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Subject to Council Selection Process
July 25, 2014

Disposal Services Contract

Executed between

City of Oakland

and

[Insert Contractor name]

July 1, 2015



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CITY OF OAKLAND

This Disposal Services Contract ("Contract") is entered into [Insert Date] (the "Effective Date") by and between the CITY OF OAKLAND, a California municipal corporation ("CITY") and _____ ("CONTRACTOR").

RECITALS

WHEREAS, CITY enters this Contract with CONTRACTOR, under which CONTRACTOR receives Garbage generated within the CITY and Residue from the Processing of Mixed Materials Collected by the Mixed Materials and Organics ("MM&O") Collection Contractor within the CITY of Oakland at the Disposal Facility;

WHEREAS, the City Council of the City of Oakland determines, pursuant to its police powers, that obtaining a long-term commitment for Disposal of Garbage generated in the CITY and Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor within the CITY is in the best interests of the health, safety and well-being of the citizens of the CITY;

WHEREAS, the state of California, through enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000, et seq.), also recognizes the important health and safety consideration to long-term planning for local government's adequate Disposal needs. The California Integrated Waste Management Act of 1989 declares that the responsibility for management of Solid Waste is a shared responsibility between the state and local governments. The state requires local governments to make adequate provision for at least fifteen (15) years of Garbage Disposal capacity to preserve the health, safety and well-being of the public. The California Integrated Waste Management Act of 1989 and Oakland City Charter Article X and Oakland Municipal Code Chapter 8.28 also authorize local governments to enter into exclusive franchise contracts to provide Garbage handling services for the health, safety and well-being of its citizens (California Public Resources Code section 40059); and,

WHEREAS, this Contract also advances the objectives of the federal government to encourage environmentally sound Garbage management (Resource Conservation and Recovery Act of 1976 (RCRA), 42, U.S.C. section 6941 et seq.);

WHEREAS, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter Amendment established a county-wide solid waste diversion goal of seventy five (75) percent by 2010;

WHEREAS, in 2002 the City Council of the City of Oakland approved Resolution No. 77500 C.M.S., adopting a goal of seventy-five (75) percent reduction of waste going to landfills by 2010 in support of the Measure D goal, and the implementation date established by the Alameda County Source Reduction and Recycling Board;

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 79774 C.M.S. adopting a Zero Waste Goal by 2020;

WHEREAS, in 2006 the City Council of the City of Oakland approved Resolution No. 80286 C.M.S., adopting a Zero Waste Strategic Plan;

41 WHEREAS, the Disposal Facility is intended to be the principal facility for the Disposal of Mixed
42 Materials and Garbage generated in the CITY and Mixed Materials Residue from the
43 Processing of Mixed Materials Collected by the MM&O Collection Contractor within the CITY, as
44 well as Recyclable Materials Residue from the Processing of Recyclable Materials Collected by
45 the Residential Recyclables Contractor;

46 WHEREAS, the CONTRACTOR guarantees permitted capacity at the Disposal Facility for up to
47 thirty (30) years for Disposal of all Mixed Materials and Garbage generated in the CITY and
48 Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O
49 Collection Contractor within the CITY;

50 WHEREAS, the City Council of the City of Oakland determines that in order to provide adequate
51 Disposal capacity, it is in the best interests of the CITY to secure a commitment from
52 CONTRACTOR for the right to a portion of the Disposal Facility's current Disposal capacity on
53 the terms and subject to the conditions set out in this Contract. The intent of this provision is, in
54 part, for the CITY to contribute to preventing the substantial environmental, aesthetic, health,
55 and safety problems that may be created from increasing volumes of Garbage in this country;

56 WHEREAS, the CONTRACTOR has represented that it has the experience and ability to
57 provide for Disposal of Mixed Materials, Garbage and Residue, at the Disposal Tipping Fees
58 provided for herein;

59 WHEREAS, the CITY has entered into Collection Service Contracts to provide: (i) Mixed
60 Material and Organics Collection Services and (ii) Residential Recycling Collection Services
61 within the CITY;

62 WHEREAS, the CONTRACTOR receives Disposal Tipping Fees from the CITY'S MM&O
63 Collection Contractor for the acceptance of Mixed Materials, Garbage and Residue at the
64 Disposal Facility for final Disposal;

65 WHEREAS, the CITY determined that the CONTRACTOR has proposed to provide Disposal
66 Services at the Disposal Facility in a manner and on terms which are in the best interest of the
67 CITY and its residents and businesses, taking into account the qualifications and experience of
68 the CONTRACTOR, and the Disposal Tipping Fees for providing such services;

69 WHEREAS, the CITY wishes to engage the CONTRACTOR to provide the services specified
70 within this Contract, in accordance with the terms and conditions of this Contract; and

71 WHEREAS, the City Council of the City of Oakland declares its intention of maintaining
72 reasonable Disposal Tipping Fees for the Disposal of Mixed Materials, Garbage and Residue.

73 NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions
74 contained in this Contract and for other good and valuable consideration, the CITY and
75 CONTRACTOR agree as follows.

76 **ARTICLE 1. DEFINITIONS**

77 For the purpose of this Disposal Services Contract ("Contract"), the definitions contained in this
78 Article shall apply unless otherwise specifically stated. When not inconsistent with the context,
79 words used in the present tense include the future, words in the plural include the singular and
80 words in the singular include the plural. Use of the masculine gender shall include the feminine
81 gender.

82 1.01 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water
83 heaters, washing machines, clothes dryers, small air conditioning units, other large and small

84 household appliances, including appliances containing Freon, furniture, carpets, tires, wood,
85 household items, tires with or without rims, mattresses, clothing, Large Plant Debris, corrugated
86 cardboard, materials generated from minor home repairs or remodeling and other similar
87 materials that can be handled by two (2) people and which do not individually weigh more than
88 seventy-five (75) pounds and which are delivered to the Disposal Facility by the MM&O
89 Collection Contractor.

90 1.02 Change in Law. The adoption, promulgation, or modification of any generally
91 applicable and enforceable federal, state, local joint power authority (JPA), or foreign rule, law,
92 regulation, ordinance, order, judgment, decree, permit or administrative agency guidelines
93 (excluding orders, judgments, and decrees specific to a particular facility) duly adopted and
94 promulgated officially in writing for uniform application occurring after January 1, 2013. Change
95 in Law does not include changes initiated by CONTRACTOR. Change in Law shall not include
96 such changes enacted or adopted prior to the due date for RFP proposals, or regulatory
97 changes approved prior to the effective date of this Contract (i.e. chaptered statute or final
98 adoption of regulation).

99 1.03 CITY. The CITY of Oakland, California, a municipal corporation.

100 1.04 CITY Administrator. The CITY official who is responsible for the day-today
101 operations of CITY agencies and departments or his/her designee.

102 1.05 Collect/Collection. To pick up, transport, and remove Garbage, Mixed Materials,
103 Organic Materials or Bulky Goods.

104 1.06 Collection Contractor(s). The Mixed Materials and Organic (MM&O) Collection
105 Contractor and the Residential Recycling (RR) Collection Contractor during the term of this
106 Contract.

107 1.07 Contract or Franchise Contract. The written document and all amendments
108 thereto, between CITY and CONTRACTOR, governing the provision of Disposal Services as
109 provided herein, including all exhibits hereto, as it may be amended from time to time.

110 1.08 Construction and Demolition Debris. Materials resulting from construction,
111 remodeling, repair or demolition operations on any house, residential property, commercial
112 building, pavement or other structure. Construction and Demolition Debris includes but is not
113 limited to rocks, soils, tree remains and other Plant Debris that results from land clearing or land
114 development operations in preparation for construction.

115 1.09 Contract Manager. The CITY employee(s) designated by the CITY Administrator
116 to act as his/her designee regarding the day to day management of this Contract.

117 1.10 CONTRACTOR. _____

118 1.11 Covered Electronic Device or CED. Discarded electronic devices that the
119 California Department of Toxic Substances Control (DTSC) has determined to be a covered
120 electronic device (California Public Resources Code section 42463). CEDs include cathode ray
121 tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors;
122 laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players
123 with LCD screens; and other electronic devices as may be added by the DTSC from time to
124 time.

125 1.12 Disposal/Dispose. The final Processing and disposition of Mixed Materials,
126 Garbage and Residue received from the Collection Contractor(s) and CITY by CONTRACTOR
127 under the terms of this Contract onto land located at the Disposal Facility, including but not

128 limited to placement as alternative daily cover, road construction, slope stabilization, or other
129 beneficial uses. Disposal does not include transformation using incineration, pyrolysis,
130 distillation, gasification, biological conversion or other similar methodologies unless authorized
131 by CITY.

132 1.13 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont
133 Pass Road, Livermore, California 94551 that is that is owned and operated by CONTRACTOR.

134 1.14 Disposal Services. The receipt, acceptance and Disposal of all Mixed Materials,
135 Garbage and Residue delivered by the Collection Contractor(s) and CITY to the Disposal
136 Facility.

137 1.15 Disposal Tipping Fee or Tipping Fee. The charges for acceptance of material
138 delivered to the Disposal Facility as set forth in Exhibit 1, which is attached to and included in
139 this Contract.

140 1.16 Divert/Diversion. To prevent Recyclable Materials, Organic Materials and other
141 materials from Disposal at the Disposal Facility or transformation facilities (including facilities
142 using incineration, pyrolysis, distillation, gasification or biological conversion methods) through
143 source reduction, reuse, recycling and composting, as provided in section 41780 of the
144 California Integrated Waste Management Act of 1989, as such California Integrated Waste
145 Management Act may be hereafter amended or superseded.

146 1.17 E-Waste. Waste that is powered by batteries or electricity, such as computers,
147 telephones, answering machines, radios, stereo equipment, tape players/recorders,
148 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and
149 other items also defined as CEDs.

150 1.18 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items,
151 including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard, and
152 other compostable items that have been contaminated with food, cooking fats, oil or kitchen
153 grease; compostable or paper or plastics associated with food preparation or consumption, such
154 as paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard; and
155 other materials agreed upon by the MM&O Collection Contractor and City that are capable of
156 being composted and that are set out separate from Mixed Materials for Collection as Organic
157 Materials.

158 1.19 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,
159 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a
160 public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent
161 domain, condemnation or other taking, or other events of a similar nature, not caused or
162 maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the
163 party claiming the excuse from its obligations due to such event, to the extent such event has a
164 significant and material adverse effect on the ability of a party to perform its obligations
165 thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work
166 stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by or
167 directed at CONTRACTOR or CONTRACTOR's employees or subcontractors. Force Majeure
168 shall include a Change in Law if such Change in Law prohibits a party's performance hereunder.
169 Notwithstanding the foregoing, (i) no event relating to a Disposal Facility, other than a Disposal
170 Facility operated by CONTRACTOR or a related party of CONTRACTOR, or the delivery of
171 Garbage, Mixed Materials and/or Residue to that facility shall constitute a Force Majeure under
172 this contract unless (and then only to the extent) that such event prevents the delivery of or
173 acceptance of Garbage, Mixed Materials and Residue to or by a that facility; (ii) no failure of

174 performance by any subcontractor of CONTRACTOR shall be a Force Majeure unless such
175 failure was itself caused by a Force Majeure; (iii) except as provided herein, no event which
176 merely increases CONTRACTOR'S cost of performance shall be a Force Majeure; and () no
177 event, the effects of which could have been prevented by reasonable precautions, including
178 compliance with agreements and applicable laws, shall be a Force Majeure.

179 1.20 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging
180 and rubbish attributed to normal activities of the service address wherein the Garbage is
181 generated. Garbage does not include abandoned automobiles or those items defined herein as
182 Unacceptable Waste.

183 1.21 Gas Control Credits. All greenhouse gas credits, carbon credits and other similar
184 credits that can be received for the control of gases emitted by the Disposal Facility, such as
185 emission cap and trade allowances issued under the Regional Greenhouse Gas Initiative or the
186 rules of any of its member states, and any emission credit authorized by the Global Warming
187 Solutions Act for the reduction of greenhouse gases.

188 1.22 Guarantor. [Insert Name]

189 1.23 Guaranty. The document contained in Exhibit 3, which is attached to and
190 included in this Contract that is executed by the Guarantor guaranteeing the timely and full
191 performance of CONTRACTOR'S obligations.

192 1.24 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include
193 those wastes defined as Hazardous Waste in Oakland Municipal Code Section 8.28.010 or as
194 subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any
195 hazardous waste, material, substance or combination of materials which because of its quantity,
196 concentration, or physical, chemical, or infectious characteristics may cause, or significantly
197 contribute to an increase in mortality or an increase in serious irreversible, or incapacitating
198 reversible illness; or may pose a substantial present or potential risk to human health or the
199 environment when improperly treated, stored, transported, disposed or otherwise managed; and
200 which requires special handling under any present or future federal, State or local law, excluding
201 de minimis quantities of waste of a type and amount normally found in residential Garbage after
202 implementation of programs for the safe Collection, recycling, treatment and Disposal of
203 Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California
204 Public Resources Code. Hazardous Waste shall include, but not be limited to: (a) substances
205 that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any
206 fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic
207 substances or related hazardous materials; and (d) substances defined, regulated or listed
208 (directly or by reference) by applicable local, State or federal law as "hazardous substances,"
209 "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or
210 "toxic substances," or similarly identified as hazardous to human health or the environment,
211 including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive
212 Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC section
213 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802,
214 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the
215 Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section
216 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.;
217 and (vii) California Water Code section 13050; all rules and regulations adopted and
218 promulgated pursuant to such statutes, and future amendments to or recodifications of such
219 statutes, and any regulations adopted pursuant to these statutes after the date of this Contract,
220 as well as any subsequently enacted federal or California statute relating to the use, release or

221 disposal of toxic or hazardous substances, or to the remediation of air, surface waters,
222 groundwater, soil or other media contaminated with such substances; any other hazardous or
223 toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or
224 regulated under any other applicable federal, State or local environmental laws currently
225 existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated
226 biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. The
227 parties intend that this definition not be limited to any particular statutory or regulatory regime
228 and that it be construed as broadly as possible.

