 341 under the direction of the CCCSWA. These activities shall include educating Multi-Family and Commercial Subscribers regarding the mandatory Recycling requirements of AB 341; and notifying non-compliant Multi-Family and Commercial Subscribers at least semi-annually. The Contractor's approach to educating Subscribers shall be reviewed and approved by the CCCSWA.

On a monthly basis, the Contractor shall provide all necessary reporting data requested by the CCCSWA relating to the CCCSWA's compliance requirements pertaining to AB 939 and AB 341 as it affects the CCCSWA's reporting to CalRecycle.

The Contractor shall cooperate in activities requested by the CCCSWA to measure Diversion of Solid Waste from landfills including, but not limited to, providing a location for conducting waste sorting at the Contractor's facility, and re-routing trucks on a temporary basis to facilitate composition analysis. Such reports shall include, but not necessarily be limited to, throughput, Diversion rates per material type, Residue, costs, Recyclable Materials commodity values, and final disposition of Recyclable Materials and Organic Materials. The Contractor shall also supply any other information reasonably requested by the CCCSWA to meet State, federal, or Contra Costa County regulatory requirements as those requirements may be amended from time to time.

Contractor shall identify, educate, and monitor all Commercial and Multi-Family Subscribers required to be in compliance with AB 341, and, in accordance with Exhibit A, shall implement a Recycling plan that supports and educates such Subscribers about the State requirements. Throughout the Term, Contractor shall ensure that online and print materials related to Commercial and Multi-Family Subscribers contain up-to-date information pertaining to AB 341 or other mandatory requirements.

7.7 Provision of Emergency Services

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

2373 emergency services within twenty-four (24) hours of notification by the CCCSWA or as soon thereafter
2374 as is reasonably practical in light of the circumstances. Emergency services, which exceed the
2375 Contractor's obligations, shall be compensated in accordance with Section 10.4.A. If Contractor cannot
2376 provide the requested emergency services, the CCCSWA shall have the right to take possession of the
2377 Contractor's equipment (in accordance with Section 14.6.D for the purposes of providing emergency
2378 services).

2379 **7.8 Other Services**

2380 **7.8.1 "We're Looking Out for You"**

2381 Contractor shall implement its "We're Looking Out for You" neighborhood watch program in partnership
2382 with local law enforcement. Through this program, Contractor's route staff, which are in the community
2383 on a daily basis, shall assist law enforcement officials in identifying and reporting suspicious behavior
2384 through Contractor's dispatch department.

2385 **7.8.2 Commercial Reuse Program**

2386 Contractor's "Recycling Coordinator(s)" staff shall work with Commercial Subscribers to identify atypical
2387 Discarded Materials, for which no traditional Recycling opportunities exist, and determine their
2388 potential for reuse. Contractor shall create an online forum or webpage to post items available for reuse
2389 and outlets that may be available. Contractor shall keep a record of the types and quantity of materials
2390 handled through this program, as well as their ultimate use or destination.

2391 **7.8.3 Online Recycling Pledge Campaign**

2392 Contractor shall incorporate community-based social marketing principles, seeking to go beyond a
2393 traditional awareness and education campaign by leveraging local community relationships and
2394 interests. Contractor shall implement an annual "Pledge-to-Preserve" campaign through which residents
2395 may compete to win a Contractor-sponsored grant by making online pledges to Recycle, Compost, or
2396 reduce Solid Waste. Contractor staff will work closely with CCCSWA and Member Agencies, as well as
2397 engage community voting, to select a grant recipient. Each year, Contractor shall award a community
2398 improvement project grant within the Service Area in the amount of one thousand, five hundred
2399 (\$1,500) dollars to the selected winner.

2400 **7.8.4 Annual Food Drive**

2401 Annually, Contractor shall hold afoot drive to assist the efforts of the Contra Costa and Solano County
2402 Food Bank. Contractor shall advertise the event, and inform residents to set non-perishable food and
2403 new, unwrapped toys at the Curb on their regular Collection day for a period of two weeks during the
2404 holiday season (beginning directly after Thanksgiving). Contractor's route drivers shall Collect the
2405 donated items and store them in a designated area of the Collection vehicle cab. A member of
2406 Contractor staff will then deliver the donated items to a location selected by Contractor and the food
2407 bank.

2408 **7.8.5 Annual Compost Give-Away**

2409 Contractor shall provide one (1) free annual Compost give-away event through which residents of the
2410 Service Area may claim, in resident-provided Containers, up to three (3) cubic yards of Compost Product.

2411 Contractor shall coordinate with CCCSWA to determine a CCCSWA approved date and time for the
2412 event.

2413 **7.8.6 Facilitate Garage Sale Days**

2414 No less than one (1) time annually, Contractor shall facilitate a Service Area-wide "Garage Sale Day,"
2415 through which residents and businesses within the Service Area may host "garage sales" during a
2416 scheduled and pre-determined weekend. Contractor shall provide an online platform for participants to
2417 register their individual sales, and indicate which types of items or materials will be available. The online
2418 platform shall enable users to search for sales by item category and download all sale locations in a
2419 printable map format.

2420 **7.8.7 Sharps Collection**

2421 Contractor shall Collect Sharps contained in authorized Sharps containers and placed for Collection in
2422 clearly-marked Sharps collection receptacles, from eight (8) CCCSWA approved drop-off locations within
2423 the Service Area, as identified in Exhibit T. Sharps receptacles shall be labeled with the CCCSWA name
2424 and logo, Contractor's phone number, and instructions for use. Following Collection, Contractor shall
2425 arrange for proper Disposal of Sharps. Contractor shall provide Sharps Collection services according to
2426 the CCCSWA approved schedule in Exhibit T. Contractor shall obtain and maintain through the Term all
2427 Permits required for the Collection location and for Collection, Transportation, and Disposal for Sharps.
2428 In the event that program use requires increased frequency of Collection, Contractor and CCCSWA shall
2429 meet and confer to determine revised program requirements. Contractor shall submit Disposal
2430 information and program data to CCCSWA on a monthly basis, pursuant to Exhibit B. Contractor shall
2431 not be responsible for providing Sharps Collection services to residential care facilities, medical or
2432 veterinary offices, or other Commercial Generators.

2433 **7.8.8 Contractor's Implementation Plan**

2434 Within fifteen (15) Days following the Effective Date, Contractor shall submit to CCCSWA a revised
2435 Implementation Plan to update and replace the original Implementation Plan submitted with
2436 Contractor's proposal. Upon submittal of the updated Implementation Plan, Contractor and CCCSWA
2437 shall meet and confer to discuss any necessary changes, following which, Contractor shall submit a final
2438 Implementation Plan for CCCSWA approval. Following CCCSWA approval, Contractor's final and restated
2439 Implementation Plan shall replace Contractor's originally submitted Implementation Plan, and shall be
2440 included in Exhibit L of the Contractor's Proposal. Failure to adhere to the Implementation Plan may
2441 result in Liquidated Damages pursuant to Exhibit C.

2442 **7.8.9 Anti-Scavenging Program**

2443 Contractor and the CCCSWA acknowledge that scavenging of Franchised Materials may present health
2444 and safety hazards as well as economic loss to the CCCSWA and other CCCSWA contractor(s). Contractor
2445 shall make all commercially reasonable efforts to prevent the scavenging of Franchised Materials from
2446 Subscriber Containers, including utilizing Container locks pursuant to Section 8.5.C, notifying the
2447 CCCSWA pursuant to Section 2.2.A, providing anti-scavenging outreach to Residential and Commercial
2448 Subscribers, and aiding Subscribers with strategic Container placement to reduce or prevent scavenging.

2449 **ARTICLE 8**
2450 **STANDARD OF PERFORMANCE**

2451 **8.1 General**

2452 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to
2453 the public and the Contractor's employees. Except to the extent that a higher performance standard is
2454 specified in this Agreement, Contractor shall perform services in accordance with Solid Waste,
2455 Recyclable Materials, and Organic Materials management practices common to Northern California.

2456 **8.2 Operating Hours and Schedules**

2457 A. **Hours of Collection.** Unless otherwise authorized by the CCCSWA, Contractor's days and hours for
2458 Collection operations shall be as follows:

2459 1. **Residential Premises.** Collection from Residential Premises shall only occur between the
2460 hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

2461 2. **Commercial Premises.**

2462 a. Collection shall occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through
2463 Friday for the following: (i) Commercial Premises that are two hundred (200) feet or
2464 less from Residential Premises, and, (ii) areas zoned "mixed use" Residential and
2465 Commercial.

2466 b. Collection from designated Commercial business areas identified in Exhibit J and the
2467 community of Rossmoor shall only occur between the hours of 7:00 a.m. and 6:00
2468 p.m., Monday through Friday.

2469 c. Collection from Commercial Premises that are more than two hundred (200) feet from
2470 Residential Premises and that are not listed in Exhibit J shall occur between the hours
2471 of 4:00 a.m. and 9:00 p.m., Monday through Saturday.

2472 d. Contractor is encouraged to schedule Collection from Commercial Subscribers in close
2473 proximity to any Residential Subscribers after 7:00 a.m. by focusing early morning
2474 Collection service in Commercial areas away from Residential neighborhoods.

2475 e. Upon complaints from Residential Subscribers about Collection noise, the Contractor
2476 shall re-route its Collection vehicles to Collect after 7 a.m. and shall meet and confer
2477 with the CCCSWA to agree on a proposed solution.

2478 B. **Holiday Collection Schedule.** Contractor shall not provide Collection services on a Holiday.
2479 Contractor shall provide Collection services on the day following the Holiday thereby adjusting
2480 subsequent work that week; however, Subscriber service days shall be returned to the normal
2481 schedule within one (1) week of the Holiday. In the event a Holiday falls on a Friday, regular Friday
2482 Collection will occur on Saturday. The Contractor shall provide Subscribers, the CCCSWA, and
2483 Member Agencies written notice of Holiday-related changes in Collection schedules at least two

2484 (2) weeks prior to the change. Contractor shall also post notice of Holiday-related changes in
2485 Collection schedules on its website.

2486 **8.3 Collection Standards**

2487 A. **Servicing Containers.** Contractor shall pick up and return each Container to the location where the
2488 Occupant properly placed the Container for Collection. Contractor shall place the Containers
2489 upright with lids properly secured. Contractor's service shall include, at no additional charge to the
2490 Customer: (i) unlocking and locking Containers; (ii) accessing Container enclosures with a key;
2491 and, (iii) opening and closing gates.

2492 Contractor, at the request of Subscribers, may provide Special Services for which the CCCSWA has
2493 adopted a Maximum Rate including, but not limited to: (i) extra on-call Collection of Franchised
2494 Materials in addition to the regularly scheduled Collection and in addition to the allowable
2495 number of on-call pick-ups Single-Family Customers are eligible pursuant to Section 5.1; (ii) pulling
2496 or pushing Containers to the Collection vehicle; (iii) washing Containers; and (iv) other services.

2497 B. **Litter and Spill Abatement.** Contractor shall use due care to prevent spills or leaks of material
2498 placed for Collection, Used Motor Oil, fuel, and fluids while providing services under this
2499 Agreement. If any materials are spilled or leaked during Collection and Transportation, the
2500 Contractor shall clean up all spills or leaks before leaving the site of the spill.

2501 Contractor shall not transfer Loads from one vehicle to another on any public street, unless it is
2502 necessary to do so because of mechanical failure, hot Load (combustion of material in the truck),
2503 or accidental damage to a vehicle.

2504 Contractor shall cover all open Drop Boxes at the pickup location before Transporting materials to
2505 the Approved Facilities or Designated Facilities.

2506 C. **Clean-Up.** During the Collection or Transportation process, the Contractor shall clean-up Litter in
2507 the immediate vicinity of any Container storage area (including the areas where Collection Bins
2508 and Drop Boxes are delivered for Collection) whether or not Contractor has caused the Litter. The
2509 Contractor shall discuss instances of repeated spillage not caused by it directly with the Generator
2510 responsible and shall report such instances to CCCSWA. CCCSWA shall attempt to rectify such
2511 situations with the Generator if Contractor has already attempted to do so without success.

