

FIRST AMENDMENT TO FRANCHISE AGREEMENT

This First Amendment to Franchise Agreement (“Amendment”) is entered into by and between CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY, a joint powers authority organized under California law (“Authority” or “CCCSWA”) and ALLIED WASTE SYSTEMS, INC., dba REPUBLIC SERVICES OF CONTRA COSTA, a Delaware corporation (“Contractor”), with respect to the following recitals.

RECITALS

WHEREAS, on May 14, 2014, the Authority and Contractor entered into a contract entitled, “Franchise Agreement between Central Contra Costa Solid Waste Authority and Allied Waste Systems, Inc. for Franchised Materials Collection, Transfer, Transportation, Processing, Diversion and Disposal Services” (“Franchise Agreement”) wherein Contractor was awarded the exclusive right by the Authority to collect solid waste, recyclables and organic materials generated by residential and commercial customers within the Authority’s jurisdiction; and

WHEREAS, the Franchise Agreement sets forth a number of requirements regarding collection, transport and processing of materials which can be diverted from landfills, including the required collection and transformation of organic materials into marketable compost, mulch, or soil amendments, a prohibition on disposing of organic materials, and a limit on compost overages; and

WHEREAS, the Parties have met and discussed modifications to the Franchise Agreement, including directing Authority’s organic materials to Contractor’s Forward Resource Recovery Facility modifying certain Organic Materials Processing standards to reflect a new residual limit of 7%, a requirement to market 80% of finished compost materials, and elimination of the overage limit; and

WHEREAS, Contractor will also provide a letter of credit of \$1,000,000 that can be drawn on in the event that the Authority imposes liquidated damages related to organic materials processing and handling; and

WHEREAS, the Parties agree that the Franchise Agreement should be amended to eliminate ambiguity for the avoidance of doubt; and

WHEREAS, this Amendment memorializes the agreements of the Parties regarding the foregoing matters.

AMENDMENT

NOW THEREFORE, the Authority and Contractor hereby amend the Franchise Agreement as follows:

1. Article 1 of the Franchise Agreement, Definitions, is amended to read as follows: **“Approved Organic Materials Processing Facility”** means the Forward Resource Recovery Facility located at 9999 S. Austin Road, Manteca, CA 95336. The facility is owned and operated by Forward, Inc., and approved by the CCCSWA for Processing of Green Materials and Home Food Scraps.

2. Section 6.1.3 A of the Franchise Agreement is amended to read as follows:

A. **Approved Facility.** Below is information about the Approved Organic Materials Processing Facility approved by the CCCSWA for Processing of Green Materials and Home Food Scraps:

Facility Name: Forward Resource Recovery Facility

Owner: Forward, Inc.

Operator: Forward Resource Recovery Facility, Inc.

Address: 9999 S. Austin Road, Manteca, CA 95336

3. Section 6.1.3 B of the Franchise Agreement, subparts 4, 5 and 6, are amended as follows to delete paragraphs 4 and 5, with paragraph 6 amended to read as follows:

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

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

6. At least Eighty Percent (80%) of all compost produced from processing of Franchised Green Materials and Home Food Scraps shall be marketed for non-landfill commercial or agricultural purposes, as averaged annually over the calendar year. This metric will apply to the average percent of compost marketed from January 1, 2019 to December 31, 2019. The remainder of CCCSWA's Organic Materials may be processed or used in any manner that results in 93% of all the CCCSWA materials received being considered diverted in accordance with current State law or regulations, including AB 939, AB 1594 and AB 341 (i.e., 7% residue is allowed after processing). In no event may any CCCSWA Organic Material be disposed in a landfill without being processed. Excepting only processing residue amounting no more than 7% of all CCCSWA organic materials received, in no event may any CCCSWA Organic Material be disposed in a landfill after processing.

4. Section 6.1.1 H of the Franchise Agreement is amended to read as follows:

H. Allocation Method

Allocation Method. The CCCSWA approved methodology for the proportionate share of materials tonnages to be allocated to CCCSWA is the ratio of total incoming Organic Material tonnage from CCCSWA to the Approved Facility during a given time period (with all such tonnage measured at time of receipt) as compared to the total incoming material tonnage to that facility during that same time period from all sources (with all such tonnage measured at time of receipt). Amounts of residue, overs, finished compost, or any other category, use or destination of Approved Facility organic materials for a particular time period shall be allocated to CCCSWA in the same proportion as the inbound CCCSWA proportionate share of those materials applicable to that time period. The allocation amounts will be established taking into account the results of the studies undertaken pursuant to section I.B. of Cooperative Agreement No. 3 and comments from Contractor.

5. The Franchise Agreement is amended to add a new section 6.I as follows:

I. Certification of Composting Operations

Every year, within 45 calendar days of the submission of the annual report, Contractor will provide a certificate from a ranking company executive, such as an executive vice president or above, warranting on behalf of Contractor that the information provided by Contractor in, and in association with, the annual report regarding composting operations at the Approved Facility, or other approved composting facility receiving CCCSWA organic materials, is accurate.