229 1.25 Household Hazardous Waste. Any Hazardous Waste generated at a single
230 family or multi-family service address within the CITY, including, but not limited to, cleaning
231 products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, fluorescent
232 lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers,
233 automobile batteries, household batteries, adhesives, and Universal Waste except those items
234 defined in this Contract as Recyclable Materials, including Used Oil or Used Oil Filters, and dry
235 cell household batteries.

236 1.26 Labor Disruption. Labor Disruptions are defined as strikes, slowdowns, sickout,
237 picketing, other concerted job actions, directed at CONTRACTOR, CONTRACTOR's employees
238 or subcontractors, excluding lockouts or stoppages conducted or initiated by CONTRACTOR.

239 1.27 Landfill Gas-to-Energy Credits. All energy credits, fuel production credits and
240 other similar credits that may be available for the creation of a fuel or the production of
241 alternative energy.

242 1.28 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or
243 untreated and unpainted wood.

244 1.29 Material Recovery Facility or MRF. Any facility, selected by the Collection
245 Contractor(s) and approved by CITY, or specifically designated by CITY, designed, operated,
246 and legally permitted for the purpose of receiving, sorting, Processing, storing, or preparing
247 Recyclable Materials, Organic Materials or Mixed Materials for sale, market, or reuse.

248 1.30 Mixed Materials. All Garbage, Recyclable Materials, Organic Materials and Bulky
249 Goods, excluding items that are source separated from Garbage. Mixed Materials do not
250 include items defined herein as Unacceptable Waste.

251 1.31 Mixed Materials and Organics (MM&O) Collection Contractor. The company
252 holding a current Mixed Materials and Organics Collection Services Contract with the CITY of
253 Oakland.

254 1.32 Mixed Materials Residue. Materials remaining after the Processing of Mixed
255 Materials that cannot reasonably be Diverted from the Landfill.

256 1.33 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food
257 ware, compostable food containers, compostable paper, horse stable matter, etc. Organic
258 Materials do not include items herein defined as Unacceptable Waste.

259 1.34 Organic Materials Residue. Materials remaining after the Processing of Organic
260 Materials that cannot reasonably be Diverted from the Landfill.

261 1.35 Person. An individual, association, partnership, corporation, joint venture, the
262 United States, the State of California, any municipality or other political subdivision thereof, or
263 any other entity whatsoever.

264 1.36 Plant Debris. Any vegetative matter resulting from normal yard and landscaping
265 maintenance or unpainted and untreated wood. Plant Debris includes palm, yucca, cactus;
266 grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of
267 horticultural waste. Plant Debris does not include items defined herein as Unacceptable Waste.

268 1.37 Post-Closure. All activities and related costs during the period subsequent to the
269 closure of the Disposal Facility or portions of the Disposal Facility in accordance with applicable
270 laws and permits.

271 1.38 Processing or Process. An operation or series of operations, whether involving
272 equipment or manual labor, which sorts, enhances, upgrades, concentrates, decontaminates,
273 packages or otherwise prepares Mixed Materials, Recyclable Materials, Organic Materials or
274 Bulky Goods for a secondary use. Processing begins at the time Mixed Materials, Recyclable
275 Materials, Bulky Goods or Organic Materials are delivered to the Processing Facility and ends
276 when the Processed materials are sold or reused, and the Residue is properly Disposed.

277 1.39 Recovered Materials. Recyclable Materials or Organic Materials removed at the
278 Disposal Facility from Garbage, Mixed Materials or Residue and directed to recycling, reuse or
279 compost processing.

280 1.40 Recyclable Materials. Those materials designated in this Contract or by CITY for
281 Collection and Processing under the MM&O or RR Collection Service Contracts which are
282 segregated from Mixed Materials by the CITY or service recipient at the source of generation
283 and set out for Collection. Recyclable Materials include those materials defined by CITY,
284 including newspaper, mixed paper (including white and colored paper, magazines, telephone
285 books, chipboard, junk mail, and high grade paper) glass containers, metal containers (ferrous,
286 non-ferrous, and bi-metal Containers including empty aerosol containers), aluminum foil and
287 trays, milk and juice cartons, all narrow neck rigid plastic containers, non-bottle rigid plastics,
288 and corrugated cardboard. Recyclable Materials also include dry cell batteries generated by
289 residential service recipients and CITY facilities.

290 1.41 Recyclable Materials Residue. Materials remaining after the Processing of
291 Recyclable Materials that cannot reasonably be Diverted from the Landfill.

292 1.42 Residential Recycling (RR) Contractor. The company holding a current
293 Residential Recyclable Materials Collection Services Contract with the CITY of Oakland.

294 1.43 Residue. Mixed Materials Residue, Organic Materials Residue and Recyclable
295 Materials Residue.

296 1.44 Revenue Generating Resources. Resources generated by or at the Disposal
297 Facility including, but not limited to, Recovered Materials, Gas Control Credits, Landfill Gas-to-
298 Energy Credits and landfill gas that can be sold or otherwise used to produce revenue for
299 CONTRACTOR.

300 1.45 Ton/Tonnage. A unit of measure for weight equivalent to two thousand (2,000)
301 standard pounds where each pound contains sixteen (16) ounces.

302 1.46 Universal Waste ("U-Waste"). Materials that the California Department of Toxic
303 Substances Control considers Universal Waste, (California Code of Regulations Title 22, Div
304 4.5, Ch 23) including materials such as batteries, thermostats, lamps, cathode ray tubes,
305 computers, telephones, answering machines, radios, stereo equipment, tape players/recorders,
306 phonographs, video cassette players/recorders, compact disc players/recorders, calculators,
307 some appliances, aerosol cans, fluorescent lamps, certain mercury-containing devices and such
308 other items as may be added from time to time.

309 1.47 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous
310 Waste, the acceptance or handling of which would cause a violation of any permit condition or
311 legal or regulatory requirement, damage or threatened damage to CONTRACTOR'S equipment
312 or facilities, or present a substantial endangerment to the health or safety of the public or
313 CONTRACTOR'S employees; provided, that de minimis quantities or waste of a type and
314 amount normally found in Garbage, Mixed Materials, or Residue after implementation of
315 programs for the safe Collection, Processing, treatment, and Disposal of Household Hazardous
316 Waste in compliance with sections 41500 and 41802 of the California Public Resources Code
317 shall not constitute Unacceptable Waste.

318 1.48 Work Day. Any day, Monday through Saturday that is not a holiday as set forth
319 in Section 5.06 of this Contract.

320 **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF** 321 **CONTRACTOR**

322 CONTRACTOR hereby makes the following representations and warranties for the benefit of
323 CITY as of the date of this Contract.

324 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly
325 existing and in good standing under the laws of the state of California. It is qualified to transact
326 business in the State of California and has the corporate power to own its properties and to
327 carry on its business as now owned and operated and as required by this Contract.

328 2.02 Corporate Authorization. CONTRACTOR has full legal right, power and authority
329 to execute, deliver and perform its obligations under this Contract. The Board of Directors of
330 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its
331 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this
332 Contract. The Persons signing this Contract on behalf of CONTRACTOR have authority to do
333 so.

334 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of
335 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been
336 duly executed and delivered by CONTRACTOR in accordance with the authorization of its
337 Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding
338 obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

339 2.04 No Conflict With Applicable Law or Other Documents. To the best of
340 CONTRACTOR's knowledge, neither the execution and delivery by CONTRACTOR of this
341 Contract nor the performance by CONTRACTOR of its obligations hereunder:

342 2.04.1 Conflicts with, violates or will result in a violation of any existing applicable
343 law; or

344 2.04.2 Conflicts with, violates or will result in a breach or default under any term
345 or condition of any existing judgment, order or decree of any court, administrative agency or
346 other governmental authority, or of any existing contract or instrument to which CONTRACTOR
347 is a party, or by which CONTRACTOR or any of CONTRACTOR'S properties or assets is
348 bound; or

349 2.04.3 Will result in the creation or imposition of any lien, charge, or
350 encumbrance of any nature whatsoever upon any of the properties or assets of CONTRACTOR
351 which will interfere materially with CONTRACTOR'S performance hereunder.

352 2.05 No Litigation. There is no action, suit, proceeding or action at law or equity, or to
353 the best of CONTRACTOR'S knowledge, any investigation before or by any court or
354 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting
355 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the
356 aggregate, would materially adversely affect CONTRACTOR'S performance hereunder, or
357 which in any way would adversely affect the validity or enforceability of this Contract, or which
358 would have a material adverse effect on the financial condition of CONTRACTOR or its parent
359 company.

360 2.06 Financial Ability, Disclosures, No Material Change. CONTRACTOR has
361 sufficient financial resources to perform all aspects of its obligations hereunder.
362 CONTRACTOR has provided CITY with audited financial statements that present fairly, in
363 accordance with generally accepted accounting principles, the financial resources of
364 CONTRACTOR. There has been no material adverse change in CONTRACTOR'S or
365 CONTRACTOR'S parent company's financial circumstances since the date of the most recent
366 financial statements.

367 2.07 Expertise. CONTRACTOR has the expert, professional, and technical capability
368 to perform all of its obligations under this Contract.

369 2.08 CONTRACTOR'S Statements. CONTRACTOR'S proposal and any other
370 supplementary information submitted to CITY that CITY has relied on in negotiations and
371 entering into this Contract, do not: (i) contain any untrue statement of a material fact, or (ii) omit
372 to state a material fact that is necessary in order to make the statements made, in light of the
373 circumstances in which they were made, not misleading.

374 2.09 CONTRACTOR'S Investigation. CONTRACTOR has made an independent
375 investigation (satisfactory to it) of the conditions and circumstances surrounding this Contract
376 and the work to be performed by CONTRACTOR under the Contract, and enters into this
377 Contract on the basis of that independent investigation.

378 **ARTICLE 3. TERM OF CONTRACT**

379 3.01 Initial Term. The term of this Contract shall be for a twenty (20) year term
380 beginning on July 1, 2015, and terminating on June 30, 2035. CITY, in its sole discretion, shall
381 have an option to extend the Contract for up to two (2) additional five (5) year periods.

382 3.01.1 First Extension. On or about April 1, 2033, CITY, at its sole discretion
383 may extend this Contract by five (5) years by notifying CONTRACTOR of its intension to do so
384 in writing.

385 3.01.2 Second Extension. On or about April 1, 2038, CITY, at its sole discretion
386 may extend this Contract by five (5) years by notifying CONTRACTOR of its intension to do so
387 in writing.

388 3.01.3 No Right to Extension. Nothing in the foregoing paragraphs or otherwise
389 set forth in this Contract is intended to create a right in favor of CONTRACTOR to obtain either
390 the first or second extension.

391 **ARTICLE 4. OBLIGATIONS OF CITY**

392 4.01 General. CITY and CONTRACTOR acknowledge that CITY will not be
393 responsible for the payment of Disposal Tipping Fees for Mixed Materials, Garbage or Residue
394 that the Collection Contractor(s) deliver to the Disposal Facility. CITY contractually controls the

395 delivery of Mixed Materials and Garbage Collected in CITY and Residue from Mixed Materials
396 Processing activities by the MM&O Collection Contractor and shall direct the MM&O Collection
397 Contractor to deliver such Mixed Material, Garbage or Mixed Material Residue to the Disposal
398 Facility. CONTRACTOR acknowledges that CITY has no ability to direct individuals who self-
399 haul to use the Disposal Facility. CITY may utilize CITY staff and vehicles to haul Mixed
400 Materials, Garbage, Bulky Goods or other materials generated by or at any building, structure,
401 yard, park, or any other facility owned, leased, or operated by CITY to the Disposal Facility.
402 CONTRACTOR shall bill CITY for CITY-hauled loads at no more than the then current Disposal
403 Tipping Fee, as calculated under this Contract, for the type of material being hauled.

404 4.02 Hazardous Waste Programs. CITY shall contractually require its Collection
405 Contractor(s) to develop and implement a load inspection program to detect and discover
406 Hazardous Waste and Household Hazardous Waste and shall prohibit Collection Contractor(s)
407 from knowingly delivering such material to the Disposal Facility. CITY shall encourage its
408 residents to participate in the Alameda County Household Hazardous Waste Program that
409 provides residents with a place for safe recycling, treatment, and/or disposition of Household
410 Hazardous Waste. The parties recognize, however, that CITY cannot assure CONTRACTOR
411 that such programs will prevent any amount of Hazardous Waste or Household Hazardous
412 Waste from being delivered to the Disposal Facility.

413 4.03 No Limit on Waste Prevention. CITY, Collection Contractor(s) or other CITY
414 agents will continue to develop and participate in waste prevention activities including, source
415 reduction and Diversion activities, which may reduce the amount of material delivered to the
416 Disposal Facility. Nothing in this Contract shall restrict CITY, Collection Contractor(s) or other
417 CITY agents from any such activities.