2512 D. **Noise.** All Collection operations shall be conducted as quietly as possible and shall conform to
2513 applicable federal, State, and local noise level regulations, including the requirement that the
2514 noise level during the stationary compaction process not exceed seventy-five (75) decibels at a
2515 distance of twenty-five (25) feet at a height of five (5) feet from the Collection vehicle or more
2516 stringent standards if applicable. The CCCSWA may conduct random checks of noise emission
2517 levels to ensure such compliance.

2518 E. **Routes.** On or before November 1, 2014, Contractor shall provide CCCSWA with route information
2519 and maps of the Single-Family Collection routes in sufficient detail that allows the CCCSWA and
2520 Member Agencies to review and approve the routes and to plan Member Agency street sweeping
2521 routes. Route maps shall be provided in Adobe Acrobat PDF format or other format agreed upon
2522 by the CCCSWA. Pursuant to Exhibit L (Contractor's Proposal), Contractor shall implement the

2523 routing program "Route Editor" to ensure that specific metrics including, but not limited to,
2524 population density, distance to the Approved Facilities or Designated Facilities, and historical
2525 operating statistics are taken into account while developing Collection routes, in order to
2526 maximize Route safety and minimize wear and tear on Service Area streets. In planning its
2527 Collection routes, Contractor shall work to minimize the number of Subscribers that experience
2528 change in the day of the week their Collection services were provided by the CCCSWA's prior
2529 Collection contractors. With its submittal of route maps on November 1, 2014, Contractor shall
2530 identify the number of Subscribers that will experience a change in Collection days and a list of
2531 each Subscriber's name and address.

2532 During the Term of the Agreement, Contractor shall meet and confer with the CCCSWA to amend
2533 the route schedule. Contractor shall not modify scheduled Collection routes or scheduled
2534 Collection days without prior written notification to and approval of CCCSWA.

2535 Contractor shall Collect materials generated in the Service Area in Collection vehicles separately
2536 from other materials generated outside the Service Area.

2537 **8.4 Vehicle Requirements**

2538 A. **General.** Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity
2539 to efficiently perform the work required by the Agreement, including special Subscriber groups
2540 such as Hard-to-Serve areas, in strict accordance with its terms. Contractor shall have available
2541 sufficient back-up vehicles for each type of Collection vehicle used to respond to scheduled and
2542 unscheduled maintenance, service requests, complaints, and emergencies. All such vehicles shall
2543 have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall
2544 comply with all federal, State, and local laws and regulations. On or before the Commencement
2545 Date, Contractor shall provide all new vehicles to be used for Collection of Franchised Recyclable
2546 Materials and Franchised Organic Materials. On or before March 1, 2016, Contractor shall provide
2547 all new vehicles to be used for Collection of Franchised Solid Waste. All Collection vehicles shall
2548 be equipped with on-board computers (OBC) and global positioning systems (GPS) as well as GPS
2549 and customer service software pursuant to Exhibit L (Contractor's Proposal). Contractor shall
2550 purchase vehicles with a useful life of ten (10) years or more and shall depreciate the vehicles over
2551 a ten-year (10-year) period.

2552 Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety
2553 and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's
2554 recommendations or limitations imposed by State or local weight restrictions on vehicles.
2555 Collection vehicles shall present a clean appearance while providing service under this Agreement.
2556 Collection vehicles shall be thoroughly washed and steam cleaned on a regular basis so as to
2557 present a clean appearance. CCCSWA may inspect vehicles at any time to determine compliance
2558 with sanitation requirements. Contractor shall make vehicles available to the Contra Costa County
2559 Health Department for inspection, at any frequency it requests.

2560 B. **Labels and Signage.** Contractor's name and local telephone number shall be displayed on all
2561 vehicles in at least four (4) inch characters. Vehicles shall be equipped with sign board holders or
2562 other hardware to allow public education signage of no less than thirty-six (36) by forty-eight (48)
2563 inches to be displayed on both sides of the vehicle.

2564 C. **Vehicle Inspection Requirements.** Contractor shall inspect each vehicle daily to ensure that all
2565 equipment is operating properly. Vehicles that are not operating properly shall be taken out of
2566 service until they are repaired and operate properly. Contractor shall repair, or arrange for the
2567 repair of, all of its vehicles and equipment for which repairs are needed because of accident,
2568 breakdown or any other cause so as to maintain all equipment in a safe and operable condition.
2569 CCCSWA staff may inspect vehicles at any reasonable time, and within three (3) Days of such a
2570 request, to determine compliance with sanitation requirements.

2571 D. **Inventory Information Requirements.** Contractor shall furnish the CCCSWA a written inventory of
2572 all vehicles, including Collection vehicles, used in providing service, and shall update the inventory
2573 annually. The inventory shall list all vehicles by manufacturer, identification number, date of
2574 acquisition, type, capacity, and decibel rating.

2575 E. **Vehicles by Service Type.** Pursuant to Exhibit L (Contractor's Proposal), Contractor shall use the
2576 following Collection vehicle types by Subscriber type as described herein:

2577 1. **Residential and Commercial Cart Subscribers:** 42 cubic-yard front-load vehicle, fitted with
2578 an automated 4.6 cubic-yard "Curotto-Can" device for; or, automated side-loader with a 5
2579 cubic-yard hopper.

2580 2. **Multi-Family and Commercial Bin Subscribers:** 42 cubic-yard front-end load vehicle.

2581 3. **Residential Hard-to Serve Subscribers:** 10 cubic-yard, semi-automated, 2-axle vehicle.

2582 4. **Commercial Hard-to-Serve Subscribers:** 25-30 cubic-yard, rear-load, 3-axle vehicle.

2583 All Collection vehicles, shall operate on compressed natural gas (CNG), and shall be fueled at
2584 Contractor's existing service yard located at 411 N. Buchanan Circle, Pacheco, CA. Changes or
2585 substitutes of vehicles by service type from those specified herein shall be subject to approval
2586 from the CCCSWA Executive Director.

2587 **8.5 Container Requirements**

2588 A. **General.** On or before the Commencement Date, Contractor shall provide Subscribers with new
2589 Collection Containers as requested by the Subscriber to meet its desired Service Level. All
2590 Contractor-provided Containers shall be new and shall be designed and constructed to be
2591 watertight and prevent the leakage of liquids. Contractor shall cooperate with the previous
2592 CCCSWA collection contractor to ensure that all existing Containers are replaced with Contractor-
2593 provided Containers within thirty (30) Days following the Commencement Date.

2594 Contractor shall purchase Containers with a useful life of ten (10) years or more and shall
2595 depreciate the Containers over a ten-year (10-year) period.

2596 Contractor shall make Compactors available to Subscribers for purchase or lease and/or shall
2597 allow Subscribers to purchase or lease Compactors through an outside vendor.

2598 B. **Carts.** Solid Waste Container sizes for Subscribers subscribing to Cart service shall be twenty (20),
2599 thirty-two (32), sixty-four (64), and ninety-six (96)-gallons. Unless a Subscriber specifically requests
2600 a smaller Cart size, or the CCCSWA Executive Director approves alternate default Cart sizes,

2601 Contractor shall provide ninety-six (96) gallon Recycling Carts and Organic Carts to Single Family
2602 Subscribers. All Cart sizes shall be "true" sizes, such that smaller capacities in Carts shall not be
2603 achieved by adding inserts into larger capacity Carts.

2604 Upon request, Contractor shall provide Used Oil Recovery Kits free of charge, to each Single-
2605 Family and Multi-Family Subscriber for Used Motor Oil and Filter Collection.

2606 C. **Bins, Drop Boxes, and Compactors.** Contractor shall provide Bins, Drop Boxes, and/or Compactors
2607 for storage and Collection of Solid Waste, Recyclable Materials, and Organic Materials. Contractor
2608 shall install plastic lids on all Bin Containers owned and serviced by the Contractor. All Containers
2609 with the capacity of one cubic yard or more shall meet applicable federal regulations and Solid
2610 Waste Bin safety. All Bins, Drop Boxes, and Compactors shall be painted the Contractor's standard
2611 color (subject to approval by the CCCSWA). Refer to Sections 8.5.D and 8.5.E for additional
2612 requirements.

2613 Prior to the Commencement Date, Contractor shall conduct a pilot program among existing
2614 Commercial Subscribers in the Service Area to test the effectiveness and serviceability of "gravity
2615 locks" on Bins, from a Collection, security and Subscriber experience standpoint. Following
2616 conclusion of the pilot, Contractor and CCCSWA shall meet and confer to discuss the results of the
2617 pilot program. Following the meet and confer period, pending CCCSWA request, Contractor shall
2618 fit some or all Bins with "gravity locks" or other form of CCCSWA approved locking device at no
2619 additional charge to CCCSWA or Subscribers.

2620 D. **New Container Standards**

2621 1. All new Carts shall be manufactured by injection or rotational molding methods and shall
2622 meet the Cart design, color, and performance requirements provided in Exhibit G. Carts
2623 provided to Subscribers shall have a useful life of ten (10) or more years evidenced by a
2624 manufacturer's warranty or other documentation acceptable to the CCCSWA.

2625 2. All new Containers with a capacity of one (1) cubic yard or more shall meet applicable
2626 federal regulations for Bin safety and be covered with attached lids. Subject to approval by
2627 the CCCSWA, all Bins, Drop Boxes, and Compactors shall be painted the Contractor's
2628 standard color and shall prominently display the name and telephone number of the
2629 Contractor.

2630 3. Contractor shall differentiate Solid Waste Containers, Recyclable Materials Containers, and
2631 Organic Materials Containers from each other by: (i) providing Containers of different colors
2632 (blue for Recyclable Materials, green for Organic Materials, and black for Solid Waste), or (ii)
2633 adhering clearly-visible labels to each Container identifying the allowable material type. The
2634 second option is not acceptable for Carts purchased for this Agreement and during the
2635 Term. In the event that Contractor adheres labels to Containers for any purpose, Contractor
2636 shall ensure that such labels remain clearly-visible, do not fade or peel, and are maintained
2637 in accordance with Section 8.5.G below. Any new Carts shall have bodies in colors that
2638 differentiate the different material types to be Collected and such colors shall be approved
2639 by the CCCSWA.

2640 4. Contractor shall obtain the CCCSWA's written approval of Container specifications, colors,
2641 and labeling before acquisition, painting, and labeling occurs.

2642 5. When purchasing plastic Collection Containers, Contractor shall purchase Containers that
2643 contain a minimum of 30% post-consumer recycled plastic content.

2644 6. All such Containers shall be 100% recyclable at the end of its useful life.

2645 E. **Container Labeling.** On the body of each Container, Contractor shall label the type of materials to
2646 be placed in the Container for Collection (e.g., Solid Waste, Recyclable Materials, Organic
2647 Materials, cardboard, mixed paper, yard trimmings, wood waste, metal, etc.). The labeling shall
2648 be positioned on the side of each Container so it is visible to the Subscriber at all times. Hot
2649 stamping information on the Carts shall be limited to the labeling on the sides of the Carts and the
2650 Cart orientation arrows on the lid of the Cart.

2651 All Containers shall display the Contractor's name, Contractor's local telephone number, and some
2652 identifying inventory or serial number, and, at the CCCSWA's request, shall also display the
2653 CCCSWA's name and logo.

2654 F. **Repair and Replacement of Containers; Inventory.** Contractor shall be responsible for repairing or
2655 replacing Containers when Contractor determines the Container is no longer suitable for service;
2656 or when the CCCSWA or Subscriber requests replacement of Subscriber's Container that does not
2657 properly function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be
2658 responsible for acquiring and providing the replacement Containers. Contractor shall repair or
2659 replace all damaged or broken Containers within a one (1) week period. If the repair or
2660 replacement cannot be completed within a week, the Subscriber shall be notified by Contractor
2661 and a larger Container shall be made available until the proper Container can be replaced.

2662 Contractor shall maintain a sufficient inventory of Containers to accommodate new Subscriber
2663 requests for service, requests for change in Service Levels (size, type, or number of Containers)
2664 from current Subscribers, and requests for replacement due to damage.

2665 Contractor shall provide to Single-Family Subscribers one (1) free Cart replacement per any twelve
2666 (12) month period in order to accommodate stolen Carts. If Subscriber requests more than one (1)
2667 Cart replacement per any twelve (12) month period, Contractor shall make Carts available at a
2668 Rate not to exceed Maximum Rates for such services. Single-Family Subscribers may also request
2669 one Cart size exchange per Rate Year at no charge. All such Containers shall be provided within
2670 one (1) week of request, excluding requests to change Cart size which occur within one (1) month
2671 of the Commencement Date, which may be provided within one (1) month of request.
2672 Contractor's failure to comply with the Container requirements may result in assessment of
2673 Liquidated Damages pursuant to Section 14.9 and Exhibit C.