A. The certificate will state what information was reviewed, and that the officer has personally reviewed the information and confirmed that it is accurate.

B. The officer will certify beginning January 1, 2019 1) that he or she has reviewed the number of incoming tons of CCCSWA organic materials, 2) that at least 80% of the finished compost was marketed for commercial or agricultural purposes, and 3) that the remaining amount of CCCSWA organic materials, excluding processing residue, were used in a manner that is considered diverted under State law.

C. Contractor must keep and make available records supporting the certificate for at least three (3) years.

6. The Franchise Agreement is amended at Exhibit B to add a new section 8 as follows:

8. Report Certification

For each monthly report, quarterly report and annual report submitted by Contractor as specified in this Exhibit B, Contractor will provide a certificate beginning January 1, 2019 from the Operations Manager or other qualified person, warranting on behalf of Contractor that the information provided by Contractor in, and in association with the applicable monthly, quarterly or annual report is accurate.

A. The certificate will state what information was reviewed, and that the Operations Manager has personally reviewed the information and confirmed that it is accurate.

B. Contractor must keep and make available records supporting the certificate for at least three (3) years.

7. The Franchise Agreement is amended at Exhibit B.3 to add a new section H as follows:

H. Contractor shall include in its Quarterly Report sufficient data and information to demonstrate compliance or non-compliance with all of the requirements of Section 6.1.3.B.6 requirements as measured in accordance with the allocation methodology set forth in section 6.1.1 H of the Franchise Agreement, as amended.

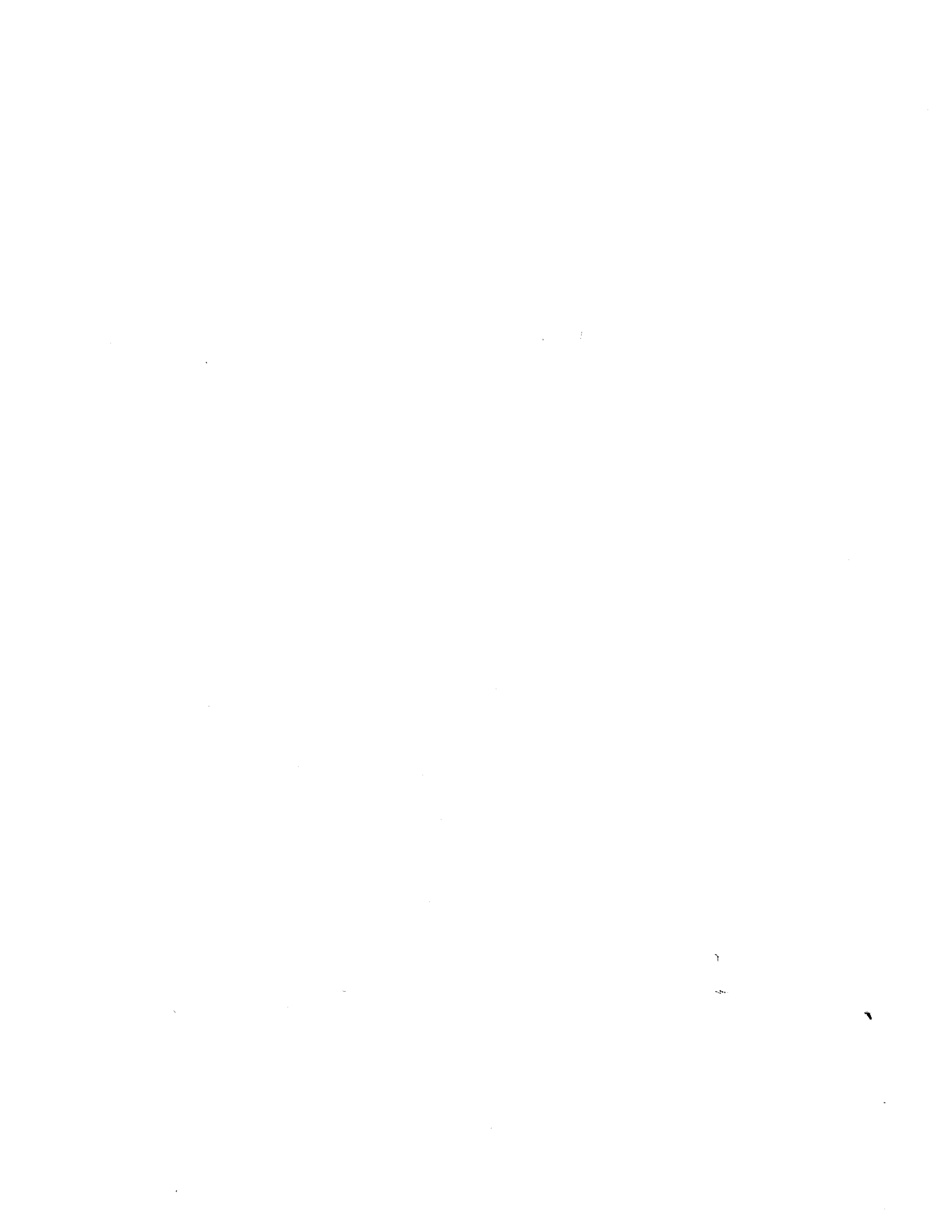
8. The Franchise Agreement is amended at Exhibit B.4 to add a new section E as follows:

H. Contractor shall include in its Annual Report sufficient data and information to demonstrate compliance or non-compliance with all of the requirements of Section 6.1.3.B.6 requirements as measured in accordance with the allocation methodology set forth in section 6.1.1 H of the Franchise Agreement, as amended.