418 **ARTICLE 5. OBLIGATIONS OF CONTRACTOR**

419 5.01 General. During the term of this Contract, and consistent with Section 5.12
420 herein, CONTRACTOR shall provide Disposal Services under the terms and conditions of this
421 Disposal Services Contract. CONTRACTOR shall perform its obligations with respect to
422 Disposal Services hereunder in accordance with sound management and operations practice,
423 regulatory and permit requirements, applicable law, the provisions hereof, and covenants,
424 conditions, and restrictions pertaining to the Disposal of Mixed Materials, Garbage and Residue.

425 5.02 Facility Permits.

426 5.02.1 Existing Permits. CONTRACTOR shall obtain, at its own expense, all
427 permits and licenses required by law or ordinance and maintain same in full force and effect
428 throughout the term of this Contract. CONTRACTOR shall provide proof of such permits,
429 licenses or approvals and shall demonstrate compliance with the terms and conditions of such
430 permits, licenses and approvals upon the request of the Contract Manager.

431 5.02.1.1 CONTRACTOR shall keep CITY fully informed, in a timely
432 manner, of its progress in securing permits, or renewals of permits that occur during the term of
433 this Contract as they pertain to the Disposal operations at the Disposal Facility in accordance
434 with this Contract and the costs related thereto.

435 5.02.1.2 CONTRACTOR shall provide CITY, upon CITY'S request, with
436 copies of any applications that CONTRACTOR submits to any regulatory body in connection
437 with the issuance of new permits, or the extension, revision or modification of existing permits
438 with respect to the Disposal Facility.

439 5.02.2 CONTRACTOR Compliance with Permits. CONTRACTOR shall comply
440 with all permits, terms, and conditions of such permits as they may be amended or superseded
441 related to the operation and maintenance of the Disposal Facility. Over the term of this
442 Contract, CONTRACTOR shall be solely responsible for assuring that the facility is operated in
443 compliance with all requirements of the California Environmental Quality Act (CEQA).
444 CONTRACTOR shall be solely responsible for paying any fines or penalties imposed by
445 governmental agencies for CONTRACTOR'S noncompliance with permit terms or
446 CONTRACTOR'S failure to obtain or maintain compliance with the requirements of the permits
447 necessary to operate the Disposal Facility.

448 5.03 Operations. CONTRACTOR, at its cost and expense, shall operate the Disposal
449 Facility in the manner required by applicable law and permits. CONTRACTOR'S responsibilities
450 for the Disposal Facility shall include, but are not limited to, the following:

451 5.03.1 Operation, management, and maintenance of the Disposal Facility will
452 comply with sound management and operations practice, regulatory and permit requirements,
453 applicable law, standard industry practices, and covenants, conditions and restrictions
454 pertaining to the site;

455 5.03.2 Provision, operation, and maintenance of all equipment, rolling stock, and
456 supplies necessary for operations, and environmental monitoring; and

457 5.03.3 Operation, maintenance and management of leachate and Disposal
458 Facility gas management systems, groundwater monitoring and management systems, storm
459 water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities,
460 and any other required facility elements.

461 5.04 Days and Hours of Operation. CONTRACTOR shall operate the Disposal
462 Facility for the receipt of Mixed Materials, Garbage and Residue in accordance with the days
463 and hours of operation as set forth in all permits. At a minimum, CONTRACTOR shall accept
464 Mixed Materials, Garbage and Residue delivered by the Collection Contractor(s) Monday
465 through Friday from 6:00 a.m. to 5:00 p.m. and Saturday from 6:00 a.m. to 4:30 p.m.
466 CONTRACTOR may not reduce the hours or total number of hours for acceptance of Mixed
467 Materials, Garbage and Residue delivered by the Collection Contractor(s) required by the
468 Contract without the concurrence of CITY and Collection Contractor(s) except where such
469 changes are required by a change in the Disposal Facility permits.

470 5.05 Emergency Services. In the event of a tornado, major storm, earthquake, fire,
471 natural disaster or other such event, the Contract Manager may require CONTRACTOR to
472 extend the hours of operation in order to accept materials from CITY'S Collection Contractor(s).
473 However, CONTRACTOR shall not be required to extend the hours of operation to the extent
474 that such extension would cause CONTRACTOR to violate its permit(s).

475 5.06 Holidays. CONTRACTOR shall not be required to accept Mixed Materials,
476 Garbage or Residue from the Collection Contractor(s) at the Disposal Facility on January 1,
477 Thanksgiving Day and December 25.

478 5.07 Average Turnaround Time.

479 5.07.1 In the event CONTRACTOR is not the MM&O Collection Contractor as
480 defined under this Contract, CONTRACTOR shall operate the Disposal Facility so that all
481 MM&O Collection Contractors' vehicles are processed, unloaded, and exited from the facility no
482 more than twenty (20) minutes, on average, after arriving at the scale house and mounting the

483 scale to weigh-in. For purposes of this 5.07.1, "on average" shall be calculated on a monthly
484 basis.

485 5.07.2 In the event CONTRACTOR is the MM&O Collection Contractor, but
486 CITY has exercised its authority to have other personnel Collect and deliver Mixed Materials,
487 Garbage or Residue to the Disposal Facility as a result of a strike or other labor unrest,
488 CONTRACTOR shall operate the Disposal Facility so that all Collection vehicles delivering
489 Mixed Materials, Garbage and Residue from CITY are processed, unloaded, and exited from
490 the facility no more than twenty (20) minutes, on average after arriving at the scale house and
491 mounting the scale to weigh-in, unless CITY has approved a labor peace plan specifying a
492 longer time period.

493 5.08 Scale Operation.

494 5.08.1 Weighing Standards and Procedures. The scale house(s) at the Disposal
495 Facility entrance shall serve as the location for weighing vehicles and charging Tipping Fees as
496 provided herein. All weighing shall be conducted by CONTRACTOR or its agents by a licensed
497 weigh master. CONTRACTOR scale house personnel shall be responsible for inspecting the
498 Mixed Materials, Garbage and Residue delivered to the Disposal Facility. The Collection
499 Contractor(s)' vehicles shall be charged Tipping Fees based on the Tonnage of Mixed
500 Materials, Garbage and Residue accepted by the Disposal Facility and the applicable Disposal
501 Tipping Fees as set forth in Exhibit 1 which is attached to and included in this Contract.
502 CONTRACTOR shall weigh and record inbound weights of all Collection Contractor(s) vehicles
503 when the vehicles arrive at the Disposal Facility. In addition, CONTRACTOR shall weigh and
504 record outbound weights of such vehicles for which CONTRACTOR does not maintain tare
505 weight information. CONTRACTOR shall provide each driver with a receipt showing the date,
506 time, and quantity and type of Mixed Materials, Garbage or Residue delivered to the Disposal
507 Facility and the Tipping Fee charged for such material. The scale house computer system shall
508 compile information into various reports, which typically include for each transaction, date of
509 receipt, inbound and (as applicable) outbound times, documentation of the Tipping Fee
510 charged, inbound and outbound weights of vehicle, vehicle identification number, hauler
511 identification and/or classification, customer account, material type, vehicle type, weight of load,
512 and invoice number.

513 5.08.2 Maintenance and Operation. CONTRACTOR shall maintain, in
514 accordance with applicable law, at least two (2) State-certified motor vehicle scales at the
515 Disposal Facility. All scales shall be linked to a centralized computer recording and billing
516 system which shall be compatible with CONTRACTOR'S systems and account for tracking all
517 incoming and outgoing materials. CONTRACTOR shall operate such scales during facility
518 receiving hours, established in Section 5.04, provided that CONTRACTOR shall provide CITY
519 with access to weighing information at all times and copies thereof within three Work Days of
520 request from CITY.

521 5.08.3 Vehicle Tare Weights. Between the time this Contract is executed and
522 June 1, 2015, CONTRACTOR shall weigh and determine the unloaded ("tare") weight of each
523 MM&O Collection Contractor's vehicles to be used to deliver Mixed Materials, Garbage or Mixed
524 Materials Residue to the Disposal Facility beginning July 1, 2015. Before July 1, 2015,
525 CONTRACTOR shall provide CITY and MM&O Collection Contractor with a report listing vehicle
526 tare weight information, which shall include, at a minimum, hauler name, tare weight, vehicle
527 identification number, and date tare weight was determined. CONTRACTOR shall, at least
528 every six (6) months, reweigh and revise tare weights for all MM&O Collection Contractors'

529 vehicles used to deliver Mixed Materials, Garbage or Mixed Materials Residue to the Disposal
530 Facility.

531 5.08.3.1 When CONTRACTOR is notified in writing by the MM&O
532 Contractor that new vehicles have been placed into service or significant repairs have been
533 made to vehicles, CONTRACTOR shall promptly weigh such vehicles and determine the tare
534 weight of each vehicle. Within ten (10) Work Days of weighing, CONTRACTOR shall provide
535 CITY and MM&O Collection Contractor with a report listing vehicle tare weight information.
536 CONTRACTOR, CITY, and MM&O Collection Contractor shall have the right to request re-
537 weighing of vehicles up to two (2) times per year, unless there is reasonable suspicion or
538 evidence that tare weights are not accurate, in which case the scales shall be recalibrated in
539 accordance with the provision so of Section 5.08.6 and tare weights shall be updated. (Note:
540 Sections 5.08.3 and 5.08.3.1 may be deleted or modified based on the final Disposal Services
541 Contract award.)

542 5.08.4 Substitute Scales. To the extent practicable, if a scale is inoperable,
543 being tested or otherwise unavailable, all vehicles shall be weighed on the remaining operating
544 scale(s). To the extent that all Disposal Facility scales are inoperable, being tested, or
545 otherwise unavailable, CONTRACTOR shall substitute portable scales until the permanent
546 scales are replaced or repaired. CONTRACTOR shall arrange for any inoperable scale to be
547 repaired as soon as possible and, in any event, within three (3) Work Days of the failure of the
548 permanent scale. CONTRACTOR shall arrange to immediately obtain a temporary substitute
549 scale(s) should the repair of the permanent scale require more than twelve (12) hours.

550 5.08.5 Estimates. Pending substitution of portable scales or during power
551 outages, CONTRACTOR shall estimate the Tonnage of Mixed Materials, Garbage and Residue
552 delivered to the Disposal Facility by utilizing the arithmetic average of that vehicle's recorded
553 Tons of Mixed Materials, Garbage or Residue delivered on its preceding three (3) deliveries, on
554 the same day of the week, to the Disposal Facility, with the exception that the estimate of
555 Tonnage in roll-off boxes shall be made by multiplying the estimated number of cubic yards of
556 Mixed Materials, or Garbage delivered per non-compacted roll-off box by 0.25 Tons per cubic
557 yard or compacted roll-off box by 0.50 Tons per cubic yard or such other amounts as may be
558 agreed to in writing between CONTRACTOR and CITY.

559 5.08.5.1 All information required by this Article shall continue to be
560 recorded for each delivery of Mixed Material, Garbage or Residue to the Disposal Facility during
561 any period the scales are out of service.

562 5.08.6 Testing. CONTRACTOR shall test and calibrate all scales in accordance
563 with applicable law, but at least every twelve (12) months. Upon CITY request, CONTRACTOR
564 shall provide CITY with copies of test results. CONTRACTOR shall further test and calibrate
565 any or all scales upon written request therefore by CITY, within three (3) Work Days of such
566 request. If such test results indicate that the scale or scales complied with applicable law, CITY
567 shall reimburse CONTRACTOR the direct costs of such tests. If such test results indicate that
568 the scale or scales did not comply with applicable law, CONTRACTOR shall bear the costs
569 thereof and CONTRACTOR shall at its own cost adjust and correct, consistent with the results
570 of such test, all weight measurements recorded and Tipping Fees calculated, charged and paid,
571 as the case may be, from the date of such request.

572 5.08.7 Records. CONTRACTOR shall maintain scale records that provide
573 information such as, but not limited to, date of receipt, inbound and, (as applicable) outbound
574 time, inbound and outbound weights of vehicles, Tipping Fee charged, vehicle identification
575 number, vehicle type, type of material, hauler identification and/or classification, type, and

576 weight. CONTRACTOR shall also maintain records of all outbound materials that provide
577 information such as, but not limited to material type, weight, destination and revenue from sale
578 of materials. CONTRACTOR'S records shall, to the extent practical, include the above
579 information for all Oakland material delivered by self-haulers.

580 5.09 Personnel. CONTRACTOR shall engage and train qualified and competent
581 employees, including managerial, supervisory, clerical, maintenance, and operating personnel,
582 in numbers necessary and sufficient for operation of the Disposal Facility and to perform
583 CONTRACTOR'S obligations hereunder.

584 5.10 Ownership of Materials. Once Mixed Materials, Garbage or Residue are
585 delivered to the Disposal Facility by Collection Contractor(s), ownership and possession of such
586 material shall transfer directly from the Collection Contractor(s) to CONTRACTOR.
587 CONTRACTOR is hereby granted the right to retain, recycle, Process, Dispose, subject to the
588 limitations set forth in Section 1.12 on allowable Disposal methodologies, and otherwise use
589 such materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by
590 CONTRACTOR. Such right shall include CONTRACTOR'S right to retain any benefit resulting
591 from its right to retain, recycle, Process, Dispose, or reuse the Mixed Materials, Garbage or
592 Residue in accordance with the provisions of the Revenue Sharing Plan provided by
593 CONTRACTOR as set forth in Exhibit 6 which is attached to and included in this Contract.

594 5.11 Rejection of Unacceptable Waste.

595 5.11.1 Inspection. CONTRACTOR shall use standard industry practices to
596 endeavor to detect and discover Unacceptable Waste and shall not knowingly accept
597 Unacceptable Waste at the Disposal Facility. CONTRACTOR shall comply with the inspection
598 procedures contained in its permit requirements. CONTRACTOR shall promptly modify such
599 procedure to reflect any changes in permits or applicable law.