2674 G. **Maintenance, Cleaning, Painting.** All Containers shall be maintained in a safe, serviceable, and
2675 functional condition and present a clean appearance. Contractor shall repair or replace all
2676 Containers damaged by Collection operations in accordance with standards specified in Section
2677 8.5.F, unless damage is caused by Subscriber's gross negligence, in which case, the Subscriber will
2678 be billed for repair or replacement of Container at a Rate not to exceed the Maximum Rate for
2679 such service. All Containers shall be maintained in a functional condition.

2680 Contractor shall steam clean and repaint all Containers as needed (other than Carts) so as to
2681 present a clean appearance. Contractor shall offer steam cleaning service (or clean Container

2682 exchange) to Subscribers requesting such service, and shall charge Subscribers for such cleaning
2683 (or Container exchange) at a Rate not to exceed Maximum Rates.

2684 Contractor shall remove graffiti from Containers within forty-eight (48) hours of identification by
2685 Contractor or notice by CCCSWA or Subscriber if such graffiti includes any written or pictorial
2686 obscenities and otherwise within a one (1) week period.

2687 At the CCCSWA's request, Contractor shall provide CCCSWA with a list of Containers and the date
2688 each Container was painted and maintained.

2689 H. **CCCSWA Ownership of Containers at End of Term.** Upon expiration or early termination of
2690 Agreement, all Carts, Bins, Drop Boxes, and Compactors (for permanent Subscribers) purchased
2691 and put into service at Subscribers' Premises during the Term of the Agreement shall become
2692 property of the CCCSWA at no cost to the CCCSWA if such Containers are fully depreciated. All
2693 Carts, Bins, Drop Boxes, and Compactors (for permanent Subscribers) purchased and put into
2694 service at Subscribers' Premises during the Term of the Agreement that have not been fully
2695 depreciated shall be available to the CCCSWA, at the CCCSWA's option, at a cost reflecting the net
2696 book value.

2697 At its sole discretion, the CCCSWA may elect not to exercise its rights with regards to this Section
2698 and, in such case, the Containers shall remain the property of the Contractor upon the date of this
2699 Agreement's expiration or earlier termination. In such case, Contractor shall be responsible for
2700 outstanding depreciation and for removing all Containers in service from the Premises within
2701 fourteen (14) Business Days of the expiration date or early termination date of this Agreement or
2702 within a different timeframe mutually agreed to by the Parties. Contractor shall arrange for reuse
2703 or Recycling of Containers removed from the Service Area.

2704 **8.6 Personnel**

2705 A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
2706 services required by this Agreement in a safe and efficient manner. Contractor shall designate at
2707 least one (1) qualified employee as CCCSWA's primary point of contact with Contractor who is
2708 principally responsible for Collection operations and resolution of service requests and
2709 complaints.

2710 Contractor shall use its best efforts to assure that all employees present a neat appearance and
2711 conduct themselves in a courteous manner. Contractor shall not permit its employees to accept,
2712 demand, or solicit, directly or indirectly, any additional compensation, or gratuity from members
2713 of the public.

2714 B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
2715 issued by the California Department of Motor Vehicles. Contractor shall use the Class II California
2716 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

2717 C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its
2718 employees who operate Collection vehicles or equipment. Contractor shall train its employees
2719 involved in Collection to identify, and not to collect, Unpermitted Materials. Upon the CCCSWA's

2720 request, Contractor shall provide CCCSWA with a copy of its safety policy and safety training
2721 program, the name of its safety officer, and the frequency of its trainings.

2722 D. **Provision of Field Supervision.** Contractor shall designate four qualified employees as supervisor
2723 of field operations. Each field supervisor shall devote at least 80% of his or her time in the field
2724 checking on Collection operations, including responding to complaints.

2725 E. **Uniforms and Identification.** All employees of the Contractor performing field service under this
2726 Agreement shall be dressed in clean uniforms with employee's name or numbered badge, which
2727 also shows Contractor's name, thereon at all times while engaged in the work; no portion of this
2728 uniform may be removed while working.

2729 F. **Hiring Displaced Employees.** Contractor shall make a good faith effort to offer employment to
2730 employees that are working under the agreement between the CCCSWA and the prior contractors
2731 for Collection of Solid Waste and Recyclable Materials, which agreements expire February 28,
2732 2015, and who become unemployed by reason of the change in contractors ("prior contractor's
2733 employees").

2734 G. **Subcontractor and Approved Affiliates' Obligations.** Subcontractors and Approved Affiliates shall
2735 be required to comply with the obligations stated in this Section 8.6.

2736 H. **Labor Agreements.** Labor agreements for drivers and mechanics shall be included as Exhibit Q
2737 and any future modification shall be provided to the CCCSWA as they occur. The Contractor shall
2738 provide full copies of the labor agreements including any and all amendments, extensions,
2739 renewals, or other forms of modification.

2740 **8.7 Unpermitted Materials Inspection and Handling**

2741 A. **Inspection Program and Training.** Contractor shall develop a Load inspection program during
2742 Collection and at Approved Facilities that includes the following components: (i) personnel and
2743 training; (ii) Load checking activities; (iii) management of materials; and, (iv) record keeping and
2744 emergency procedures.

2745 Contractor's Load checking personnel, including its Collection vehicle drivers and personnel at
2746 Approved Facilities, shall be trained in: (i) the effects of Hazardous Substances on human health
2747 and the environment; (ii) identification of Unpermitted Materials; and, (iii) emergency notification
2748 and response procedures. Collection vehicle drivers shall inspect materials in Containers before or
2749 during Collection when practical.

2750 B. **Response to Unpermitted Materials Identified During Collection.** If Contractor determines that
2751 material placed in any Container for Collection is Unpermitted Materials or presents a hazard to
2752 Contractor's employees, the Contractor shall have the right to refuse to accept such material. The
2753 Person that generated the Unpermitted Materials shall be contacted by the Contractor and
2754 requested to arrange proper Disposal. If the Generator cannot be reached immediately, the
2755 Contractor shall, before leaving the Premises, leave a tag at least two (2) inches by six (6) inches in
2756 size, which indicates the reason for refusing to Collect the material and lists the phone number of
2757 at least one Facility that accepts the Unpermitted Materials or a phone number of an entity that
2758 can provide information on proper Disposal of the Unpermitted Materials. Under no

2759 circumstances shall Contractor's employees knowingly Collect Unpermitted Materials or remove
2760 unsafe or poorly containerized Unpermitted Materials from a Collection Container. Prior to
2761 Commencement of this Agreement, the CCCSWA shall review and approve the tag that will be
2762 used to notice Subscribers of reason for non-Collection.

2763 If Unpermitted Material is found in a Collection Container, Collection area, or in material Collected
2764 that could possibly result in imminent danger to people or property, the Contractor shall
2765 immediately notify the local Fire Department.

2766 **ARTICLE 9**

2767 **CONTRACTOR PAYMENTS TO CCCSWA AND MEMBER AGENCIES**

2768 **9.1 Franchise Payments and Other Payments**

2769 In consideration of the exclusive Franchise provided in Section 2.1 of this Agreement, Contractor shall
2770 pay to the CCCSWA Franchise Payments for Danville, Lafayette, Orinda, Moraga, Walnut Creek, and
2771 Contra Costa County that are calculated as a percentage of the Total Calculated Contractor Costs or are
2772 a fixed amount for services provided in each such respective jurisdiction's territory within the Service
2773 Area. Contractor shall pay to CCCSWA any additional fees or expenses as determined and approved by
2774 the specific Member Agencies (for example, vehicle impact fees). Contractor shall submit all Franchise
2775 Payments and other Member Agency fees or expenses to the CCCSWA and the CCCSWA shall distribute
2776 the payments to Member Agencies.

2777 **9.2 Source Reduction and Recycling Fee**

2778 CCCSWA and its Member Agencies prepared and adopted the Source Reduction and Recycling and
2779 Household Hazardous Waste Elements (SRRE and HHWE, respectively) required by AB 939. CCCSWA
2780 incurs expenses for implementing the programs in the SRRE and HHWE. These expenses will be
2781 determined and a Source Reduction and Recycling (SRR) fee set to reimburse CCCSWA. Such Board-
2782 approved fee shall be set each year by CCCSWA and included in calculation of the Maximum Rates.
2783 Contractor may be required to separately identify the SRR fee and other specific costs on bills as
2784 determined and directed by CCCSWA. Each month, Contractor shall remit to the CCCSWA one-twelfth
2785 (1/12th) of the total annual amount identified by the CCCSWA as the SRR fee in the calculations of the
2786 Maximum Rates. The amount of the monthly SRR fee shall be set by the CCCSWA. Contractor shall
2787 continue to pay the same amount of money to CCCSWA each month until the CCCSWA changes the SRR
2788 fee.

2789 **9.3 Other Payments**

2790 A. **Administrative Fee.** Each month during the Term of this Agreement, Contractor shall remit to the
2791 CCCSWA an administrative fee to off-set the costs related to the administration of this Agreement.
2792 The amount of the monthly administrative fee shall be set by the CCCSWA. Contractor shall
2793 continue to pay the same amount of money to the CCCSWA each month until this administrative
2794 fee is adjusted by the CCCSWA.

B. **Reuse and Cleanup Program Fees.** As described in Section 5.1.H, the CCCSWA provides a Curbside Reuse and Cleanup program for Collection of Recyclable Materials and Reusable Items. CCCSWA incurs expenses related to this program. As long as the program remains in effect, these expenses shall be determined and a "reuse fee" set annually by the CCCSWA as part of the calculation of Maximum Rates. Contractor may be required to separately identify the reuse fee on bills as determined and directed by the CCCSWA. The amount of the monthly reuse fee shall be set by the CCCSWA and Contractor shall pay such amount to the CCCSWA each month. Contractor shall continue to pay the same amount of money to CCCSWA each month until the reuse fee changes.

C. **Additional Fees.** The CCCSWA shall reserve the right to set "additional" fees, as it deems necessary. These fees will be reflected in the annual calculation of Maximum Rates and Contractor shall remit the fees to the CCCSWA.

9.4 Materials Marketing Revenue Share

CCCSWA and Contractor anticipate that as of the Commencement Date, the costs associated with Processing Franchised Organic Materials will be higher than the potential revenue that Contractor may receive from marketing the Processed materials. In the event that market conditions change, and it may be reasonably estimated that the costs associated with Organic Materials Processing may be less than the potential revenue from marketing the Processed materials, Contractor and CCCSWA shall meet and confer to discuss the option of implementing a revenue share program.

9.5 Adjustment of Payments

All payments described in this Article 9 (excluding the materials marketing revenue share) shall be included in the calculation of Maximum Rates in accordance with Exhibits D and E. In its sole discretion, the CCCSWA may adjust the amount of any payment required by this Article 9 (except the materials marketing revenue share), as necessary. Such adjustment shall be reflected in the calculation of Maximum Rates.

9.6 Method of Payments

To make the payments required by this Article, Contractor shall collect monies from Subscribers through the Rates. Contractor shall remit all payments required to CCCSWA on a monthly basis, as provided below.

9.7 Timing of Payments and Penalties for Late Payments

Contractor shall remit all payments required under this Article 9 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 9 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. Late payment penalty amounts shall not be considered allowable costs when determining adjustment to Contractor's costs and Maximum Rates pursuant to Exhibit E. The late payment penalty amounts are

2833 not intended as interest on debt, but rather are intended as a predetermined penalty for failure to meet
2834 an obligation under this Agreement.

2835 Each monthly remittance to CCCSWA shall be accompanied by a statement detailing gross Billings and
2836 Gross Receipts for the period covered from all operations conducted or permitted pursuant to this
2837 Agreement. Contractor shall maintain copies of all Billings and Gross Receipts, each in chronological
2838 order, for the Term of this Agreement and for three (3) years beyond the Term, for inspection and
2839 verification by the CCCSWA at any reasonable time but in no case more than thirty (30) Days after
2840 receiving a request to do so.