9. The Franchise Agreement is amended at Exhibit C to add a new section "Performance Group 7: Organics Materials and Processing" as follows:

1. For failure to cooperate with Approved Facility review activities as described in Section I.B. of Cooperative Agreement No. 3: \$400 for each calendar day of non-performance for up to 14 calendar days, after which point liquidated damages shall accrue at a rate of \$750 for each calendar day of such non-performance.
2. For failure to provide requested Compost records or reports by the applicable deadline established pursuant to Cooperative Agreement No. 3: \$400 for each calendar day of delay past the due date for the records for up to 14 calendar days, after which point liquidated damages shall accrue at a rate of \$750 for each calendar day for such delay.
3. For failure to meet organics Processing requirements as described in Section 6.1.3.6 of the Franchise Agreement, as amended: \$75 per ton. No cure period shall apply to this provision.
4. For failure to make recycling contributions as described in Section II (or to pay when due any recycling contributions which have become due and payable as a result of payment escalation pursuant to Section III.C.) of Cooperative Agreement No. 3: liquidated damages shall accrue on unpaid amounts at a rate of 1.5% per month up to 3 months, after which point any overdue recycling contribution amount shall automatically convert to a liquidated damages amount that can be drawn down on the Letter of Credit by CCCSWA without any additional notice or cure period being required or provided.
5. For failure to provide a certification within 30 calendar days of its due date as required by the Franchise Agreement as amended at section 6.I or Franchise Agreement as amended at Exhibit B., section 8. \$3000 on the 31st calendar day, and \$400 for each additional calendar day of delay for up to 14 additional calendar days, after which point liquidated damages shall accrue at a rate of \$750 or each calendar day of such non-performance.
6. For failure to replenish the Letter of Credit as per applicable bank requirements: \$400 per calendar day for up to 14 calendar days, after which point liquidated damages shall accrue at a rate of \$750 for each calendar day of such non-performance. No cure period shall apply for a failure under this provision.

Notice of the imposition of liquidated damages under Subsections 1 through 6 above shall be provided as set forth in Section 14.9 of the Franchise Agreement, during which time Contractor may (should it choose to do so) arrange for the payment of liquidated damages by a means other than through a draw down on the Letter of Credit. In addition, except as otherwise set forth in paragraphs 3, 4 and 6 above, a single ten (10) calendar day right to cure period shall be triggered by a notice of the imposition of liquidated damages before any liquidated damages may be collected (provided, however, that the imposition of additional liquidated damages resulting from



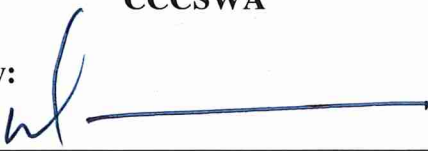
an unbroken continuation of a particular failure shall not trigger the extension of any cure period or the commencement of any additional cure periods for that same failure). As noted in Section VI of Cooperative Agreement No. 3, Contractor serving a timely Notice of Dispute will toll the payment of liquidated damages and a drawdown of the Letter of Credit through the informal dispute resolution time frame, not to exceed 30 days. Otherwise payment of liquidated damages shall occur within 10 calendar days after notice of imposition of liquidated damages by CCCSWA.

Approved October 25, 2018.

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

CCCSWA

By:

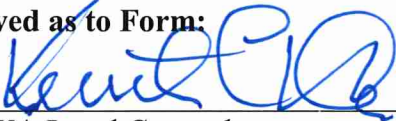


Board Chairperson

Mike Anderson
Printed Name

10-26-18
Date

Approved as to Form:



CCCSWA Legal Counsel

Kenton Alm
Printed Name

10-26-18
Date

Attest:



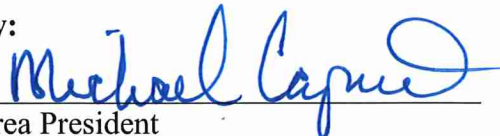
Board Secretary

Janna McKay
Printed Name

10-26-18
Date

Allied Waste Systems, Inc.

By:

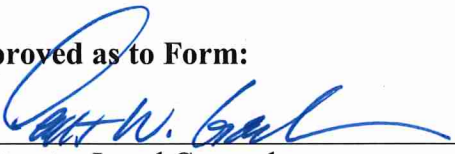


Area President

Michael Caprio
Printed Name

10/19/18
Date

Approved as to Form:



Contractor Legal Counsel

SCOTT W. GORDON
Printed Name

10/19/2018
Date