600 5.11.2 Unacceptable Waste Handling and Costs. CONTRACTOR shall arrange
601 for or provide transportation and delivery to an appropriately permitted facility of all
602 Unacceptable Waste, which has been accepted by CONTRACTOR, that are encountered and
603 which cannot be accepted at the Disposal Facility. CONTRACTOR is solely responsible for
604 handling and arranging transport and disposition of any Unacceptable Waste that is contained in
605 or with Mixed Materials, Garbage or Residue accepted by CONTRACTOR, and for all related
606 costs.

607 5.11.3 Remedies for Rejected Materials. If CONTRACTOR rejects material
608 delivered to the Disposal Facility by Collection Contractor(s), because it contains Unacceptable
609 Waste including Hazardous Wastes, CONTRACTOR shall direct Collection Contractor(s) to
610 remove and dispose of it in a safe and lawful manner, at the sole expense of the Collection
611 Contractor(s). In the event that Unacceptable Waste is delivered to the Disposal Facility,
612 CONTRACTOR shall be entitled to pursue whatever remedies, if any, it may have against
613 Collection Contractor(s) bringing such Unacceptable Waste to the Disposal Facility, provided
614 that in no case shall CITY be considered to have brought such Unacceptable Waste to the
615 Disposal Facility. In the event the Collection Contractor(s) delivers Unacceptable Waste on a
616 frequent or continuous basis and the Collection Contractor(s) refuses to provide for the proper
617 handling and disposition of such Unacceptable Waste, CONTRACTOR shall provide written
618 notice to CITY of such refusal by Collection Contractor(s). Nothing herein shall excuse
619 CONTRACTOR from the responsibility of handling such Unacceptable Waste in a lawful manner
620 and to arrange for the proper disposition of such materials. In the event the CITY delivers
621 Unacceptable Waste to the Disposal Facility, CITY shall have the same responsibility as the
622 Collection Contractor(s).

623 5.11.4 Notification. In the event CONTRACTOR is not the Collection
624 Contractor(s) and CONTRACTOR rejects delivered materials, CONTRACTOR shall
625 immediately notify the Collection Contractor(s) verbally and then follow such verbal notification
626 with written notice. The written notice will identify: the date and time of occurrence; material
627 type; material weight or volume; characterization of material; and CONTRACTOR'S reason for
628 rejection of the delivered material.

629 5.12 Reservation of Disposal Capacity. CONTRACTOR guarantees its ability to
630 accept and Dispose all Mixed Materials, Garbage and Mixed Material Residue delivered to the
631 Disposal Facility by, or on behalf of, CITY, and CITY'S MM&O Collection Contractor, or
632 successor for thirty (30) years from July 1, 2015. CONTRACTOR shall be responsible for
633 reasonably estimating the quantity of capacity that it shall be required to provide to accept and
634 Dispose of all Mixed Materials, Garbage and Mixed Materials Residue generated in CITY over
635 the term of the Contract. CITY makes no representations, and is under no obligation, regarding
636 the quantity or composition of the Mixed Material, Garbage and Mixed Material Residue to be
637 delivered to the Disposal Facility by, or on behalf of, CITY and CITY'S MM&O Collection
638 Contractor or successor.

639 5.13 Alternate Disposal Facility.

640 5.13.1 If CONTRACTOR becomes unable to accept Mixed Material, Garbage
641 and Mixed Materials Residue generated in CITY at the Disposal Facility because it did not use
642 reasonable business efforts in resisting changes, alterations and amendments to permits, or
643 due to reasons within its control and which could have been avoided by the exercise of due
644 care, or as the result of any labor unrest, including but not limited to, strike, slowdown, sick-out,
645 picketing, or other concerted job action conducted by CONTRACTOR, CONTRACTOR'S
646 employees or subcontractors, then and only if, and to the extent, CONTRACTOR is actually
647 prevented from accepting, Processing and/or transferring Mixed Materials, Garbage and Mixed
648 Materials Residue at the Disposal Facility because of a concerted labor action, CONTRACTOR
649 shall (i) accept, and Dispose of such Mixed Materials, Garbage and Mixed Materials Residue at
650 another Disposal Facility owned by it (or by another company which is owned and controlled,
651 directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees in effect
652 under this Contract, and shall pay any additional transportation costs incurred by the MM&O
653 Collection Contractor in delivering the Mixed Materials, Garbage and Mixed Materials Residue
654 to the other Disposal Facility, or (ii) shall arrange for all Mixed Materials, Garbage and Mixed
655 Materials Residue to be accepted, and Disposed at a disposal facility not owned by it or an
656 affiliated company, in which case CONTRACTOR shall pay any difference in the fees charged
657 at such disposal facility plus any additional transportation costs incurred in delivering Mixed
658 Materials, Garbage and Mixed Materials Residue to the disposal facility, and the then-current
659 Disposal Tipping Fees in effect under this Contract. If as a result of a labor action directed at
660 CONTRACTOR, CONTRACTOR makes arrangements that allow for continued operation of the
661 Disposal Facility during the labor action, then it shall not be obligated to provide an alternative
662 Disposal Facility and CITY shall be required to direct all Mixed Materials, Garbage and Mixed
663 Materials Residue to the Disposal Facility, providing operations at the Disposal Facility are
664 consistent with the requirements under this Contract.

665 5.13.2 If CONTRACTOR, despite using reasonable business efforts to resist
666 changes, alterations and amendments to permits under Section 5.02, becomes unable to accept
667 and Dispose of Mixed Materials, Garbage and Mixed Materials Residue generated in CITY at
668 the Disposal Facility, or if CONTRACTOR becomes unable to accept and Dispose of Mixed
669 Materials, Garbage and Mixed Materials Residue at the Disposal Facility as the result of an
670 event of Force Majeure as defined herein then CONTRACTOR shall, to the extent it is legally

671 able to do so, offer to accept and Dispose of Mixed Materials, Garbage and Mixed Materials
672 Residue at another disposal facility owned by it (or by another company which is owned and
673 controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees
674 in effect under this Contract. CONTRACTOR has no obligation, however, to pay for additional
675 transportation costs incurred by the MM&O Collection Contractor. CITY has no obligation to
676 accept such offer and, if CITY rejects such an offer, CITY may terminate this Contract by giving
677 written notice in the manner as set forth in Article 21 of this Contract. Such termination shall be
678 effective thirty (30) calendar days after CITY has given notice.

679 5.14 Monthly Report. Beginning on July 1, 2015, and monthly during the term of this
680 Contract, CONTRACTOR shall provide a complete and accurate monthly report no later than
681 twenty (20) calendar days after the end of the reporting month. Therefore, the first report will be
682 due no later than August 20, 2015 for the reporting month of July 2015. The report shall be
683 prepared in an electronic format in a form approved by the Contract Manager and shall, if
684 requested by CITY, include data that can be uploaded by CITY. The report shall include the
685 total Tonnage of Mixed Materials, Garbage and Residue generated in the CITY that was
686 accepted and Disposed at the Disposal Facility and shall also list other applicable information,
687 including date of receipt, inbound and outbound time, inbound and outbound weights of
688 vehicles, Disposal Tipping Fee charged, vehicle identification number, vehicle type, type of
689 material, hauler identification type, and weight, separately for each of the following categories
690 for material Collected by the Collection Contractor(s) within CITY: residential Garbage, Mixed
691 Materials, Mixed Materials Residue, residential Organic Materials Residue, or residential
692 Recyclable Materials Residue, commercial Garbage, Mixed Materials, or Residue, and CITY
693 Garbage, Mixed Materials, or Residue. In addition, the report shall include Tonnage information
694 for materials generated in the CITY delivered by other companies, small vehicles, CITY hauled
695 materials, and other self-haulers, Recovered Materials and destination of outbound materials.
696 The monthly report shall also include the following using an allocation methodology, where
697 appropriate, that is acceptable to CITY:

698 5.14.1 Tonnage information by material type for material accepted at the
699 Disposal Facility;

700 5.14.2 Gross revenue from the sale of each Revenue Producing Resource;

701 5.14.3 Number and nature of rejected loads during the month;

702 5.14.4 In addition CONTRACTOR shall maintain and make the following
703 information available to CITY upon request:

704 5.14.4.1 Number and nature of occurrences in which CONTRACTOR
705 identified Hazardous Waste inadvertently accepted; and

706 5.14.4.2 Number and nature of any notices of violation.

707 5.15 Annual Report of Disposal Facility Activity. Beginning February 15, 2016, and
708 annually thereafter during the term of this Contract, CONTRACTOR shall submit a complete
709 and accurate annual report of Disposal Facility activity to CITY. Annual reports shall be
710 submitted no later than forty-five (45) calendar days after the end of each full or partial calendar
711 year. Therefore, the first report will be due no later than February 15, 2016, for the partial
712 calendar year of July 2015 through December 2015. The report shall be prepared in an
713 electronic format in a form approved by the Contract Manager and shall, if requested by CITY,
714 include data that can be uploaded by CITY. This report shall contain all items required by
715 Section 5.14 in addition to the following: a list of parties that CONTRACTOR has guaranteed
716 capacity to through written agreements, the annual estimated Tonnage to be delivered by each

717 party, and the term of CONTRACTOR'S capacity commitment. In the event CONTRACTOR
718 has agreements with private companies, the name of the party may be withheld from the list;
719 however, the annual Tonnage estimate and term of the commitment must be provided.

720 5.15.1 The annual report shall include information on amounts of Mixed
721 Materials, Garbage and/or Residue delivered to the Disposal Facility and Disposed, Recycled or
722 Diverted and other information that CITY may request in order to meet its related federal, State
723 and local solid waste obligations.

724 5.16 Correction of Reports. In the event CONTRACTOR is notified in writing by CITY
725 of the need to resubmit a corrected monthly or annual report, as set forth in Section 5.14 or 5.15
726 above, CONTRACTOR shall submit the corrected report within three (3) Work Days of the
727 written notification.

728 5.17 Closure and Post-Closure of Landfill. CONTRACTOR shall safely manage the
729 Disposal Facility in full regulatory compliance not only during normal Disposal Facility operating
730 period but also during the Disposal Facility closure and Post-Closure periods. CONTRACTOR
731 acknowledges that it is solely responsible for: (i) the appropriate closure and Post-Closure
732 activities of the Disposal Facility; and, (ii) the establishment and funding of any reserve funds
733 required by applicable law for the purposes of providing funds for the payment of costs of
734 closure of the Disposal Facility (or any Landfill cell within the Disposal Facility) or Post-Closure
735 activities relating to the Disposal Facility. Without limitation, in no event shall CITY or Collection
736 Contractor(s) be responsible for paying any deficiencies in such required reserves. In addition,
737 CITY or Collection Contractors(s) shall have no responsibility to make any payments in the
738 event that actual closure and Post-Closure costs relating to the Disposal Facility exceed the
739 amounts upon which CONTRACTOR'S Disposal Tipping Fee was based on and the amount
740 reserved by CONTRACTOR for such purposes.

741 5.18 Right to Enter Disposal Facility and Observe Operations. Upon reasonable
742 written notice of not less than twenty-four (24) hours, CITY and its designated representative(s)
743 shall have the right to enter, observe and inspect the Disposal Facility at any time during
744 operations; conduct studies or surveys of the Disposal Facility; meet with the Disposal Facility
745 manager(s) or their representatives at any time; and meet with other employees upon request,
746 which request shall not be unreasonably denied by CONTRACTOR, provided that CITY and its
747 representatives comply with CONTRACTOR'S reasonable safety and security rules and shall
748 not interfere with the work of CONTRACTOR or its subcontractors. Upon CITY request,
749 CONTRACTOR shall make personnel available to accompany CITY employees on inspections.
750 CONTRACTOR shall ensure that its employees cooperate with CITY and respond to CITY'S
751 reasonable inquiries.

752 5.19 Provision of Emergency Services. CONTRACTOR shall provide emergency
753 services, at CITY'S request, in the event of major accidents, disruptions or natural calamities.
754 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours
755 of notification by CITY, or as soon thereafter as is reasonably practical, in light of the
756 circumstances. Emergency services that exceed CONTRACTOR'S obligations under this
757 Contract including, but not limited to, obligations related to facility receiving hours, the types and
758 quantities of permitted materials accepted at the Disposal Facility, and the nature of resource
759 recovery activities, shall be compensated through a modification to the scope of services using
760 procedures set forth on Section 5.20.

761 5.19.1 Specifically, with reference to any legal action contesting charges for
762 services under this Contract or the MM&O Collection Contract, should a court of competent
763 jurisdiction or other regulatory agency set aside, invalidate or stay all or a portion of the

764 Maximum Services Rate or Disposal Tipping Fees established by City, Contractor agrees to
765 continue to provide Disposal Services as otherwise set forth herein. City may take such
766 urgency actions as necessary to facilitate Contractor's continuation of Disposal Services,
767 potentially including interim suspension of portions of MM&O or Disposal Services. Under such
768 circumstances, City and Contractor agree to cooperate and mutually act in good faith and, if
769 needed, immediately meet and confer to address the impact of these legal actions. Such legal
770 actions shall not be considered a change in law or force majeure event excusing Contractor's
771 performance.

772 5.19.2 If as a result of a legal action the Contractor is unable to include
773 Governmental Fees in the rates it charges for Disposal Services, then Contractor agrees, upon
774 direction from the City, to reduce its charges to MM&O Contractor in an amount corresponding
775 to the disallowed fee or charge, and shall thereafter not be required to remit the amount of the
776 disallowed fee or charge to the City or other governmental entity provided it is not collected from
777 MM&O Contractor.