2841 **9.8 Billing and Payment Audit**

2842 The CCCSWA may, at any time during the Term or within three (3) years following the expiration or early
2843 termination of this Agreement, perform an audit of Contractor's Billings and payment of monies due to
2844 the CCCSWA. Contractor shall fully cooperate with the CCCSWA in any such audit. Should the CCCSWA
2845 or its agent perform this review and identify Billing errors or other errors in payments due to the
2846 CCCSWA valued at one (1%) percent or more of Gross Receipts, Contractor shall, in addition to
2847 compensating the CCCSWA for lost payments and applicable delinquency penalties, reimburse the
2848 CCCSWA's cost of the review.

2849 **ARTICLE 10**

2850 **CONTRACTOR REVENUE AND MAXIMUM RATES**

2851 **10.1 Overview**

2852 The Contractor's compensation for performance of its obligations under this Agreement shall be
2853 Contractor Revenue. Contractor Revenue shall be the full, entire, and complete compensation due to
2854 Contractor pursuant to this Agreement to cover Contractor's costs for all labor, equipment, materials
2855 and supplies, Facility fees, payments and fees due to CCCSWA, taxes, insurance, bonds, overhead,
2856 operations, profit and all other things necessary to perform all the services required by this Agreement
2857 in the manner and at the times prescribed.

2858 If Contractor's actual costs, including fees due to CCCSWA, are more than Contractor Revenue,
2859 Contractor shall not be compensated for the difference in actual costs and actual Contractor Revenue. If
2860 Contractor's actual costs are less than the actual Contractor Revenue, Contractor shall retain the
2861 difference provided that Contractor has paid Member Agency and CCCSWA fees pursuant to Article 9.

2862 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
2863 Subscribers, Rates not to exceed Maximum Rates approved by the CCCSWA Board for provision of
2864 services to Subscribers. Contractor shall also have the obligation to share revenues received from the
2865 sale of materials in accordance with Section 9.4.

2866 The Maximum Rates for Rate Year One are based on Contractor's proposed costs and operating
2867 assumptions for Rate Year One, which are presented in Exhibit N. Maximum Rates for subsequent Rate
2868 Years (excluding Rate Years Three, Six, and Nine) shall be adjusted annually in accordance with Section

10.2 using an index-based adjustment method that involves adjustments using various cost indices and adjustments to Processing, Transfer, and Disposal costs to reflect actual Tonnage. Maximum Rates for Rate Years Three, Six, and Nine shall be adjusted using a cost-based methodology that involves a review of Contractor's actual costs and projection of costs for the coming Rate Year. The purpose of conducting a cost-based adjustment process three (3) times during the Term of the Agreement is intended to provide the Parties an opportunity to adjust Rates to more accurately reflect actual costs of operations if the results of the index-based adjustment process are not tracking with actual changes in costs.

The annual adjustment to Maximum Rates involves adjusting Contractor's Operating Costs among other costs and fees, and the annual adjustment to the Contractor's Operating Costs shall not exceed a maximum percentage increase described in Exhibits D and E.

10.2 Process for Setting Maximum Rates

A. **General.** The CCCSWA Board shall be responsible for approving Maximum Rates as described in this Article. If at any time during the Term of the Agreement, the Contractor determines the need for a Maximum Rate that does not appear on the Maximum Rate schedule approved by the CCCSWA Board, Contractor shall immediately notify the CCCSWA Executive Director and request establishment of such Maximum Rate. For example, if a Subscriber requires Collection of a fifteen (15) cubic yard Compactor five (5) times per week and the Maximum Rate schedule does not include this Service Level, the Contractor must request that the CCCSWA approve a Maximum Rate for this Service Level.

B. **Maximum Rates for Rate Year One.** Maximum Rates for Rate Year One shall be determined by Contractor and CCCSWA and approved by CCCSWA Board resolution on or before the Commencement Date. The Maximum Rates for Rate Year One will be effective March 1, 2015 through February 29, 2016, and shall not be adjusted to reflect either increases or decreases in costs from those anticipated by Contractor.

C. **Annual Adjustment Process.** The Maximum Rates shall be adjusted annually, with CCCSWA Board approval, commencing March 1, 2016 through the remaining Term of this Agreement including any extension periods. The adjustments to Maximum Rates shall be determined using one of two methodologies: (1) an index-based adjustment, or (2) cost-based adjustment. The index-based adjustment, which is described in Exhibit D, involves use of various cost adjustment factors (such as the percentage change in the consumer price index and percentage change in the Approved Facilities' Tipping Fees) to calculate adjusted Maximum Rates. The cost-based adjustment, which is described in Exhibit E, involves a detailed review of the Contractor's actual costs of service and determination of adjusted Maximum Rates to reflect Contractor's projected costs. The cost-based adjustment process will only be used to determine Maximum Rates for Rate Years Three, Six, and Nine. The following table specifies when the two adjustment methods shall be used.

{Remainder of page intentionally blank}

Rate Year	Commencement Date of Rate Year	Adjustment Method Used to Determine Maximum Rates for the Rate Year
1	March 1, 2015	Not Applicable*
2	March 1, 2016	Index-Based
3	March 1, 2017	Cost-Based
4	March 1, 2018	Index-Based
5	March 1, 2019	Index-Based
6	March 1, 2020	Cost-Based
7	March 1, 2021	Index-Based
8	March 1, 2022	Index-Based
9	March 1, 2023	Cost-Based
10	March 1, 2024	Index-Based
11**	March 1, 2025	Index-Based
12**	March 1, 2026	Index-Based

* Rate Year One Rates to be developed based on Contractor's Cost Proposal in Exhibit N.

**Applicable only if the Term is extended pursuant to Section 4.1.

D. **Rate Structure.** With input from its Member Agencies, the CCCSWA Board shall have the sole and exclusive right to change the relationship of individual Maximum Rates in comparison with other Maximum Rates as it deems appropriate. Any such changes would occur in conjunction with the annual Maximum Rate adjustment process described in Section 10.2 or in conjunction with a Maximum Rate adjustment resulting from a Special Rate Review in accordance with Section 10.4.

E. **Approval Process.** The CCCSWA Board shall review and approve all adjustments to Maximum Rates. Prior to CCCSWA Board approval, adjustments to Maximum Rates are typically determined and reviewed by each Member Agency, and, in some cases, by the Member Agencies' Councils or Boards.

10.3 Maximum Rate Application Process

A. Application Date and Content

1. **Application Submittal Date.** On August 1, prior to the commencement of the Rate Year for which Maximum Rates are to be determined (coming Rate Year), Contractor shall submit to the CCCSWA Executive Director at least three (3) copies of its application requesting the adjustment of Maximum Rates for the coming Rate Year and an electronic copy via email. For example, on August 1, 2017, the Contractor shall submit three (3) copies of its application for the adjustment of Maximum Rates to be effective March 1, 2018 (i.e., Rate Year Four).

2932 2. **Content of Application for Index-Based Adjustment.** The application submitted to support
2933 an index-based adjustment of Maximum Rates shall present the calculations of the annual
2934 percentage change in various cost indices, Total Calculated Contractor Costs for the Rate
2935 Year, cost allocations to Member Agencies, Total Revenue Requirement for each Member
2936 Agency, the Rate adjustment factors for each Member Agency, annual revenues and per-
2937 Ton rates for Organic Materials Processing, Transfer, and Disposal services. The application
2938 shall include all supporting documentation for the calculations including a copy of the
2939 collective bargaining agreement(s) currently in effect and reports on revenues resulting
2940 from the sale of Organic Materials (if a revenue sharing program is established in
2941 accordance with the provisions of Section 9.4).

2942 The application shall also present the Maximum Rates for the then-current Rate Year (e.g.,
2943 Rate Year Three) and the proposed Maximum Rates for the coming Rate Year (e.g., Rate
2944 Year Four).

2945 3. **Content of Application for Cost-Based Adjustment.** The application submitted to support a
2946 cost-based adjustment of Maximum Rates shall present the Contractor's actual total annual
2947 cost of operations, revenues from the sale of Organic Materials (if a revenue sharing
2948 program is established in accordance with the provisions of Section 9.4), profit, pass-
2949 through costs, CCCSWA and Member Agency fees, reporting data as stated in Section 5 of
2950 Exhibit B, the actual total annual costs for the most-recently completed Rate Year and
2951 forecast of the same cost items for the coming Rate Year in accordance with the procedures
2952 described in Exhibit E. Contractor shall assemble, provide, and submit such information that
2953 is necessary to support the actual costs presented and the calculation of the assumptions
2954 made by Contractor with regard to forecasting the total annual costs before profit, profit,
2955 pass-through costs, Total Calculated Contractor Costs, cost allocations to Member Agencies,
2956 CCCSWA and Member Agency fees, the total revenue requirement for each Member
2957 Agency, and Rate adjustment factors for each Member Agency for the coming Rate Year.
2958 Such documentation shall include, but not be limited to: calculations of the annual
2959 percentage change in various cost indices, per-Ton Rates for Organic Materials Processing,
2960 Transfer and Disposal services, annual revenues and per-Ton revenues from the sale of
2961 Organic Materials (if a revenue sharing program is established in accordance with the
2962 provisions of Section 9.4), and a copy of the collective bargaining agreement(s) currently in
2963 effect. The actual costs shall be based on the financial statements for the most-recently-
2964 completed Rate Year, which shall be submitted in accordance with requirements of Exhibit
2965 B. In addition, the application shall present, for each Member Agency, the Contractor's
2966 calculation of the Rate adjustment factor, each Maximum Rate for the then-current Rate
2967 Year, and each proposed Maximum Rate for the coming Rate Year. Lastly, the application
2968 shall include operational data listed in Exhibit B.

2969 If the CCCSWA requests additional information beyond that provided by the Contractor in its
2970 application, the Contractor shall provide all information requested by the CCCSWA during its
2971 review of the application, including, but not limited to, all information from Affiliates
2972 requested by the CCCSWA regarding any transactions between Contractor and any Affiliates
2973 pertaining to Contractor's performance under this Agreement.

2974 B. **CCCSWA Review of Application.** The Contractor's application for an adjustment of Maximum
2975 Rates shall be reviewed by the CCCSWA. The CCCSWA Board shall adjust Maximum Rates to

2976 reflect the adjustments made in accordance with Exhibits D or E depending on the method used to
2977 adjust the Maximum Rates that are being approved. The CCCSWA Board shall act in good faith to
2978 approve such adjustments to Maximum Rates by March 1 of the Rate Year. The adjusted
2979 Maximum Rates shall not take effect until the CCCSWA Board has approved such Maximum Rates.

2980 C. **Failure to Adjust Rates by March 1.** If the Contractor submits its application for adjustment of
2981 Maximum Rates on or before the application date identified in Section 10.3.A.1, and the CCCSWA
2982 Board does not approve adjusted Maximum Rates to be effective on or before March 1 of a Rate
2983 Year, the CCCSWA shall include a surcharge on the Maximum Rates that shall be effective for the
2984 remainder of the Rate Year to recover Gross Receipts lost by the Contractor, if any. To determine
2985 the amount of lost revenues, if any, the CCCSWA and Contractor shall meet and confer to
2986 determine the effect the delay in adopting Maximum Rates has on the Contractor's Gross
2987 Receipts. The assessment of the revenue impact shall consider the Contractor's Billing cycle (e.g.,
2988 impact to Subscribers billed in advance and to Subscribers billed in arrears), the ability of
2989 Contractor to delay issuance of bills, the payment cycle of Subscribers, and other variables.

2990 If the Contractor does not submit the application on or before the application date identified in
2991 Section 10.3.A.1, adjusted Maximum Rates may not be approved by March 1. In such case, all
2992 Maximum Rates shall be adjusted as soon as practical following approval by the CCCSWA Board. If
2993 the Contractor does not submit the application by the application date, no retroactive adjustment
2994 will be made to allow the Contractor to recover Gross Receipts that it would have collected, had
2995 the Maximum Rate adjustment been implemented in accordance with the prescribed schedule.

2996 With regard to review of records of Affiliates, CCCSWA review shall be related to transactions
2997 between Contractor and any Affiliates pertaining to Contractor's performance under this
2998 Agreement.