778 5.19.3 CITY and CONTRACTOR agree to immediately meet and confer to
779 negotiate in good faith any modifications to CONTRACTOR's obligations under this Contract to
780 ensure provision of basic Disposal Services and enable CONTRACTOR to continue to bill and
781 collect for the ongoing cost of services, including its return on capital and costs of operations.
782 Nothing in this Contract, including those provisions relating to the CITY's regulation of Maximum
783 Service Rates, shall be read to limit CONTRACTOR's right to bill and collect for the cost of
784 continuing provision of Collection Service.

785 5.19.4 If by virtue of an order by a court of competent jurisdiction, an order
786 issued by a regulatory agency with authority, or pursuant to or an agreement between
787 petitioner/plaintiff and CITY that affects all or a portion of the Maximum Service Rates, and this
788 results in a loss to CONTRACTOR not otherwise recovered through a temporary reduction in
789 services, CITY shall implement, with CONTRACTOR's consent, methods to recapture any
790 losses that CONTRACTOR sustained under this Article. Such methods may include an
791 adjustment in future Maximum Service Rates, a reduction in, or adjustment to, services and/or
792 other obligations under the Contract, or such other lawful methods which may be agreed to by
793 CITY and CONTRACTOR. Any method selected shall be designed to produce revenues that
794 ensure CONTRACTOR fully recoups any and all demonstrated losses within no more than two
795 years from that date on which Maximum Service Rates were reduced (or within two years
796 following the trial court's determination in the event of a Maximum Service Rates Lawsuit), or,
797 by the termination date of said Contract if less than two (2) years remain on the Term.
798 CONTRACTOR shall have the right to terminate the Contract upon twelve (12) months written
799 notice after the two (2) year period for recoupment of CONTRACTOR losses has expired, in the
800 event CONTRACTOR has not been made whole for the demonstrated losses and no
801 satisfactory agreement to address this shortfall has been reached between CONTRACTOR and
802 CITY.

803 5.19.5 Nothing herein is intended to imply that California Constitution Articles
804 XIII(C) or (D) apply to the Maximum Service Rates provided for under this Contract. The
805 foregoing paragraphs are merely intended as a contractual allocation of risks in the event of an
806 unanticipated event affecting the ability to impose or collect Maximum Service Rates.

807 5.20 Modifications to Scope of Service.

808 5.20.1 General. CITY may direct CONTRACTOR to perform additional services
809 (including, but not limited to, performance of resource recovery activities) or modify the manner
810 in which CONTRACTOR performs existing services (including, but not limited to, the

811 modifications to or elimination of services). CONTRACTOR'S Disposal Tipping Fee shall be
812 increased or decreased, as appropriate, to give effect to these adjustments.

813 5.20.2 Implementing Changes in Service. CONTRACTOR shall submit a
814 proposal to perform such additional services pursuant to Section 5.20.3 below. CITY shall
815 consider CONTRACTOR's proposal and upon CITY approval or determination, CITY will issue a
816 notice approving the modification to the scope of service and determine the amount by which
817 the Disposal Tipping Fee should be adjusted. CONTRACTOR shall implement the changes in
818 accordance with the schedule directed by CITY, regardless of whether the parties agree on the
819 Disposal Tipping Fee adjustment amount. If the parties do not agree on the adjustment amount,
820 CONTRACTOR may challenge its adequacy pursuant to Article 28.

821 5.20.3 Service Proposal. Within sixty (60) calendar days of CITY request for a
822 proposal to modify services, CONTRACTOR shall present its proposal to modify existing
823 services. At a minimum, the proposal shall contain a complete description of the following:

824 5.20.3.1 Program objectives and goals to be used in measuring the
825 success of the program as discussed in Section 5.20.5 below;

826 5.20.3.2 Methodology to be employed (changes to equipment, staffing,
827 etc.);

828 5.20.3.3 Equipment to be utilized (equipment number, types, capacity,
829 age, etc.);

830 5.20.3.4 Labor requirements (changes in number of employees by
831 classification);

832 5.20.3.5 Provision for program publicity, education, and marketing (if
833 appropriate);

834 5.20.3.6 Estimate of the impact of the service modification (increased
835 Diversion Tonnage, reduced costs, increased public service, etc.); and

836 5.20.3.7 Five (5) year projection of the financial results of the program's
837 operations in an operating statement format including documentation of the key assumptions
838 underlying the projections and the support for those assumptions, giving full effect to the
839 savings or costs to existing services.

840 5.20.3.8 CITY may request the assistance of an independent third party
841 to review the proposal. The reasonable costs of such review shall be paid by CONTRACTOR if
842 the modification to the scope of services is initiated by CONTRACTOR or, by CITY if the
843 modification to the scope of services is initiated by CITY. CONTRACTOR'S refusal to pay the
844 reasonable cost of review of a CONTRACTOR-initiated proposal shall be grounds for CITY
845 rejection of such proposal.

846 5.20.3.9 CITY may request copies of, or access to, CONTRACTOR'S
847 operating and business records reasonably required to verify the reasonableness and accuracy
848 of the impacts associated with a modification to the scope of services. CONTRACTOR shall
849 fully cooperate with CITY'S request and provide CITY and its agent(s) copies of or access to
850 CONTRACTOR'S records.

851
852 5.20.4 Termination for Cause. CITY shall have the right to terminate a
853 program for cause, at no cost to CITY or CITY'S ratepayers if CONTRACTOR is not achieving

854 the program's agreed to and defined goals and objectives as approved by CITY in accordance
855 with Section 5.20.3. Prior to such termination CITY shall meet and confer with CONTRACTOR
856 for a period of up to ninety (90) calendar days to resolve CITY'S concerns. Thereafter, CITY
857 may terminate the program if CITY reasonably believes CONTRACTOR cannot meet or is not
858 meeting the agreed to and defined project goals and objectives. Notwithstanding these
859 changes, CONTRACTOR shall continue the program during the ninety (90) day period unless
860 instructed in writing by CITY to discontinue the program.

861 5.20.5 Termination without Cause. CITY shall also have the right to terminate a
862 program without cause. Prior to such termination, and as a condition of the termination, CITY
863 shall reimburse CONTRACTOR for all costs incurred for implementation and performance of the
864 program that were identified in the program proposal prepared and submitted by
865 CONTRACTOR and agreed to by CITY which will have not been funded or otherwise recovered
866 through program compensation at the time the program is terminated.

867 5.21 Recovered Materials. CONTRACTOR shall use reasonable efforts to operate
868 the Disposal Facility so as to segregate Recoverable Materials. CONTRACTOR shall document
869 the quantity of Recovered Materials removed from the Garbage, Mixed Materials or Residue
870 delivered by the MM&O Collection Contractor and the quantity of such material Diverted from
871 Disposal. CONTRACTOR shall calculate the quantity of Recovered Materials Diverted from
872 Disposal on a monthly basis using a methodology acceptable to CITY and shall report thereon
873 in accordance with reporting requirements set forth herein. CONTRACTOR shall provide
874 resource recovery programs as may be agreed between CITY and CONTRACTOR to Divert
875 Recoverable Materials from Disposal.

876 5.22 Other Services. CONTRACTOR shall provide additional services not otherwise
877 contemplated under this Contract at a price to be mutually agreed upon between CITY and
878 CONTRACTOR. In the event CONTRACTOR and CITY cannot agree on terms, conditions and
879 price of such service or program CITY shall have the right to procure the service of other
880 vendors or contractors to provide the requested service or program at a location other than
881 CONTRACTOR'S Disposal Facility.

882 5.23 CITY Delivered Materials. CONTRACTOR shall dispose of dirt and debris, Bulky
883 Goods, and tires with or without rims if offered for Disposal as Mixed Materials or Garbage
884 which are collected by CITY crews and delivered by CITY vehicles to the Disposal Facility.

885 5.24 Non-Permitted Companies. CONTRACTOR recognizes that collection of
886 Construction and Demolition Debris in CITY is regulated by CITY, and in most cases may only
887 be performed by companies that have obtained permits from CITY for Construction and
888 Demolition Debris collection. For those commercial loads containing materials that are
889 identified by the individual delivering the materials as being generated in CITY, CONTRACTOR
890 shall provide a monthly statement as part of the monthly report, listing the date and weight of
891 each load, and the name of the company delivering each load. CONTRACTOR shall also post,
892 on a sign in clear view of all customers, CITY'S requirement that a permit is required for
893 companies delivering Construction and Demolition Debris generated in the CITY in Roll-Off
894 Boxes to the Disposal Facility.

895 5.25 Notification of Non-Payment. CONTRACTOR shall notify the Contract Manager
896 in writing or by email in the event the MM&O Contractor fails to pay invoices submitted by
897 CONTRACTOR for the provision of Disposal Services within thirty (30) days of the due date.

898 5.26 Cessation of Disposal Services to MM&O Contractor. CONTRACTOR may
899 cease to provide Disposal Services to CITY'S MM&O Contractor, only after giving CITY thirty

900 (30) calendar days advance written notice, to be served as provided in Article 21, upon the
901 happening of the following event

902 5.26.1 CONTRACTOR has provided written notice to CITY and CITY'S MM&O
903 Contractor that CITY'S MM&O Contractor has failed to pay CONTRACTOR for Disposal
904 Services for a period of two (2) months and said non-payment has not been cured within thirty
905 (30) calendar days of receipt of written notice by CITY.

906 5.27 Service Resumption Protocol (Labor Disruptions). In the event of a Labor
907 Disruption whereby employees of CONTRACTOR do not perform work for CONTRACTOR at
908 normally anticipated levels or efficiency which affects the ability of the CONTRACTOR to
909 provide Disposal Services in accordance with this Contract, CONTRACTOR shall comply with
910 the following provisions, and only for the periods set forth below:

911 5.27.1 Within two (2) hours of notification to CONTRACTOR by labor that a
912 Labor Disruption has been authorized, CONTRACTOR shall notify the Public Works Director
913 and Contract Manager by telephone and or electronic communication and follow up with
914 confirmation to the CITY Administrator within twelve (12) hours of such notice.

915 5.27.2 CONTRACTOR will bring in alternate work forces within three (3) Work
916 Days of the commencement of a Labor Disruption for the purpose of providing Disposal
917 Services in accordance with this Contract.

918 5.27.3 If necessary, CONTRACTOR shall provide disposal at an Alternate
919 Facility pursuant to Section 5.13.

920 5.27.4 If after thirty (30) days from the commencement of a Labor Disruption
921 there is a continuing CONTRACTOR failure to materially perform the Disposal Services, such
922 failure to perform shall be considered a default under Article 11 and CITY may cancel this
923 Contract. In such an event, CITY shall not waive its right to seek damages from
924 CONTRACTOR for any increase in cost as a result of the breach of this Contract by
925 CONTRACTOR and the consequential election by CITY to cancel the Contract and move
926 forward with alternate collection alternatives.

927 5.27.5 If CONTRACTOR fails to provide Disposal Services pursuant to Sections
928 5.27.2 and/or 5.27.3 within three (3) Work Days of a Labor Disruption, then CITY may begin to
929 impose liquidated damages under Section 24.01.1 for such failure no earlier than five (5) Work
930 Days after CONTRACTOR provides notice of the Labor Disruption to CITY. However, a claim
931 for liquidated damages may not be sought unless the Labor Disruption is caused by a dispute
932 between CONTRACTOR and the employees employed at facilities covered by this Contract.

933 **ARTICLE 6. DISPOSAL TIPPING FEE**

934 6.01 Disposal Tipping Fee. The Disposal Tipping Fee established under this Section
935 6.01 includes all costs associated with complying with all federal and State statutes, and CITY
936 and County ordinances concerning public health, safety and environmental issues and all laws,
937 regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any
938 governmental agency having jurisdiction over the disposition of Mixed Materials, Garbage or
939 Residue that are in force on the effective date of this Contract, including any current provisions
940 that become effective on or which require compliance by a date after the effective date of this
941 Contract. The Disposal Tipping Fee comprises two (2) elements: 1) a Disposal Fee Element,
942 and 2) a Government Fee Element.

943 6.01.1 Annual Adjustments to the Disposal Fee Element. Except as provided in
944 this Article 6, the Disposal Fee Element shall not be adjusted over the term of this Contract.

945 6.01.1.1 Annual Adjustment to Maximum Service Rates Prior to Start of
946 Disposal Services. In order to provide some mitigation for inflation between the time that the
947 Maximum Service Rates were proposed and the time when Disposal Services will commence,
948 the Maximum Collection Service Rates as set forth in Exhibit 1 to this Contract shall be adjusted
949 on July 1, 2015, by the annual change in the Consumer Price Index - All Urban Consumers,
950 Series ID cuura422sa0, Not Seasonally adjusted, San Francisco - Oakland-San Jose, California
951 for the prior calendar year, January 1, 2014, through December 31, 2014.

952 6.01.1.2 Annual Disposal Fee Element Adjustment. Beginning on
953 July 1, 2016, and annually thereafter, the Disposal Fee Element of the Disposal Tipping Fee
954 shall be adjusted by the RRI adjustment as set forth in Exhibit 2.

955 6.02 Government Fees. The Disposal Tipping Fee includes the Government Fee
956 Elements set forth in Exhibit 1.

957 6.02.1 Changes in Government Fee Elements. Government Fee Elements shall
958 be adjusted each July 1 as needed, so that they equal the then current government fees
959 required to be paid by CONTRACTOR. In the event of a new government fee, or a change in
960 an existing government fee, which becomes effective at some time other than July 1 of any
961 year, CONTRACTOR shall be compensated for such change through the inclusion of a
962 "Retroactive Element" in the next rate adjustment. CITY and CONTRACTOR agree that the
963 "Retroactive Element" shall be an amount needed to compensate CONTRACTOR for increases
964 in fees paid during the period from the inception of the fee increase through the subsequent
965 June 30 and shall not include interest, overhead or any other costs of any type. The
966 "Retroactive Element" shall only be included in the rate structure for twelve (12) months or that
967 period necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve
968 (12) months, and shall be removed prior to calculating the rates to be set as of the subsequent
969 July 1. However, no governmental fees or charges to which CONTRACTOR agrees
970 contractually or negotiates shall be passed through to customers unless agreed to in writing by
971 CITY.

972 6.02.2 Payment of Governmental Fees. CONTRACTOR shall pay, when and as
973 due, any and all governmental fees to the appropriate federal, State, regional, or local
974 governmental entities that levied the fees, and shall provide CITY with proof of such payments
975 promptly upon request.

976 6.03 Annual Adjustment. The annual Disposal Tipping Fee adjustment shall comprise
977 the changes in the Disposal Fee Element, subject to the limitations set forth above, and the
978 changes in the Governmental Fee Elements.

979 6.04 Changes in Disposal Fee Element Due to Changes in Law.

980 6.04.1 The Disposal Fee Element in Exhibit 1 includes all costs associated with
981 complying with all existing laws, governmental regulations and permits applicable to the
982 Disposal Facility as of the date of this Contract and including requirements that may be imposed
983 on permits for which CONTRACTOR has applied for including amendments to permits, as of the
984 effective date of this Contract. The purposes of this Section 6.04 are (a) to specify the costs of
985 compliance with laws and governmental regulations that is included in the Disposal Fee
986 Element, as well as other similar costs, whose increase may not result in an increase in the
987 Disposal Fee Element, (b) to identify those laws and governmental regulations that may be
988 enacted in the future, a proportionate share of the cost of which may be the basis for an

989 increase in the Disposal Fee Element, and (c) to specify the method by which CITY'S
990 proportionate share of such costs will be determined.

991 6.04.2 The Disposal Fee Element will not be increased as a result of any of the
992 following:

993 6.04.2.1 Costs to comply with all laws and governmental regulations
994 existing as of the Effective Date, if any, which become effective, or which require compliance by
995 a date, after the Effective Date of this Contract, including but not limited to, all closure and Post-
996 Closure cost regulations.

997 6.04.2.2 Costs due to CONTRACTOR'S negligence, active or passive,
998 or intentional misconduct, or fines or penalties for violations of law.

999 6.04.2.3 Costs for which CONTRACTOR is already responsible under
1000 other provisions of this Contract.

1001 6.04.2.4 Costs attributable to the classification of the Disposal Facility
1002 that are only necessary in order to allow CONTRACTOR to accept material other than Garbage
1003 or Residue at the Disposal Facility.

1004 6.04.2.5 Costs attributable to permits and amendments to permits, (i)
1005 which have been issued to CONTRACTOR, or (ii) for which CONTRACTOR has applied for by
1006 the effective date of this Contract (attached as Exhibit 7).

1007 6.04.3 The Disposal Fee Element may be increased to reflect CITY'S
1008 proportionate share, determined as provided in Section 6.04.4, of the net increase in the
1009 Disposal Fee Element attributable to the following, to the extent mandated by Changes in Laws:
1010 (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of
1011 performing closure/Post-Closure monitoring at the Disposal Facility, and/or (3) costs caused
1012 directly by, or directly necessary for operations at the Disposal Facility, including costs of site-
1013 specific record keeping and reporting, if such costs (in items (1), (2), and/or (3)) are necessary
1014 to comply with changes to the existing laws and governmental regulations enacted or
1015 promulgated after the effective date of this Contract, and not otherwise excluded by virtue of
1016 Section 6.04.2.1, with new laws and governmental regulations enacted or promulgated after the
1017 effective date of this Contract and not otherwise excluded by virtue of Section 6.04.2, with new
1018 permits and changes to the terms and conditions contained in existing permits (except as
1019 provided in Section 6.04.2) applicable to the Disposal Facility.

1020 6.04.3.1 This Article is not intended to allow the Disposal Fee Element
1021 to be increased to cover increased overhead and general or administrative expenses unless
1022 they can be specifically identified and related to disposal of Mixed Materials, Garbage or
1023 Residue Collected in CITY, e.g., a laboratory technician added at the regional level, and which
1024 are attributable to Changes in Law.

1025 6.04.4 Proportionate Share of Disposal Facility Costs. To the extent that the net
1026 increase in costs of complying with Changes in Law are attributable to material already in place
1027 at the Disposal Facility at the time such Change in Law occurs, then CITY'S proportionate share
1028 of the present value of such increases in costs shall be determined by multiplying such increase
1029 in costs by a fraction, the numerator of which is the amount of material as of the time of increase
1030 is computed that is deposited at the Disposal Facility which was delivered under this Contract
1031 and the denominator of which is the total amount of material then deposited at the Disposal
1032 Facility from all sources. CONTRACTOR represents that these amounts as of January 1, 2015,
1033 are approximately (to be inserted based on Contract award) Tons and (to be inserted based on

1034 contract award) Tons, respectively. The costs of compliance with Changes in Law described in
1035 this section shall be calculated on a "per Ton" basis, amortized over the useful life of the
1036 facilities constructed, and the annual amortization incorporated in the Disposal Tipping Fee over
1037 the remaining term of this Contract. The annual increase in the Disposal Fee Element
1038 attributable to the amortization of such costs shall be determined by dividing CITY'S aggregate
1039 proportionate share of such costs by (i) the remaining term of this Contract and (ii) the average
1040 number of Tons of Mixed Materials and Garbage collected from within CITY'S boundaries
1041 during the preceding year. The annual amortization described in the prior sentence shall be
1042 added to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for
1043 said year as set forth in Section 6.01.1, adjustments to reflect changes in the Governmental
1044 Fees Element as described below, and adjustments to the Disposal Fee Element described in
1045 the following section.

1046 6.04.4.1 To the extent that the costs of complying with Changes in Law
1047 are attributable to material not yet in place at the Disposal Facility at the time such Change in
1048 Law occurs, then CITY'S proportionate share of such costs shall be determined by multiplying
1049 the present value of such costs by a fraction, the numerator of which is the average number of
1050 Tons of material from CITY Disposed of at the Disposal Facility during the preceding three (3)
1051 years multiplied by the number of years remaining in the term of this Contract and the
1052 denominator of which is the total remaining permitted air space available for Disposal at the
1053 Disposal Facility as of the date of the change. As of the effective date of this Contract, the
1054 remaining air space is approximately (to be completed based on Contract Award) Tons. The
1055 costs of compliance with Changes in Law shall be calculated on a "per Ton" basis and
1056 amortized over the remaining life of the Disposal Facility and the annual amortization
1057 incorporated in the Disposal Fee Element over the remaining term of this Contract by adding
1058 CITY'S proportionate share of such increases to the Disposal Fee Element. The annual
1059 amortization described in the prior sentence shall be added to the Disposal Fee Element after
1060 said Disposal Fee Element is otherwise adjusted for said year as set forth in Section 6.01.1, and
1061 to reflect changes in the Governmental Fees Element as described in the preceding paragraph
1062 above. In all cases in which CONTRACTOR requests an increase in the Disposal Fee Element
1063 above that provided for in Section 6.01.1 based on the costs of compliance with a Change in
1064 Law, CONTRACTOR shall provide CITY, on an annual basis, evidence showing (1) that the
1065 work required by the Change in Law has been performed, (2) the amount of costs actually
1066 incurred, and (3) that the costs incurred were necessary to comply with the Change in Law.

1067 6.04.5 Procedures for Sharing in Cost of Changes in Laws. If CONTRACTOR
1068 believes that complying with Changes in Law will increase the costs of operating the Disposal
1069 Facility, and that it is entitled, under this Article to an increase in the Disposal Fee Element to
1070 reflect the costs of compliance, then it must follow the procedures in this Article before the
1071 Disposal Fee Element will be increased.

1072 6.04.5.1 CONTRACTOR shall give CITY prompt notice (in no case less
1073 than ninety (90) days before their effective date, if possible) of the regulations, specifically
1074 identifying them and describing what changes in operations at the Disposal Facility are required,
1075 when compliance is required, and whether CONTRACTOR or the Disposal Facility is eligible for
1076 any exemptions or variances.

1077 6.04.5.2 CONTRACTOR shall thereafter submit to CITY for review and
1078 comment, its proposed method for complying with the regulations, the estimated cost of
1079 compliance, CITY'S proportionate share thereof, and the associated increase necessary in the
1080 Disposal Fee Element. CITY will act promptly on the submission.

1081 6.04.5.3 CONTRACTOR shall thereafter submit its proposed method of
1082 compliance to the appropriate regulatory agency. If the regulatory agency approves that
1083 method without conditions, the proportionate share of the costs necessary to implement that
1084 method of compliance will be the amount by which the Disposal Fee Element may be increased.

1085 6.04.6 No fees or charges to which CONTRACTOR agrees contractually or
1086 negotiates shall be passed through to customers unless agreed to in writing by CITY.

1087 6.05 Payment of Taxes. CONTRACTOR shall pay, when and as due, any and all
1088 governmental assessments, or taxes incurred as a result of CONTRACTOR'S provision of
1089 services under this Contract, including estimated taxes and shall provide CITY with proof of
1090 such payments promptly upon request.

1091 6.06 Disposal Facility Closure/Post Closure Funding. CITY and CONTRACTOR
1092 agree that CITY shall not be liable for any Disposal Facility closure/Post-Closure costs for waste
1093 Disposal prior to July 1, 2015.

1094 6.06.1 CONTRACTOR acknowledges and agrees that from July 1, 2015,
1095 going forward, the Disposal Tipping Fee adequately funds CITY'S liability for Disposal Facility
1096 closure/Post -Closure costs.

1097 6.07 Proposal Development Fee. No later than thirty (30) calendar days after the
1098 execution of this Contract by CITY and CONTRACTOR, CONTRACTOR shall submit a one-
1099 time proposal development fee to CITY in the amount of Two Hundred Fifty Thousand Dollars
1100 (\$250,000).

1101 **ARTICLE 7. INDEMNITY AND INSURANCE,**

1102 7.01 CONTRACTOR'S Duty to Indemnify CITY. CONTRACTOR shall and does
1103 indemnify and hold harmless CITY, its agents (for purposes of this Article, including attorneys
1104 and consultants), officers, employees, volunteers, successors, assigns, and appointed and
1105 elected officials (collectively "Indemnitees") from and against any and all losses, liabilities,
1106 claims, suits, allegations, actions, damages, interest, penalties, fines, forfeitures, demands
1107 and/or causes of action (collectively "claims") arising from or in connection with
1108 CONTRACTOR'S performance hereunder, including but not limited to closure/Post-Closure
1109 costs associated with a Change in Law related to Tonnage received prior to the Change in Law,
1110 except to the extent such claims arise out of the negligence or willful misconduct of CITY, in
1111 which case CONTRACTOR'S indemnification shall be reduced in proportion to CITY'S degree
1112 of comparative fault. CONTRACTOR shall indemnify and hold harmless the Indemnitees from
1113 and against all costs of investigation, litigation, negotiation or alternative dispute resolution;
1114 counsel fees; expenses incurred in obtaining expert testimony and the attendance of witnesses;
1115 and all other expenses and liabilities incurred in connection with the defense of any action or
1116 proceedings brought thereon, and from and against any orders, judgments, or decrees which
1117 may be entered therein. CITY shall provide CONTRACTOR with prompt notice of any claims,
1118 and CONTRACTOR shall assume the defense of any claim, with counsel reasonably
1119 acceptable to the Indemnitees, and CONTRACTOR shall have authority to settle any claim, with
1120 CITY'S consent which may not be unreasonably withheld and provided such settlement fully
1121 releases and extinguishes Indemnitees' alleged liability under the claim. Where a conflict of
1122 interest exists between the Indemnitees and CONTRACTOR with respect to a claim,
1123 CONTRACTOR shall provide the Indemnitees with independent legal counsel of the
1124 Indemnitees' choice, at CONTRACTOR'S expense. Without limiting the generality of the
1125 foregoing, CONTRACTOR'S indemnification shall include: personal injury, death or damage to

1126 property (including contamination); product liability, violation of federal, State, or local law; or
1127 any other claim whatsoever connected with the activities of CONTRACTOR, its subcontractors,
1128 agents, and/or employees under this Contract or on account of the performance of character of
1129 the work performed hereunder, including unforeseen difficulties, accidents, occurrence, or
1130 omissions, including but not limited to, any failure to exclude Hazardous Waste from Collection
1131 or Processing; any claim that CONTRACTOR, or its agents, subcontractors, directors, officers,
1132 employees or representatives, has breached an express or implied warranty of merchantability
1133 or fitness for particular use or any other warranty relating to any materials marketed pursuant to
1134 this Contract; or any claim that any of them has violated any license, copyright, or other
1135 limitation on CONTRACTOR'S use of computer software in connection with CONTRACTOR'S
1136 performance of services under this Contract. Notwithstanding the foregoing, CONTRACTOR
1137 shall not be required to indemnify the Indemnitees for: (i) claims resulting entirely from the acts
1138 or omissions of independent (not affiliated with Contractor) third party owners or operators of
1139 facilities approved by CITY under this Contract, where such third party acts or omissions are
1140 beyond CONTRACTOR'S control; (ii) third party claims based solely on CONTRACTOR'S
1141 delivery of the de minimis amounts of materials excluded from the definition of Hazardous
1142 Waste under this Contract to a facility approved by CITY under this Contract, and (iii) any claim
1143 that CITY set or approved Disposal Tipping Fees in violation of applicable law. Approval of
1144 insurance coverage or acceptance of work or services by CITY under this Contract does not
1145 relieve CONTRACTOR or its agents, subcontractors, directors, officers, employees, or
1146 representatives of liability under this Article.