2999 **10.4 Special Rate Review**

3000 A. **Eligible Items.** The Contractor is entitled to apply to the CCCSWA for consideration of a special
3001 review of Maximum Rates, or the CCCSWA may initiate such a review, should one or more of the
3002 following events occur and should such occurrence(s) have a material effect totaling two percent
3003 (2%) or more annually on the Total Calculated Contractor Costs for the then-current Rate Year. If
3004 one or more of the following events occur and should such occurrence(s) have a material effect
3005 less than two percent (2%) annually of the Total Calculated Contractor Costs for the then-current
3006 Rate Year, such cost impact shall be considered at the time the annual adjustment process for
3007 Maximum Rates is performed in accordance with Section 10.2, and Contractor may be
3008 compensated retroactively for such cost subject to CCCSWA Board approval.

3009 1. **Change in Scope.** Documented significant changes in the cost to provide services required
3010 in this Agreement as a result of an agreed-upon, CCCSWA-directed change in scope, as
3011 provided for under Section 10.5.

3012 2. **Emergency Services.** Provision of emergency services pursuant to Section 7.7.

3013 3. **Catastrophic Events.** Flood, earthquake, other acts of nature, war, civil insurrection, riots,
3014 acts of any government agency (including judicial action), or other similar catastrophic
3015 events that are beyond the control of and not the fault of the Contractor.

- 3016 4. **Change in Law.** Change in Law, including, but not limited to, Changes in Law that result in
3017 regulatory, governmental, or other surcharge fees, after the Effective Date that: (1) were
3018 not reasonably known to the Contractor before the Effective Date, and (2) the Contractor
3019 substantiates.
- 3020 B. **Ineligible Items.** A special review of Maximum Rates may not be initiated for the following items
3021 and Contractor shall not be compensated for such items over the Term of the Agreement unless
3022 the CCCSWA and Contractor agree to an adjustment during a cost-based adjustment process when
3023 determining Maximum Rates for Rate Years Six and Nine.
- 3024 1. **Collection, Processing, Transfer, and Disposal Cost Increases.** Increases in the cost of Solid
3025 Waste, Recyclable Materials, or Organic Materials Collection, Processing, Transfer and
3026 Disposal costs in excess of the increases provided through the annual adjustment
3027 mechanism described in Exhibits D and E unless cost increases are related to eligible items
3028 listed in Section 10.4.A above.
- 3029 2. **Change in Facility Conditions.** Increases in the cost of Solid Waste, Recyclable Materials, or
3030 Organic Materials Collection, Processing, Transfer and Disposal costs that may be impacted
3031 by change in operating conditions of an Approved Facility unless such change is initiated by
3032 or at the direction of the CCCSWA.
- 3033 3. **Decreases in Revenues from Sale of Materials.** In the event that CCCSWA and Contractor
3034 implement a revenue share program pursuant to Section 9.4, decreases in revenues from
3035 the sale of Organic Materials except as provided in Exhibits D and E.
- 3036 4. **Change in Number of Subscribers and/or Subscriber Service Levels.** Growth or decline in
3037 the number of Subscribers and/or changes to Subscriber Service Levels related to number
3038 and size of Containers, material type, and frequency of Collection; however, the Contractor
3039 shall be entitled to bill all Subscribers at Rates not to exceed Maximum Rates and retain all
3040 Gross Receipts (net payments and fees due to CCCSWA) collected from its Subscribers for
3041 Collection services provided under this Agreement.
- 3042 5. **Change in Material Quantities and Composition.** Change in the Tonnage or composition of
3043 Solid Waste, Recyclable Materials, or Organic Materials with the exception that changes in
3044 Tonnage shall be reflected in calculated Processing, Transfer, and Disposal costs in
3045 accordance with procedures in Exhibits D and E.
- 3046 C. **Review of Costs.** If the Contractor or the CCCSWA requests a special review of Maximum Rates,
3047 the CCCSWA shall have the right to review any or all financial and operating records of Contractor
3048 and Affiliates.
- 3049 D. **Submittal of Request.** If the Contractor is requesting a special review of Maximum Rates, the
3050 Contractor must submit its request for a special review of Maximum Rates, and cost and
3051 operational data, in a form and manner specified by the CCCSWA, at least eight (8) months before
3052 the proposed effective date of any Rate adjustment. The CCCSWA may waive the eight- (8-)
3053 month submittal requirement if the reason for the special review is a Change in Law that will
3054 become effective in less than an eight (8) month period.

If CCCSWA is requesting a special review of Maximum Rates, the CCCSWA shall notify the Contractor at least nine (9) months before the proposed effective date of any Maximum Rate adjustment. Upon such notification, Contractor shall, within thirty (30) Days, submit reasonable cost and operational data as requested by the CCCSWA, in a form and manner specified by the CCCSWA.

A request for Special Rate Adjustment review shall include a proposal on whether the Maximum Rate adjustment resulting from the special review shall be an adjustment in addition to or in lieu of the annual adjustment to Maximum Rates to be performed in accordance with Section 10.2.C above.

- E. **Burden of Justification.** Contractor shall bear the burden of justifying to the CCCSWA by substantial evidence any entitlement to current, as well as increased, Maximum Rates under this Section 10.4. Records required to be maintained pursuant to Article 12 shall be subject to review, in accordance with appropriate professional standards, and inspection, for the primary purpose of reviewing changes in costs to the Contractor attributable to the circumstances that triggered the special review of Maximum Rates, 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 Special 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 15.

- F. **Grant of Request.** Based on evidence the Contractor submits, the CCCSWA Board may grant some, all, or none of the requested increase and approve adjusted Maximum Rates.

- G. **Compensation.** If Contractor requests a Special Rate Adjustment review of Maximum Rates, Contractor shall bear all reasonable costs of both Parties for participating in such review up to a maximum of \$50,000 per Party and such costs shall not be reimbursed through Maximum Rates charged Subscribers. If a special review occurs in response to a CCCSWA-directed change in scope (pursuant to Section 10.4.A.1), the CCCSWA shall be considered the Party requesting the Special Rate Adjustment review and the CCCSWA's costs of the review may be reimbursed through the Maximum Rates.

10.5 Adjustment of Maximum Rates for Changes in Scope

In the event either the CCCSWA or Contractor requests a change in scope in accordance with Section 2.4 of this Agreement, the Contractor shall furnish the CCCSWA with projected operational and cost data for the change in scope to support any adjustment to Maximum Rates. For the purposes of analyzing cost impacts of changes in scope, the Contractor's profit shall be calculated using an operating ratio of eighty-seven percent (87%) of actual reasonable and necessary costs. The CCCSWA reserves the right to require that the Contractor supply any additional cost data or other information it may reasonably need to ascertain the appropriate adjustment of Maximum Rates, if any, for the change in scope. The CCCSWA shall review this operational and cost data, and the CCCSWA Board shall approve Maximum Rates for the change in scope, if warranted.

3096 The granting of any change in scope shall be contingent upon CCCSWA's written approval and
3097 establishment of new Maximum Rates, if appropriate. The CCCSWA Board with input from Member
3098 Agencies shall approve Maximum Rate adjustments, in good faith, coincident with any adjustment made
3099 pursuant to this Section so that the change in scope and the corresponding Maximum Rates become
3100 effective on the same date.

3101 **10.6 Notice of Rate Adjustments**

3102 The Contractor shall provide all Subscribers with advance written notice of Rate changes, in the form of
3103 a bill insert, postcard, or other written notice approved by the CCCSWA at least twenty-one (21) Days
3104 before the effective date of such changes unless the CCCSWA provides written approval to waive this
3105 requirement.

3106 **ARTICLE 11**

3107 **REVIEW OF SERVICES AND PERFORMANCE**

3108 **11.1 Performance Hearing**

3109 CCCSWA may, at its sole discretion, hold an annual public hearing to review Contractor's services and
3110 performance. Performance review hearings may be scheduled by CCCSWA during the rate-setting
3111 process or at any other time deemed appropriate by CCCSWA. The Contractor shall be present and shall
3112 participate in the hearing. The purpose of the hearing is to provide for a discussion and review of
3113 technological, economic, and regulatory changes in order to achieve a continuing, advanced Collection,
3114 Processing, Transfer, Disposal and Diversion system; to ensure services are being provided with
3115 adequate quality, effectiveness, and economy; and to ensure that the level of cooperation with the
3116 Recyclables Contractor is resulting in productive and efficient services and acceptable Diversion and
3117 Residue levels.

3118 Topics for discussion and review at the performance review hearing shall include, but shall not be
3119 limited to, services provided, feasibility of providing new services, application of new technologies,
3120 Subscriber complaints, amendments to this Agreement, developments in the law, new initiatives for
3121 meeting or exceeding AB 939 and AB 341 goals and the CCCSWA Board's goals, regulatory constraints,
3122 and Contractor's compliance with requirements of the Agreement and its performance. CCCSWA and
3123 Contractor may each select additional topics for discussion at any performance review hearing.

3124 At CCCSWA request, Contractor shall, at a minimum, submit a report to CCCSWA indicating the
3125 following:

3126 A. Changes recommended and/or new services to improve CCCSWA's ability to continue to meet or
3127 exceed the goals of AB 939, AB 341, and the CCCSWA Board and to contain costs and minimize
3128 impacts on Rates.

3129 B. Any specific plans for provision of changed or new services by Contractor.

The performance review report (described in Section 11.2) and/or the reports required by this Agreement regarding Subscriber complaints may be reviewed in a public hearing(s). Contractor may submit other relevant performance information and reports for consideration. CCCSWA may request Contractor to submit additional specific information for the hearing. In addition, any Subscriber may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Not later than sixty (60) Days after the conclusion of each performance hearing, CCCSWA may issue a report. As a result of the review, CCCSWA may require Contractor to provide expanded or new services within a reasonable time and for reasonable Rates as provided for in Section 10.5, and CCCSWA may direct or take corrective actions for any established performance inadequacies. Contractor shall have the opportunity to comment and provide additional information on, or with respect to CCCSWA's findings regarding performance inadequacies.

11.2 Performance Review

The CCCSWA reserves the right to conduct a performance review to verify Contractor has fulfilled its obligations under the Agreement, to review complaints, to review Billings, to review fee payments to CCCSWA, and to determine if Contractor has met performance standards. If CCCSWA incurs a cost for this review, Contractor shall pay for the review up to \$50,000 per Rate Year. Contractor shall cooperate with the review.

ARTICLE 12 RECORD KEEPING AND REPORTING

12.1 General Record Keeping Provisions

Contractor shall maintain, in its principal office in the County, such accounting, statistical, and other records required to conduct its operations, to support requests it may make to CCCSWA, to respond to requests from CCCSWA, and as shall be necessary to develop the financial statements and 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 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.

12.2 Review and Inspection

Contractor agrees to provide or make available its records of any and all companies conducting operations addressed in 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

3166 records and accounting systems of Contractor and to make copies of any documents it deems relevant
3167 to this Agreement. In the event the custodian of such records and systems is not on the premises at the
3168 time of inspection, Contractor shall not be in breach of this Agreement, the CCCSWA shall then give
3169 notice to Contractor requesting access to the records, and Contractor shall make arrangements to allow
3170 for inspection within twenty-four (24) hours of such notice. The CCCSWA's right to inspection of records
3171 under this paragraph shall continue for five (5) years after the expiration or early termination of this
3172 Agreement. However, after expiration or early termination of this Agreement, the CCCSWA shall
3173 provide Contractor with a written request to inspect records and Contractor shall make records
3174 available for inspection within two (2) weeks of such request.

3175 **12.3 Retention of Records**

3176 Unless otherwise herein required, Contractor shall retain all records and data required by this
3177 Agreement for five (5) years after the expiration or early termination of this Agreement.

3178 **12.4 Other Information Requirements**

3179 Contractor agrees to conduct data collection and other reporting activities as needed to comply with
3180 federal, State, and local laws and regulations, and the requirements of this Agreement. To the extent
3181 such requirements are set out in this and other Articles of this Agreement, they shall not be considered
3182 limiting or necessarily complete.

3183 **12.5 Reporting**

3184 Contractor's reporting obligations are presented in Exhibit B.

3185 **12.6 CERCLA Reporting**

3186 CCCSWA views its ability to defend itself against Comprehensive Environmental Response,
3187 Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this
3188 reason, CCCSWA regards its ability to prove where Collected Franchised Solid Waste is taken for Transfer
3189 or Disposal. Contractor shall maintain records which can establish where Franchised Solid Waste
3190 Collected was Disposed. This provision shall survive the expiration or earlier termination of this
3191 Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration
3192 or earlier termination of the Agreement. Contractor shall provide these records to CCCSWA (upon
3193 request or at the end of the record retention period) in an organized and indexed manner rather than
3194 destroying or Disposing of them.