1147 7.02 Contractor Indemnity Regarding City Approvals. To the maximum extent
1148 permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to the City),
1149 indemnify, and hold harmless the CITY, the Oakland City Council, and their respective agents,
1150 officers, employees and volunteers (hereafter collectively called "City Parties") from any liability,
1151 damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding
1152 (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff
1153 time, expenses or costs) (collectively called "Action") against the CITY to set aside, void or
1154 annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent
1155 Approval or the implementation of the same based upon an allegation that the City shall have
1156 failed to comply with the California Environmental Quality Act. The CITY may elect, in its sole
1157 discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse the
1158 CITY for its reasonable legal costs and attorneys' fees. CONTRACTOR shall not be obligated to
1159 reimburse CITY for attorneys' fees paid to outside counsel in such defense.

1160 7.02.1 Within ten (10) calendar days of the filing of any Action as specified in the
1161 preceding paragraph, CONTRACTOR shall execute a Joint Defense Letter Agreement with the
1162 CITY, acceptable to the Office of the City Attorney, which memorializes the above obligations.
1163 These obligations and the Joint Defense Letter of Agreement shall survive termination,
1164 extinguishment, or invalidation of the City Approval or any Subsequent Approval requested by
1165 CONTRACTOR. Failure to timely execute the Letter Agreement does not relieve the
1166 CONTRACTOR of any of the obligations contained in this Section or other requirements or
1167 Conditions of Approval that may be imposed by the CITY.

1168 7.03 Contractor Cooperation. In the event there is a legal challenge by a third party to
1169 the City's award of the Disposal Services Contract, CONTRACTOR agrees to cooperate with
1170 the CITY in the defense of such a challenge to the extent CITY's and CONTRACTOR's
1171 respective legal positions are not in conflict. As a condition of the acceptance of the award of
1172 the Disposal Services Contract, CONTRACTOR agrees to waive any claims it may have against

1173 the CITY pertaining to any issues arising from and/or related to the Zero Waste Services
1174 procurement process regarding the Disposal Services Contract award.

1175 7.04 Hazardous Material Indemnification. CONTRACTOR shall indemnify, defend
1176 with counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and
1177 expense, CITY, its City Council, officers, officials, employees, volunteers and agents, and the
1178 Collection Contractor(s) (collectively, "Indemnitees") from and against any and all claims,
1179 damages, injuries, costs (including and without limit any and all response, remediation and
1180 removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or
1181 administrative proceedings, interest, fines, charges, penalties, and expenses (including
1182 reasonable attorneys' and expert witness fees, expenditures for investigation and remediation)
1183 and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered by or asserted
1184 against any of the Indemnitees by reason of, or arising from, the presence, Disposal, escape,
1185 migration, leakage spillage, discharge, emission, release, handling or transportation of
1186 Hazardous Materials in, on, at, or under the Disposal Facility (collectively, "environmental
1187 events"), any personal injury, death, or property damage, arising out of or related to any of the
1188 environmental events; any lawsuit brought or threatened, settlement reached, or government
1189 hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Materials or any
1190 of the environmental events.

1191 7.04.1 Such indemnification shall apply to all events arising from or attributable
1192 to the acts or omissions of CONTRACTOR, its officers, directors, employees, whether or not
1193 negligent or otherwise culpable, in connection with or related to CONTRACTOR'S performance
1194 of this Contract, including without limit damages arising from or attributable to any operations,
1195 repair, clean-up or detoxification, or preparation and implementation of any removal, remedial,
1196 response, closure, Post-Closure or other plan (regardless of whether undertaken due to
1197 governmental action) concerning any Hazardous Materials at the Disposal Facility. For the
1198 avoidance of doubt, the foregoing indemnity is intended to operate as an agreement pursuant to
1199 section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act,
1200 CERCLA, 42 U.S.C. section 9607(e) and California Health and Safety Code section 25364, to
1201 defend, protect, hold harmless, and indemnify CITY from liability thereunder.

1202 7.04.2 This provision is in addition to all other provisions in this Contract and is
1203 intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall
1204 extend to the indemnification obligation hereunder.

1205 7.05 Environmental Indemnification. CONTRACTOR shall indemnify, defend with
1206 counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,
1207 CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection
1208 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,
1209 costs (including and without limit any and all response, remediation and removal costs), losses,
1210 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,
1211 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert
1212 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,
1213 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any
1214 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,
1215 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR'S alleged
1216 failure or actual failure to comply with the environmental laws and regulations. This
1217 indemnification will not extend to environmental claims to the extent they are caused by the sole
1218 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,
1219 employees or agents, or the Collection Contractor(s).

1220 7.05.1 This provision is in addition to all other provisions in this Contract and is
1221 intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall
1222 extend to the indemnification obligation hereunder.

1223 7.06 Insurance. CONTRACTOR shall secure and maintain throughout the course of
1224 the Contract, at CONTRACTOR's own cost and expense, insurance against claims for injuries
1225 to persons or damages to property which may arise from or in connection with the performance
1226 of the work hereunder by CONTRACTOR, its agents, representatives, employees or
1227 subcontractors.

1228 7.06.1 Commercial General Liability Insurance. CONTRACTOR, at its own
1229 expense, shall maintain liability and property damage insurance for the period covered by this
1230 Contract in the amount of Five Million Dollars (\$5,000,000) per occurrence. If such CGL
1231 insurance contains an aggregate limit, either the general aggregate limit shall apply separately
1232 to this project/location or the general aggregate limit shall be twice the required occurrence limit.
1233 The scope of such coverage shall be at least as broad as Insurance Services Office
1234 Commercial General Liability Coverage (occurrence form CG0001). CITY and CONTRACTOR
1235 shall review coverage within sixty (60) days of the end of calendar year 2020. Such coverage
1236 shall include, but not be limited to, protection against claims arising from: bodily and personal
1237 injury, including death resulting therefrom; damage to property resulting from activities
1238 contemplated under this Contract; product liability; and claims relating to completed operations.
1239 As respects the services provided by CONTRACTOR under this Agreement, the policy shall
1240 stipulate that this insurance is primary insurance and that no other insurance carried by CITY
1241 will be called upon to contribute to a loss suffered by CONTRACTOR hereunder, except where
1242 indemnity from CITY applies. The policy shall stipulate that this insurance shall apply
1243 separately to each of the insured parties against whom a claim is made, except with respect to
1244 the limits of the insurer's liability. Such insurance shall be with insurers and under forms of
1245 policies reasonably satisfactory in all respects to CITY and shall provide that written notice must
1246 be given to CITY thirty (30) days prior to policy cancellation. CONTRACTOR shall notify CITY
1247 within thirty (30) days of its knowledge of or any material change in coverage that impacts this
1248 Contract.

1249 7.06.2 Motor Vehicle Liability Insurance. CONTRACTOR, at its own expense,
1250 shall maintain motor vehicle liability insurance for the period covered by this Contract in the
1251 amount of Five Million Dollars (\$5,000,000) per occurrence combined single limit coverage for
1252 personal and bodily injury and property damage. The scope of such coverage shall be at least
1253 as broad as Insurance Services Office form number CA 0001 Covering Automobile Liability,
1254 Code (any auto). CITY and CONTRACTOR shall review coverage within sixty (60) days of the
1255 end of calendar year 2020. CITY may require reasonable changes in the amount of the
1256 insurance coverage set forth herein based on documented changes in industry standards during
1257 the five (5) year period ended June 30, 2020. Such insurance shall be with insurers and under
1258 forms of policies reasonably satisfactory in all respects to CITY and shall provide that written
1259 notice must be given to CITY thirty (30) days prior to policy cancellation. CONTRACTOR shall
1260 notify CITY within thirty (30) days of its knowledge or any material change in coverage that
1261 impacts this Contract.

1262 7.06.3 Worker Compensation Insurance. CONTRACTOR, at its own expense,
1263 shall carry and maintain full Worker Compensation Insurance, as required by the California
1264 Labor Code and Employer's Liability insurance with limits not less than Five Million Dollars
1265 (\$5,000,000) for each employee per accident or disease. The scope of such coverage shall be
1266 at least as broad as the Worker's Compensation insurance required by the State of California
1267 and Employer's Liability insurance. Such insurance shall be with insurers and under forms of

1268 policies reasonably satisfactory in all respects to CITY, unless CONTRACTOR is self-insured
1269 and complies with the requirements of Section 7.04.5. Such policies shall provide that written
1270 notice must be given to CITY thirty (30) days prior to cancellation. CONTRACTOR shall notify
1271 CITY within thirty (30) days of its knowledge or any material change in coverage that impacts
1272 this Contract. The Workers Compensation policy shall be endorsed with a waiver of
1273 subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents
1274 and subcontractors.

1275 7.06.4 Environmental Impairment and Pollution Liability. CONTRACTOR, at its
1276 own expense, shall carry and maintain environmental impairment and pollution liability
1277 insurance for the term, including any extensions thereto, in the amount of Ten Million Dollars
1278 (\$10,000,000) per loss and in annual aggregate, covering liability arising from the release of
1279 waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if
1280 commercially available, without involvement of CITY, automatically broaden in its form of
1281 coverage to include legislative changes in the definition of waste materials and/or irritants,
1282 contaminants or pollutants. The policy shall stipulate this insurance is primary insurance and no
1283 other insurance carried by CITY will be called upon to contribute to a loss suffered by
1284 CONTRACTOR hereunder and waive subrogation against CITY and other additional insureds.

1285 7.06.5 Other Insurance Provisions. The liability policies are to contain, or be
1286 endorsed to contain, the following provisions:

1287 7.06.5.1 CITY may require reasonable changes in the amount of the
1288 insurance coverage set forth herein based on documented changes in industry standards during
1289 the five (5) year period ended June 30, 2020.

1290 7.06.5.2 CITY, its Councilmembers, directors, officers, agents,
1291 employees and volunteers are to be covered as respects: liability arising out of activities
1292 performed by or on behalf of CONTRACTOR, products and completed operations of
1293 CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or vehicles owned,
1294 leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations
1295 on the scope of protection afforded to CITY, its Councilmembers, directors, officers, agents,
1296 employee's agents (including attorneys and consultants) or volunteers.

1297 7.06.5.3 For any claims related to this Contract, CONTRACTOR'S
1298 insurance coverage shall be primary insurance as respects CITY, its Councilmembers,
1299 directors, officers, agents, employees and volunteers. Any insurance or self-insurance
1300 maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of
1301 CONTRACTOR'S insurance and shall not contribute with it.

1302 7.06.5.4 CONTRACTOR'S insurance shall apply separately to each
1303 insured against whom claim is made or suit is brought, except with respect to the limits of the
1304 insurer's liability. CONTRACTOR shall monitor its insurance contracts and coverage at all times
1305 to provide the minimum coverage specified by this Article.

1306 7.06.5.5 Each insurance policy required by this Article shall be
1307 occurrence based (except as provided in Section 7.04.5.11), shall be endorsed to state
1308 coverage, shall not be canceled except after thirty (30) days' prior written notice has been given
1309 to CITY. CONTRACTOR shall provide at least thirty (30) days' written notice to CITY, by
1310 certified mail, return receipt requested, of any insurance policy required hereunder being
1311 materially changed.

1312 7.06.5.6 CITY, its Councilmembers, directors, officers, agents,
1313 employees and volunteers shall be named as additional insured on all policies. In the event of

1314 cancellation, thirty (30) days prior written notice thereof shall be given to CITY. CONTRACTOR
1315 shall provide at least thirty (30) days' written notice to CITY, by certified mail, return receipt
1316 requested, of any insurance policy required hereunder being materially changed.

1317 7.06.5.7 CONTRACTOR shall furnish CITY with original certificates
1318 affecting coverage required by this clause. The certificates are to be signed by a Person
1319 authorized by that insurer to bind coverage on its behalf. All endorsements are to be received
1320 and approved by CITY before work commences. The insurance information required by this
1321 provision shall be provided to CITY by May 15, 2015.

1322 7.06.5.8 Insurance is to be placed with insurers with a current A.M.
1323 Best's rating of no less than A:VII or a rating which is acceptable to CITY.

1324 7.06.5.9 CONTRACTOR and insurer agree to waive all rights of
1325 subrogation against CITY for losses arising from work performed by CONTRACTOR for CITY.
1326 CONTRACTOR shall deliver certificates of insurance and/or a waiver of subrogation
1327 endorsement.