ARTICLE 13
INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND

13.1 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 (including challenges to CCCSWA's authority to enter into this Agreement or to contract for the services required under this Agreement, regardless of the legal theory advanced), 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 or non-performance (including Contractor's officers, employees, agents and/or Subcontractors' performance) of this Agreement, including its failure to comply with any of its obligations contained in the Agreement, and any administrative or legal proceedings regarding the actions of Contractor or its Affiliates that are alleged to violate California Business and Professions Code sections 17200, et seq., or any similar statutory provisions under federal or state law. The foregoing shall not apply to the extent any of the above 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.

CCCSWA reserves the right to retain co-counsel at its sole cost and expense, and Contractor shall direct Contractor's counsel to assist and take direction from such co-counsel with respect to CCCSWA's defense.

13.2 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 Franchised Materials to a Processing Facility, Disposal Site, or Transfer Station 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

3237 and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and indemnify
3238 Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

3239 **13.3 AB 939 Indemnification**

3240 In addition to any other indemnity obligations set forth herein, Contractor agrees to indemnify, defend,
3241 and hold harmless CCCSWA and its Member Agencies, their officers, directors, employees, volunteers,
3242 and agents from and against any and all fines and/or penalties imposed by CalRecycle or the Local
3243 Enforcement Agency ("LEA"), in proportion to its fault, and subject to other restrictions set forth in
3244 Public Resources Code Section 40059.1, if the requirements of AB 939 are not met with respect to the
3245 Franchised Materials Collected under this Agreement, and such failure is due to the failure of Contractor
3246 to meet its obligations under this Agreement or due to Contractor delays in providing information that
3247 prevents Contractor or CCCSWA from submitting reports required by AB 939 in a timely manner.
3248 Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this
3249 Agreement.

3250 **13.4 Insurance**

3251 Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this
3252 Agreement not less than the following coverage and limits of insurance:

3253 A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

3254 1. The most recent editions of Insurance Services Office form number GL 0002 covering
3255 Commercial or Comprehensive General Liability and Insurance Services Office form number
3256 GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office
3257 Commercial General Liability coverage ("occurrence" form CG 0001 12 07).

3258 2. The most recent editions of Insurance Services Office form number CA 0001 covering
3259 Automobile Liability, code 1 "any auto" and endorsement CA 0025.

3260 3. Workers' compensation Employers Liability insurance as required by California Labor Code
3261 §3700 et al.

3262 B. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:

3263 1. Commercial or Comprehensive General Liability: Ten Million Dollars (\$10,000,000) combined
3264 single limit per occurrence for bodily injury, Personal injury and property damage.

3265 2. Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident
3266 for bodily injury and property damage.

3267 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required
3268 by the Labor Code of the State of California and Employers Liability limits of One Million
3269 dollars (\$1,000,000) per accident/occurrence.

3270 4. Environmental Impairment Liability: Ten Million Dollars (\$10,000,000) covering liability
3271 arising from the release of pollution at the Approved Disposal Facility. The Environmental

3272 Impairment Liability policy shall contain the same endorsements as required for
3273 Comprehensive General Liability.

3274 C. **Deductibles and Retentions.** Regardless of the existence or amount of any deductibles or self-
3275 insured retentions that may exist under Contractor's insurance policies, Contractor shall provide
3276 to the CCCSWA the benefits of policy coverages, so that the policy coverage shall apply starting
3277 with the first dollar of any covered defense cost or indemnity obligation.

3278 D. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following
3279 provisions:

3280 1. General Liability and Automobile Liability Coverage.

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

3288 ii. Contractor's insurance coverage shall be primary insurance as respects CCCSWA, its
3289 Member Agencies, its officials, employees and volunteers. Any insurance or self-
3290 insurance maintained by CCCSWA, its Member Agencies, its officials, employees or
3291 volunteers shall be excess of Contractor's insurance and shall not contribute with it.

3292 iii. Any failure to comply with reporting provisions of the policies shall not affect
3293 coverage provided to CCCSWA, its Member Agencies, its officials, employees or
3294 volunteers.

3295 iv. Coverage shall state that Contractor's insurance shall apply separately to each insured
3296 against whom claim is made or suit is brought, except with respect to the limits of the
3297 insurer's liability.

3298 v. Contractor's insurers shall agree to waive all rights of subrogation against CCCSWA, its
3299 Member Agencies, its officials, employees and volunteers for losses arising from work
3300 performed by Contractor under this Agreement.

3301 2. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive
3302 all rights of subrogation against CCCSWA, its Member Agencies, its officials, employees and
3303 volunteers for losses arising from work performed by Contractor under this Agreement.

3304 E. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an
3305 insurance company or companies admitted to do business in the State of California and with a
3306 rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a
3307 rating classification of A or better, unless CCCSWA agrees in writing to alternative ratings. To the
3308 extent permitted by law, all or any part of the required insurance may be provided under a plan of
3309 self-insurance, only if, in the sole discretion of CCCSWA, Contractor can provide adequate

3310 assurances that the self-insured coverage provides commercially equivalent protection to
3311 CCCSWA and its Member Agencies, their officials, employees, volunteers, and agents.

3312 F. **Verification of Coverage.** Contractor shall furnish CCCSWA with certificates of insurance and with
3313 original endorsements affecting coverage required by this clause. The certificates and
3314 endorsements for each insurance policy are to be signed by a Person authorized by that insurer to
3315 bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or
3316 acceptable to CCCSWA and are to be received and approved by CCCSWA on or before the Effective
3317 Date.

3318 G. **Approved Affiliates and Subcontractors.** Contractor shall include all Approved Affiliates and
3319 Subcontractors as insureds under its policies or shall furnish separate certificates and
3320 endorsements for each Affiliate or Subcontractor. All coverages for Affiliates and Subcontractors
3321 shall be subject to all of the requirements stated herein.

3322 H. **Required Endorsements.** The Comprehensive General Liability policy shall contain the following
3323 blanket endorsement in substantially the following form:

3324 1. "Thirty (30) days prior written notice shall be given to CCCSWA in the event of cancellation
3325 of this policy. Unless notified of a different address, such notice shall be sent to:

3326 Executive Director
3327 Central Contra Costa Solid Waste Authority
3328 1850 Mt. Diablo Blvd, Suite 320
3329 Walnut Creek, CA 94596"

3330 2. "Inclusion of CCCSWA and Member Agencies as an additional insured shall not affect
3331 CCCSWA's or its Member Agencies' rights as respects any claim, demand, suit or judgment
3332 brought or recovered against Contractor. This policy shall protect Contractor and CCCSWA
3333 and Member Agencies in the same manner as though a separate policy had been issued to
3334 each, but this shall not operate to increase Contractor's liability as set forth in the policy
3335 beyond the amount shown or to which Contractor would have been liable if only one party
3336 had been named as an insured. Unless notified of a different address, notices of
3337 cancellation shall be sent to:

3338 Executive Director
3339 Central Contra Costa Solid Waste Authority
3340 1850 Mt. Diablo Blvd, Suite 320
3341 Walnut Creek, CA 94596"

3342 I. **Delivery of Proof of Coverage.** Within fifteen (15) Days of the Effective Date, Contractor shall
3343 furnish CCCSWA certificates of each policy of insurance required hereunder, in form and
3344 substance satisfactory to CCCSWA. Such certificates shall show the type and amount of coverage,
3345 effective dates and dates of expiration of policies and shall have all required endorsements.
3346 Renewal certificates will be furnished periodically to CCCSWA to demonstrate maintenance of the
3347 required coverages throughout the term. Furthermore, in the event of a coverage dispute
3348 between the CCCSWA and an insurance carrier of Contractor that names the CCCSWA as an
3349 additional insured under this Agreement, the Contractor shall, at the CCCSWA's request, provide
3350 the CCCSWA's counsel with the copy of the policy in question, provided that the CCCSWA's

3351 counsel agrees to treat and maintains the document as confidential and proprietary information
3352 of Contractor, and keeps the information confidential and not a public record, to the extent
3353 allowed under California law.

3354 J. **Other Insurance Requirements.**

3355 1. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of
3356 insurance shall not relieve Contractor from any obligation under this Agreement. If any
3357 claim exceeding the amount of any deductibles or self-insured reserves is made by any third
3358 Person against Contractor on account of any occurrence related to this Agreement,
3359 Contractor shall promptly report the facts in writing to the insurance carrier and to
3360 CCCSWA.

3361 2. If Contractor fails to procure and maintain any insurance required by this Agreement,
3362 CCCSWA may take out and maintain, at Contractor's expense, such insurance as it may
3363 deem proper and deduct the cost thereof from any monies due Contractor.

3364 **13.6 Performance Bond**

3365 Contractor shall file with CCCSWA a bond, payable to CCCSWA, in the form presented in Exhibit R,
3366 securing Contractor's performance of its obligations under this Agreement. Such bond shall be
3367 approved by CCCSWA and renewed annually if necessary so that the performance bond is maintained at
3368 all times during the Term. The principal sum of the bond shall be five million dollars (\$5,000,000.00) and
3369 shall be adjusted every three (3) years, commencing with Rate Year Three, to equal one and half (1.5)
3370 months of the prior Rate Year's annual Gross Receipts. The bond shall be executed as a surety by a
3371 corporation authorized to issue surety bonds in the State of California that has a rating of A or better in
3372 the most recent edition of Best's Key Rating Guide, and that has a record of service and financial
3373 condition satisfactory to CCCSWA.

3374 **ARTICLE 14**
3375 **BREACH, DEFAULT, REMEDIES, AND TERMINATION**

3376 **14.1 Events of Breach**

3377 All provisions of this Agreement are considered material and Contractor's failure to perform any
3378 provision shall constitute an Event of Breach. In addition, each of the following shall also constitute an
3379 Event of Breach:

3380 A. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the
3381 Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

3382 B. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement,
3383 including any orders or filings of any regulatory body having authority over Contractor relative to
3384 this Agreement, provided that Contractor may contest any such orders or filings by in good faith,

3385 in which case no breach or default of this Agreement shall be deemed to have occurred upon final
3386 resolution of the contest or appeal in favor of Contractor.

3387 C. **Failure to Pay or Report.** Contractor fails to make any payments to CCCSWA or its Member
3388 Agencies required under this Agreement, and/or refuses to provide CCCSWA with required
3389 information, reports, and/or records in a timely manner as provided for in this Agreement.

3390 D. **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor's
3391 operating equipment, including, without limitation, its maintenance or office facilities, or any part
3392 thereof.

3393 E. **Breach or Default of Other CCCSWA Agreement.** If the Contractor or its Affiliate has entered into
3394 an agreement with the CCCSWA for services outside the scope of this Agreement and is in breach
3395 or default of that Agreement.

3396 **14.2 Contractor Rights to Remedy Breach**

3397 CCCSWA shall promptly or as soon as practicable provide Contractor written notice of an Event of
3398 Breach. Upon written notice, Contractor shall have ten (10) Days to cure the breach. However, if
3399 Contractor demonstrates that (a) the breach is curable; and (b) ten (10) Days is insufficient to cure the
3400 breach, then Contractor shall receive thirty (30) Days or another extension of time agreed to by CCCSWA
3401 in order to cure the breach.

3402 **14.3 Acts Necessary to Perform Service**

3403 Failure to specifically require an act necessary to perform any of the services required under this
3404 Agreement does not relieve Contractor of its obligation to perform such act, or the service(s) dependent
3405 on such act.

3406 **14.4 Event of Default**

3407 Each of the following shall constitute an Event of Default, upon which CCCSWA shall promptly or as soon
3408 as practicable provide Contractor written notice of the default:

3409 A. **Failure to Cure Breach.** If Contractor fails to cure an Event of Breach as provided above in Section
3410 14.2.

3411 B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the
3412 combination of breaches constitutes a material failure by Contractor to perform its obligations,
3413 even if each individual breach is later cured.

3414 C. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon CCCSWA.

3415 D. **False or Misleading Statements.** Any representation or disclosure made to CCCSWA by
3416 Contractor in connection with or as an inducement to entering into this Agreement, or any future
3417 amendment to this Agreement, which proves to be false or misleading in any material respect as
3418 of the time such representation or disclosure is made, whether or not any such representation or
3419 disclosure appears as part of this Agreement. In addition, any Contractor-provided report

3420 containing a misstatement, misrepresentation, data manipulation, or an omission of fact or
3421 content explicitly defined by the Agreement, excepting typographical and grammatical errors.

3422 E. **Failure to Perform.** Except as provided under Section 14.10, Contractor fails to provide Collection,
3423 Transfer, Transport, Processing, Diversion, or Disposal services as required under this Agreement
3424 for a minimum of either two (2) consecutive Business Days or three (3) non-consecutive Business
3425 Days within one (1) week. CCCSWA may give notice of Contractor's failure to perform verbally by
3426 telephone to Contractor at its principal office and shall be effective immediately. Written
3427 confirmation of such verbal notification shall be sent to Contractor within twenty-four (24) hours
3428 of the verbal notification.

3429 F. **Criminal Activity.** Contractor, its officer, managers, or employees are found guilty of criminal
3430 activity related directly or indirectly to performance of this Agreement or any other Agreement
3431 held with the CCCSWA.

3432 G. **Assignment without Approval.** Contractor transfers or assigns this Agreement without express
3433 written approval of the CCCSWA, unless the assignment is permitted without CCCSWA approval
3434 pursuant to Section 16.6.

3435 H. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, a
3436 receiver is appointed or Contractor's assets are involuntarily assigned, or upon listing of an order
3437 for relief in favor of Contractor in a bankruptcy proceeding.

3438 **14.5 Event of Default Not Curable**

3439 Contractor shall have no right to cure an Event of Default.

3440 **14.6 CCCSWA's Remedies in the Event of Default**

3441 Upon a determination by CCCSWA that an Event of Default has occurred, CCCSWA has the following
3442 remedies:

3443 A. **Waiver of Default.** CCCSWA may waive any Event of Default if CCCSWA determines that such
3444 waiver would be in the best interest of the Member Agencies. CCCSWA's waiver of an Event of
3445 Default is not a waiver of future events of default that may have the same or similar conditions.

3446 B. **Right to Terminate.** The CCCSWA Board may terminate this Agreement. The CCCSWA Board shall
3447 conduct a hearing upon ten (10) Days written notice to the Contractor to determine if termination
3448 is in the best interests of the public health, safety, and welfare of the citizens of the Member
3449 Agencies. In the event the CCCSWA Board decides to terminate this Agreement, termination shall
3450 be effective thirty (30) Days, or such other period determined by the CCCSWA Board, after
3451 CCCSWA has given written notice to Contractor.

3452 C. **Right to Suspend.** The CCCSWA Board may suspend this Agreement, in whole or in part, if
3453 Contractor fails to cure within the time frame specified in Section 14.2, until Contractor can
3454 provide assurance of performance in accordance with Section 14.11. During the period of
3455 suspension, CCCSWA shall have the right to use equipment and other property pursuant to
3456 Section 14.6.D. However, Contractor shall have at a minimum, a right to *quantum meruit* for the

3457 services it continues to perform during any suspension. For the purposes of this Section,
3458 "suspend" means to temporarily freeze, set aside, and make inoperative one or more provisions of
3459 this Agreement.

3460 D. **Right to Possess Property and Perform Services.** In the event that CCCSWA suspends or
3461 terminates Contractor's services, CCCSWA shall have the right to take possession of any and all of
3462 Contractor's equipment and other property used or useful in the Collection, Transfer, Transport,
3463 Processing, Diversion, and Disposal of Franchised Materials, and the Billing and collection of fees
3464 for these services, and to use such property in order to provide the services that Contractor would
3465 otherwise be obligated to perform pursuant to this Agreement. CCCSWA shall have the right to
3466 retain the possession of Contractor's property and to provide such services until Contractor
3467 remedies the default or substitute services can be provided by another contractor. If CCCSWA
3468 retains possession of Contractor's equipment or other property after the period of time for which
3469 Contractor has already been paid by means of Billings issued in advance of providing service for
3470 the service involved, Contractor shall be entitled to the reasonable rental value of such property
3471 (which shall be offset against any damages due CCCSWA for Contractor's default). Contractor
3472 shall furnish CCCSWA with immediate access to all of its business records related to its Subscribers
3473 and Billing of accounts for Collection services.

3474 1. Contractor agrees that in such event, and if CCCSWA so requests:

3475 i. It will keep in good repair and condition all property that the CCCSWA has taken
3476 possession of, provide all motor vehicles with fuel, oil and other service, and provide
3477 such other service as may be necessary to maintain said property in operational
3478 condition.

3479 ii. It will, subject to provisions of any labor agreements then in effect, furnish CCCSWA
3480 the services of any or all management or office personnel employed by Contractor
3481 whose services are necessary or useful for Franchised Materials Collection, Transfer,
3482 Transport, Processing, Diversion, Transfer and Disposal operations and for the Billing
3483 and collection of fees for these services.

3484 2. CCCSWA has no obligation to maintain possession of Contractor's property and/or continue
3485 its use in Collecting, Transporting, Processing, Transferring, Diverting, and Disposing
3486 Franchised Materials for any period of time and may, at any time, in its sole discretion,
3487 relinquish possession to the Contractor. However, CCCSWA agrees that it assumes
3488 complete responsibility for the proper and normal use of such equipment and facilities while
3489 in its possession.

3490 3. Except as otherwise expressly provided herein, CCCSWA's exercise of its rights under this
3491 Section: (a) does not constitute a taking of private property for which compensation must
3492 be paid; (b) will not create any liability on the part of CCCSWA to Contractor; and (c) does
3493 not exempt Contractor from the indemnity provisions of Article 13, which are meant to
3494 extend to circumstances arising under this Section, provided that Contractor is not required
3495 to indemnify CCCSWA against claims and damages arising from the sole negligence of
3496 CCCSWA officers, employees and agents in the operation of Collection vehicles during the
3497 time CCCSWA has taken possession of such vehicles. However, CCCSWA reserves the rights

3498 to purchase the Contractor's property utilized in the performance of this Agreement for and
3499 based upon current and reasonable market values accepted within Contractor's industry.

3500 E. **Other Available Remedies.** CCCSWA's election of one or more remedies described herein shall
3501 not limit CCCSWA from any and all other remedies at law and in equity, such as a right to
3502 immediately contract with another service provider.

3503 **14.7 Specific Performance**

3504 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service,
3505 the lead time required to effect alternative service, and the rights granted by CCCSWA to Contractor, the
3506 remedy of damages for a breach hereof by Contractor is inadequate and CCCSWA shall be entitled to
3507 injunctive relief.

3508 **14.8 CCCSWA's Remedies Cumulative**

3509 CCCSWA's rights to suspend or terminate this Agreement, to obtain specific performance, and to
3510 perform under this Article are not exclusive, and CCCSWA's exercise of one such right shall not
3511 constitute an election of remedies. Instead, they shall be in addition to any and all other legal and
3512 equitable rights and remedies that CCCSWA may have, including a legal action for damages or
3513 imposition of Liquidated Damages under Exhibit C.

3514 **14.9 Liquidated Damages**

3515 The Parties agree that, as of the time of execution of this Agreement, it is impractical and extremely
3516 difficult to reasonably ascertain the extent of damages that CCCSWA and its Member Agencies will
3517 suffer as a result of a breach by Contractor of its obligations under this Agreement. The Parties
3518 acknowledge that consistent and reliable Collection, Transfer, Transport, Processing, Diversion, and
3519 Disposal services are of utmost importance to CCCSWA, its Member Agencies, and the Subscribers. The
3520 Parties further recognize that some quantifiable standards of performance are necessary and
3521 appropriate to ensure consistent and reliable service and performance. Therefore, without prejudice to
3522 CCCSWA's right to treat such non-performance as an Event of Default, and in addition to any other
3523 remedies provided for in this Agreement, CCCSWA may assess Liquidated Damages for Contractor's
3524 failure to meet specific performance standards, and Contractor agrees to pay the Liquidated Damages
3525 amounts specified in Exhibit C. Liquidated Damages are paid as damages, and not as a penalty. The
3526 Parties agree that the amounts set forth in Exhibit C represent a reasonable estimate of the amount of
3527 the damages that CCCSWA and its Member Agencies will suffer for the specified breaches, considering
3528 all of the circumstances existing on the date of this Agreement.

3529 A. Prior to assessing Liquidated Damages, CCCSWA shall give Contractor written notice of its
3530 intention to do so. The notice shall include a brief description of the incident(s)/non-performance
3531 giving rise to the damages.

3532 B. CCCSWA shall assess Liquidated Damages and provide Contractor with a written explanation of its
3533 determination for each incident(s)/non-performance. CCCSWA may assess Liquidated Damages
3534 for each Day or incident of non-performance with the Agreement. The decision of the CCCSWA
3535 Executive Director or designee shall be final, and subject only to the right to appeal the imposition

3536 of the liquidated damages to the CCCSWA Board when the amount imposed exceeds ten thousand
3537 dollars (\$10,000) per month in total for multiple events of non-performance excluding events of
3538 non-performance related to missed or incomplete routes or twenty thousand dollars (\$20,000)
3539 per month for missed or incomplete routes. Thereafter, it is deemed the Contractor has
3540 exhausted all required administrative remedies.

3541 C. Contractor shall pay any Liquidated Damages assessed by CCCSWA within ten (10) Days after they
3542 are assessed. If they are not paid within the ten (10) Day period, CCCSWA treat such failure as an
3543 Event of Default subject to the remedies in this Article.

3544 **14.10 Excuse from Performance**

3545 In the event that a Party is prevented from performing all or some of its obligations under this
3546 Agreement by an Uncontrollable Circumstance, it shall not constitute an Event of Breach or Default of
3547 this Agreement, so long as the Party in good faith has used its best efforts to perform its respective
3548 obligations. The Party claiming excuse from performance shall, within five (5) Days after such Party has
3549 notice of the effect of such cause, give the other Party notice of the facts constituting such cause and
3550 asserting its claim to excuse under this Section. Specifically, such information shall include the
3551 following:

3552 A. The Uncontrollable Circumstance and the cause thereof (to the extent known);

3553 B. The date the Uncontrollable Circumstance began, its estimated duration, and the estimated time
3554 during which the Party's performance of its obligations hereunder will be delayed;

3555 C. Potential mitigating actions that might be taken by either Party and any areas where costs might
3556 be reduced and the approximate amount of such cost reductions.

3557 In the event that either Party validly exercises its rights under this Section, the Parties hereby waive any
3558 claim against each other for any damages sustained thereby.

3559 Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or
3560 other concerted job action conducted by Contractor's employees, directed at Contractor, or a contractor
3561 or supplier of Contractor, is not an Uncontrollable Circumstance and will not excuse performance, and
3562 Contractor will be obligated to continue to perform in accordance with this Agreement.

3563 **14.11 Right to Demand Assurances of Performance**

3564 If CCCSWA believes in good faith that Contractor's ability to perform under this Agreement has been
3565 placed in substantial jeopardy, CCCSWA may require that Contractor provide reasonable assurances that
3566 none of the events listed below will prevent Contractor from timely and proper performance of its
3567 obligations under this Agreement. Such events include, but are not limited to:

3568 A. Contractor or an Affiliate is the subject of any labor unrest including work stoppages or slowdown,
3569 sick-out, picketing, or other concerted job action affecting this Agreement;

3570 B. Contractor or an Affiliate appears, in CCCSWA's reasonable judgment, unable to regularly pay its
3571 bills as they become due; or,

3572 C. Contractor or an Affiliate is the subject of a civil or criminal judgment or order entered by a
3573 federal, State, regional, or local agency for violation of a law that may affect performance under
3574 this Agreement, including but not limited to environmental laws, or laws related to fraud and
3575 malfeasance of public contracts.

3576 If Contractor fails or refuses to provide CCCSWA with adequate information to establish its ability to
3577 perform within thirty (30) Days, such failure or refusal shall be an Event of Default for purposes of
3578 Section 14.4.

3579 **14.12 Waiver of Defenses**

3580 In order to insure the non-interruption of a vital public service, except as provided in Section 14.10,
3581 Contractor acknowledges that it is solely responsible for providing the services described herein, and
3582 hereby irrevocably waives the following defenses to the payment and performance of its obligations
3583 under this Agreement: any defense based upon failure of consideration, contract of adhesion,
3584 impossibility or impracticability of performance, commercial frustration of purpose, or the existence,
3585 non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency
3586 that may be a basic assumption of the Contractor with regard to any provision of this Agreement.

3587 **14.13 Guaranty of Contractor's Performance**

3588 The Guarantor has agreed to guaranty Contractor's performance of this Agreement including
3589 Contractor's indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially
3590 the form attached as Exhibit F. The Guaranty Agreement is being provided concurrently with
3591 Contractor's execution of this Agreement.

3592 **ARTICLE 15**

3593 **RESOLUTION OF DISPUTES**

3594 **15.1 Informal Resolution**

3595 Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any
3596 time during the term of this Agreement, the provisions of this Article shall apply. Either Party shall give
3597 the other written notice of such dispute. Such notice shall specify a date and location for the Parties to
3598 meet and confer in good faith to resolve any dispute that may arise in a cooperative and mutually
3599 satisfactory manner. The Parties shall attempt to resolve their disputes informally to the maximum
3600 extent possible.

3601 **15.2 Mediation**

3602 In the event the Parties cannot resolve such dispute within thirty (30) Days of such notice, either Party
3603 may propose the appointment of a mediator for advice and non-binding mediation, and the other Party
3604 shall attend such mediation. If the mediator is unable, within thirty (30) Days thereafter, to reach a
3605 determination as to the matter in dispute in a manner acceptable to the Parties hereto, and if the

dispute does not concern "valuation items" identified in Section 15.3, then either Party may refer the matter to a Court of competent jurisdiction. Disputes that concern valuation items shall proceed with binding arbitration procedures set forth in Section 15.4 below.

15.3 Valuation Items

For the purposes of this Agreement, disputes over "valuation items" refers to disputes over basic financial issues valued under one million dollars (\$1,000,000) that is due or owed by either Party. If mediation is unsuccessful, disputes concerning valuation items shall be referred to binding arbitration.

15.4 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, the Parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

Acknowledgement of waiver of rights to trial by jury if proceeding with binding arbitration pursuant to Section 15.4 of this Agreement.



CCCSWA



Allied Waste Systems, Inc.

3644

3645 **15.5 Pendency of Dispute**

3646 During the pendency of any dispute under this Article, all applicable time periods directly related to the
3647 dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any matters
3648 other than those directly related to the dispute and such tolling shall not entitle a Party to breach,
3649 default, or fail to perform its obligations under this Agreement. In addition, the pendency of any dispute
3650 shall not stay or affect CCCSWA's remedies under this Agreement, including but not limited to its rights
3651 to terminate, suspend, or take possession of Contractor's property.

3652

3653

ARTICLE 16
OTHER AGREEMENTS OF PARTIES

3654 **16.1 Relationship of Parties**

3655 The Parties intend that Contractor shall perform the services required by this Agreement as an
3656 independent contractor engaged by CCCSWA and nothing in this Agreement shall be deemed to
3657 constitute either Party an employee, partner, joint venturer, officer, agent, or legal representative of the
3658 other Party or to create any fiduciary relationship between the Parties. Neither Contractor nor its
3659 officers, employees, Subcontractors, Affiliates, or agents shall obtain any rights to retirement benefits,
3660 workers' compensation benefits, or any other benefits that accrue to CCCSWA employees by virtue of
3661 Contractor's Agreement with CCCSWA.

3662 **16.2 Compliance with Law**

3663 In providing the services required under this Agreement, Contractor shall at all times comply with all
3664 Applicable Law now in force and as may be enacted, issued, or amended during the Term.

3665 **16.3 Governing Law**

3666 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
3667 State of California.

3668 **16.4 Jurisdiction**

3669 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
3670 courts of Contra Costa County in the State of California, which shall have exclusive jurisdiction over such

lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Contra Costa County. Nothing in this Agreement shall be construed to limit the rights of either Party to seek judicial review of or remedies for any alleged breach of this Agreement by either Party.

16.5 Notice to Parties

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

To CCCSWA:

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

To Contractor:

Allied Waste Systems of North America, Inc.
General Manager
441 N. Buchanan Circle
Pacheco, CA 94553

16.6 Assignment and Transfer of Agreement

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

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

B. Contractor acknowledges that this Agreement involves rendering a vital service to the Member Agencies' residents and businesses, and that CCCSWA has selected Contractor to perform the

3711 services specified herein based on (1) Contractor's experience, skill and reputation for conducting
 3712 its materials management operations in a safe, effective and responsible fashion, at all times in
 3713 keeping with Applicable Law, regulations and good materials management practices, and (2)
 3714 Contractor's financial resources to maintain the required equipment and to support its indemnity
 3715 obligations to CCCSWA under this Agreement. CCCSWA has relied on each of these factors, among
 3716 others, in choosing Contractor to perform the services to be rendered by Contractor under this
 3717 Agreement.

3718 C. If Contractor requests CCCSWA's consideration of and written consent to an assignment, CCCSWA
 3719 may deny or approve such request in its complete discretion. Under no circumstances shall any
 3720 proposed assignment be considered by CCCSWA if Contractor is in default at any time during the
 3721 period of consideration.

3722 D. No request by Contractor for consent to an assignment need be considered by CCCSWA unless
 3723 and until Contractor has met the following requirements. However, CCCSWA may, in its sole
 3724 discretion, waive one or more of these requirements:

3725 1. Contractor shall undertake to pay CCCSWA its reasonable expenses for consultants' fees,
 3726 attorneys' fees, and investigation costs necessary to investigate the suitability of any
 3727 proposed assignee, and to review and finalize any documentation required as a condition
 3728 for approving any such assignment;

3729 2. Contractor shall furnish CCCSWA with audited financial statements of the proposed
 3730 assignee's operations for the immediately preceding three (3) operating years;

3731 3. Contractor shall furnish CCCSWA with satisfactory proof that: (1) the proposed assignee has
 3732 at least ten (10) years of Solid Waste, Recyclable Materials, and Organic Materials
 3733 management experience on a scale equal to or exceeding the scale of operations conducted
 3734 by Contractor under this Agreement; (2) in the last five (5) years, the proposed assignee has
 3735 not suffered any citations or other censure from any federal, State or local agency having
 3736 jurisdiction over its materials management operations due to, in CCCSWA's sole and
 3737 reasonable discretion, any material or significant failure to comply with State, federal or
 3738 local waste management laws and that the assignee has provided CCCSWA with a complete
 3739 list such citations and censures; (3) the proposed assignee has at all times conducted its
 3740 operations in an environmentally safe and conscientious fashion; (4) the proposed assignee
 3741 conducts materials management practices in full compliance with all federal, State and local
 3742 laws regulating the Collection, Transportation, Processing, Transfer, Diversion, and Disposal
 3743 of all Franchised Materials, including Hazardous Waste; and (5) any other information
 3744 required by CCCSWA to ensure the proposed assignee can fulfill the Terms of this
 3745 Agreement in a timely, safe, and effective manner.

3746 E. Contractor shall provide CCCSWA with any and all additional records or documentation which, in
 3747 CCCSWA's sole determination, would facilitate the review of the proposed assignment.

3748 F. On the date CCCSWA approves Contractor's written request for an assignment, Contractor shall
 3749 pay CCCSWA a transfer fee in the amount of one percent (1%) of the Gross Receipts for the most
 3750 recently completed Rate Year. CCCSWA's approval of such an assignment shall be conditioned on
 3751 the receipt of the transfer fee.

G. **CCCSWA Assignment.** Any assignment by CCCSWA may be only to a different or successor joint powers agency, a Member Agency or Agencies, or similar public corporation. While nothing in this Agreement is intended to prevent CCCSWA from assigning its rights and obligations under this Agreement to a different or successor joint powers authority organized for the purpose of dealing with materials management matters on a county-wide or regional basis, such an assignment may occur without prior written consent of Contractor only where CCCSWA or all of its Member Agencies become members of that successor or new authority or agency. If CCCSWA requests consideration of and consent to an assignment (other than to a different or successor county-wide or regional joint powers agency), Contractor may deny or approve such request. Contractor may request that the proposed assignee of the CCCSWA provide such documents, resolutions and ordinances that may be necessary for Contractor to properly evaluate assignment to the proposed assignee. Nothing in this Section is intended to limit CCCSWA's discretion in allowing for new Member Agencies or altering the present composition of the CCCSWA, however, such changes in composition or membership shall not affect the Service Area or mode of operation to which this Franchise Agreement applies.

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

16.7 Transition to Next Contractor

If the transition of services to another contractor occurs through expiration of Term, default and termination, or otherwise, then Contractor will cooperate with CCCSWA and subsequent contractor(s) to assist in an orderly transition that will include Contractor providing route lists and detailed account and Billing information. Contractor may, but is not obligated, to sell its Collection vehicles, equipment, or Containers to the next contractor.

16.8 Compliance Audit

If, in CCCSWA's sole determination, there is any doubt regarding the compliance of Contractor with this Agreement, CCCSWA may require an audit of Contractor's compliance and the costs of such an audit shall be paid by Contractor in advance of the performance of said audit.

16.9 Binding on Successors

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

3789 **16.10 Non-Waiver**

3790 Failure of either Party to exercise any of the remedies set forth herein within the time periods provided
3791 for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or
3792 subsequent failures to perform, whether determined to be a breach, excused performance, or
3793 unexcused defaults, by the other Party.

3794 **ARTICLE 17**
3795 **MISCELLANEOUS PROVISIONS**

3796 **17.1 Entire Agreement**

3797 This Agreement, including the Exhibits and any attachments or appendices, represents the full and
3798 entire Agreement between the Parties with respect to the matters covered herein.

3799 **17.2 Amendment**

3800 Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except
3801 by written agreement duly executed by both Parties.

3802 **17.3 Section Headings**

3803 The article and section headings in this Agreement are for convenience of reference only and are not
3804 intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

3805 **17.4 References to Laws**

3806 All references in this Agreement to laws shall be understood to include such laws as they may be
3807 subsequently amended or recodified, unless otherwise specifically provided.

3808 **17.5 Interpretation**

3809 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party,
3810 regardless of the degree to which either Party participated in its drafting.

3811 **17.6 Severability**

3812 If any clause, provision, subsection, section, or article of this Agreement is for any reason deemed to be
3813 invalid and unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of
3814 such portion shall not affect any of the remaining parts of this Agreement, which shall be enforced as if
3815 such invalid or unenforceable portion had not been contained herein.

3816 **17.7 Further Assurance**

3817 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary
3818 or reasonably requested by the other in order to give full effect to this Agreement.

3819 **17.8 Counterparts**

3820 This Agreement may be executed in counterparts each of which shall be considered an original.

3821 **17.9 Exhibits**

3822 Each of the Exhibits identified as Exhibits A through W is attached hereto and incorporated herein and
3823 made a part hereof by this reference.

3824 **17.10 Actions of CCCSWA in its Governmental Capacity**

3825 Nothing herein shall be interpreted as limiting the right of Contractor to bring any legal action against
3826 CCCSWA, not based on this Agreement, arising out of any act or omission of CCCSWA in its
3827 governmental or regulatory capacity.

3828

3829

3830

3831

3832 Remainder of page intentionally blank

3833

3834

3835

3836 IN WITNESS WHEREOF, CCCSWA and Contractor have executed this Agreement as of the day and year
3837 first above written.

3838 **CCCSWA**

3839

3840

3841 By: 

3842 Board Chairperson

3843

3844

3845 Printed name

3846

3847 Approved as to Form:

3848

3849

3850

3851 CCCSWA Legal Counsel

3852

3853

3854 Printed name

3855

3856 Attest:

3857

3858

3859

3860 Board Secretary

3861

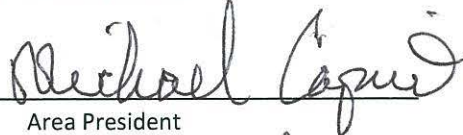
3862

3863

3864 Printed Name

3865

Allied Waste Systems, Inc.

By: 

Area President

Michael Caprio

Printed name

Approved as to Form:



Contractor Legal Counsel

THOMAS M. BREEN

Printed name