1328 7.06.5.10 The Comprehensive General Liability Insurance and
1329 Automobile Liability insurance shall be written on an occurrence basis and kept in force during
1330 the entire term of this Contract; Environmental Impairment and Pollution Liability Insurance is
1331 written on a claims-made basis and shall be maintained through continuous renewals so as to
1332 provide the same levels of coverage after the expiration of this Contract as might be necessary
1333 to protect CITY from any and all liability during all applicable statutes of limitation which might
1334 apply to claims of third parties arising out of the activities of CONTRACTOR during the term of
1335 this Contract. The deductibles or self-insured retention with respect to any Environmental
1336 Impairment and Pollution Liability Insurance, including any renewals as set forth herein, shall
1337 not exceed Five Million Dollars (\$5,000,000). Hazardous Waste and Environmental Impairment
1338 Liability will include coverage for all operations of CONTRACTOR under this Contract. If
1339 coverage is on a claims made basis, the retroactive date must be shown, and must be before
1340 the date of the Contract or the beginning of the Contract work. Insurance must be maintained
1341 and evidence of insurance must be provided for at least five (5) years after completion of the
1342 Contract of work. If coverage is cancelled or non-renewed, and not replaced with another
1343 claims-made policy form with a retroactive date prior the contract effective date, CONTRACTOR
1344 must purchase "extended reporting" coverage for a minimum of five (5) years after completion of
1345 work.

1346 7.06.5.11 CONTRACTOR shall comply with all requirements of the
1347 insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any
1348 obligation under this Contract. If any claim exceeding the amount of any deductibles or self-
1349 insured reserves is made by any third Person against CONTRACTOR or any subcontractor on
1350 account of any occurrence related to this Contract, CONTRACTOR shall promptly report the
1351 facts in writing to the insurance carrier and to CITY.

1352 7.06.5.12 The limits of insurance are the minimum required limits and if
1353 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits
1354 maintained by CONTRACTOR.

1355 7.07 Subcontractors. CONTRACTOR shall include subcontractors as insureds under
1356 its policies or shall furnish separate certificates and endorsements for each subcontractor.
1357 Coverage for subcontractors shall be subject to all requirements stated herein.

1358 7.08 Non-renewal or Cancellation. Upon notification of receipt by CITY of a notice of
1359 cancellation, material change in coverage, or expiration of policy(ies), CONTRACTOR shall file
1360 with CITY certificates for such policy(ies), satisfactory to CITY.

1361 7.09 Failure to Comply. If at any time during the term of the Contract, CONTRACTOR
1362 fails to comply with the provisions of Section 7.04 CITY may, in addition to any other remedy
1363 available to CITY, take out and maintain, at CONTRACTOR'S expense, such insurance as
1364 CITY may deem proper and charge the cost thereof to CONTRACTOR.

1365 7.10 Deductibles and Self-Insured Retentions. Any deductibles or self-insured
1366 retentions shall be for the account of CONTRACTOR and shall be the sole responsibility of
1367 CONTRACTOR.

1368 **ARTICLE 8. PERFORMANCE SECURITY**

1369 8.01 Performance Bond. A performance bond must be furnished by CONTRACTOR
1370 within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has
1371 been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in
1372 a form with language that is acceptable to CITY, for the faithful performance of this Contract and
1373 all obligations arising hereunder in an amount of Five Million Dollars (\$5,000,000). The
1374 performance bond must be executed by a surety company that is acceptable to CITY; an
1375 admitted surety company licensed to do business in the State of California; has an "A:VII" or
1376 better rating by A. M. Best or Standard and Poors; and is included on the list of surety
1377 companies approved by the Treasurer of the United States

1378 8.02 Renewal. Beginning July 1, 2016, and each July 1 thereafter, CONTRACTOR
1379 shall have the performance bond renewed annually and be executed by a surety company that
1380 is acceptable to CITY; an admitted surety company licensed to do business in the State of
1381 California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included
1382 on the list of surety companies approved by the Treasurer of the United States.

1383 8.03 Letter of Credit. As an alternative to the performance bond required by Section
1384 8.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in
1385 an amount as set forth in Section 8.01 or such other amount as may be agreed to between
1386 CITY and CONTRACTOR. If allowed, the letter of credit must be issued by an FDIC insured
1387 banking institution chartered to business in the State of California, (consistent with the Uniform
1388 Customs and Practice for Documentary Credits, then current revision or similar uniform
1389 convention approved by CITY), in CITY's name, and be callable at the discretion of CITY.
1390 Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of the
1391 performance bond.

1392 **ARTICLE 9. CORPORATE GUARANTY**

1393 9.01 In addition to the performance security required in Article 8, CONTRACTOR is
1394 required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR'S
1395 performance of this Contract, including CONTRACTOR'S indemnification obligations hereunder
1396 pursuant to a Guaranty in substantially the form attached as Exhibit 3. The Guaranty is being
1397 provided concurrently with CONTRACTOR'S execution of this Contract.

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ARTICLE 10. FORCE MAJEURE

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10.01 The parties shall be excused from performing their respective obligations under this Contract in the event they are prevented from so performing by reason of Force Majeure.

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ARTICLE 11. DEFAULT OF CONTRACT

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11.01 Termination by CITY. Subject to Article 10, CITY may cancel this Contract, except as otherwise provided below in this Article, by giving CONTRACTOR thirty (30) calendar days advance written notice, to be served as provided in Article 21, upon the happening of any one of the following events:

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11.01.1 CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy court or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

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11.01.2 By order or decree of a court, CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

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11.01.2.1 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

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11.01.3 CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the franchise fees, liquidated damages or other monies due CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

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11.01.4 CONTRACTOR has defaulted by allowing any final judgment, in favor of CITY, for the payment of money related to performance under this Contract to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

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11.01.5 In the event that the monies due CITY under Section 11.01.3 above or an unsatisfied final judgment under Section 11.01.4 above is the subject of a judicial proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the CITY Attorney; or

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11.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Manager relative thereto and said default is not cured within thirty

1441 (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of
1442 such default, the same cannot be remedied within thirty (30) calendar days following receipt by
1443 CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the
1444 remedy of such default within said thirty (30) calendar days following such written notice or
1445 having so commenced shall fail thereafter to continue with diligence the curing thereof with
1446 CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured
1447 within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default,
1448 and such default will be cured within a reasonable period of time; or

1449 11.01.7 CONTRACTOR fails to perform its obligations under this Contract,
1450 and: (i) if the failure or refusal of CONTRACTOR to perform Disposal Services required by this
1451 Contract has created an imminent threat to public health and is not cured within (2) Work Days
1452 after receiving written notice from CITY specifying the breach; or (ii) in the case of any other
1453 breach of the Contract, the breach continues for more than thirty (30) calendar days after
1454 receiving written notice from CITY for the correction thereof, provided that where such breach
1455 cannot be cured within such thirty (30) calendar day period, CONTRACTOR shall not be in
1456 default of this Contract if CONTRACTOR shall have commenced such action required to cure
1457 the particular breach within ten (10) calendar days after such notice, and it continues such
1458 performance diligently until completed. However, if CONTRACTOR has complied with its
1459 obligations to arrange and pay for Disposal of Mixed Materials, Garbage and Residue at an
1460 alternative disposal facility as set forth in Section 5.13, it shall not be in default of this Contract.

1461 11.02 Effective Date of Termination. In the event of the aforesaid events specified
1462 above, and except as otherwise provided in said subsections, termination shall be effective
1463 upon the date specified in CITY'S written notice to CONTRACTOR and upon said date this
1464 Contract shall be deemed immediately terminated and upon such termination all liability of CITY
1465 under this Contract to CONTRACTOR shall cease, and CITY shall have the right to call the
1466 performance security instrument and shall be free to negotiate with other contractors for the
1467 operation of the herein specified services.

1468 11.03 Right to Perform. If this Contract is suspended and/or terminated due to
1469 CONTRACTOR default, CITY shall have the right to perform and complete, by contract or
1470 otherwise, the work herein or such part thereof as it may deem necessary and incur all
1471 expenses necessary for completion of the work, including, but not limited to, Disposal of Mixed
1472 Materials, Garbage and Residue at an alternative disposal facility, but not including any right to
1473 operate the Disposal Facility. If such expenses (including, but not limited to, the actual fees
1474 charged for Disposal) exceed the amounts which would have been paid to CONTRACTOR
1475 under this Contract, if it had been fully performed by CONTRACTOR, then CONTRACTOR shall
1476 pay for the remaining term of this Contract, the amount of such excess costs to CITY within
1477 thirty (30) calendar days of CONTRACTOR'S receipt of a claim for reimbursement, and
1478 evidence of costs incurred, from CITY.

1479 11.04 Immediate Termination. CITY may terminate this Contract immediately upon
1480 written notice to CONTRACTOR (provided CITY has first given CONTRACTOR written notice of
1481 breach and ten (10) Work Days to cure) in the event CONTRACTOR fails to provide and
1482 maintain the performance security as required by this Contract, CONTRACTOR fails to obtain or
1483 maintain insurance policies endorsements as required by this Contract, or CONTRACTOR fails
1484 to provide the proof of insurance as required by this Contract.

1485 11.05 Termination Cumulative. CITY'S right to terminate this Contract is cumulative to
1486 any other rights and remedies provided by law or by this Contract.

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ARTICLE 12. LEGAL REPRESENTATION

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12.01 Acknowledgement. It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a Contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

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ARTICLE 13. FINANCIAL INTEREST

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13.01 Representation. CONTRACTOR warrants and represents that no elected official, officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract or the compensation to be paid under it and, further, that no CITY employee who acts in the CITY as a "purchasing agent" as defined in the appropriate section of California Statutes, nor any elected or appointed officer of CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in CONTRACTOR. Material interest means direct or indirect ownership of more than five (5) percent of the total assets or capital stock of CONTRACTOR.

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ARTICLE 14. INDEPENDENT CONTRACTOR

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14.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits, or any other benefits which accrue to CITY employees and CONTRACTOR expressly waives any claim it may have or acquire to such benefits.

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ARTICLE 15. LAWS TO GOVERN

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15.01 The law of the state of California shall govern the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of this Contract.

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ARTICLE 16. CONSENT TO JURISDICTION

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16.01 The parties agree that any litigation between CITY and CONTRACTOR concerning or arising out of this Contract shall be filed and maintained exclusively in the municipal or superior courts of Alameda County, state of California, or in the United States Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

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ARTICLE 17. ASSIGNMENT

1525 17.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR acknowledges
1526 that this Contract involves rendering a vital service to CITY's residents and businesses, and that
1527 CITY has selected CONTRACTOR to perform the services specified herein based on (1)
1528 CONTRACTOR's experience, skill and reputation for conducting its operations in a safe,
1529 effective and responsible fashion, at all times in keeping with applicable environmental laws,
1530 regulations and best management practices for Disposal of Mixed Materials, Garbage and
1531 Residue and (2) CONTRACTOR's financial resources to maintain the required equipment and
1532 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of
1533 these factors, among others, in choosing CONTRACTOR to perform the services to be
1534 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either
1535 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract
1536 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,
1537 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day
1538 written notice to CONTRACTOR. In the event such notice of termination is given as authorized
1539 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of
1540 termination, to provide any or all of the services it is obligated to perform under this Contract if
1541 requested by CITY in writing. CITY'S right to terminate the Contract in whole or in part shall
1542 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as
1543 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this
1544 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially
1545 all of CONTRACTOR's assets dedicated to any or all of the services to be provided under this
1546 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of
1547 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
1548 control of CONTRACTOR or any sale, exchange or transfer of the common stock of
1549 CONTRACTOR which results in the effective transfer of control of substantially all of
1550 CONTRACTOR's assets dedicated to any or all of the services to be provided under this
1551 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-
1552 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
1553 arrangement, liquidation or other transaction to which results in a change of ownership or
1554 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or
1555 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution
1556 being levied against this Contract, appointment of a receiver taking possession of
1557 CONTRACTOR's property, or transfer occurring in the event of a probate proceeding; and (v)
1558 any combination of the foregoing (whether or not in related or contemporaneous transactions)
1559 which has the effect of any such transfer or change of ownership, or change of control of
1560 CONTRACTOR, or substantially all of the assets used for providing any of the services under
1561 this Contract to a third party. For purposes of this Contract, an "assignment" shall not include a
1562 sale, transfer or exchange with [] or any of its subsidiaries,
1563 successors or assigns, provided such affiliated entity has financial capabilities equal to or
1564 greater than CONTRACTOR.

1565 [For purposes of this Contract, an "assignment" shall not include a sale, transfer or change in
1566 control if ownership of Contractor or any Affiliate is transferred to either individuals in
1567 consanguinity with the Duong Family, or trusts or other entities owned or controlled by a
1568 member or members of the Duong Family, provided that such trusts or other entities possess
1569 the business, professional, and technical expertise to manage and collect Recyclable Materials,
1570 and possess the equipment, facilities, and employee resources required to perform this under
1571 this Contract. Within sixty (60) Days prior to any such transfer of ownership or to trusts or other

1572 entities owned by a member or members of the Duong Family, Contractor shall provide written
1573 notice to the City and provide City with an opportunity to meet and confer with the new owner to
1574 discuss matters related to this Contract. Such sixty (60) Day notice shall not be required in the
1575 event of cases involving death or legal incapacity. In such case, notice shall be provided as
1576 soon as practical. Notwithstanding the foregoing, the skill, acumen, and relevant experience of
1577 the day-to-day management of Contractor shall remain satisfactory to the City notwithstanding a
1578 change in ownership.]

1579 17.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR
1580 requests CITY'S consideration of and consent to an assignment, CONTRACTOR shall meet the
1581 following preliminary requirements:

1582 17.02.1 CONTRACTOR shall pay CITY its reasonable expenses for
1583 attorney's fees, consultant's fees and investigation costs necessary to investigate the suitability
1584 of any proposed assignee, and to review and finalize any documentation required as a condition
1585 for approving any such assignment;

1586 17.02.2 CONTRACTOR shall furnish CITY with audited financial
1587 statements of the proposed assignee's operations for the immediately preceding three (3)
1588 operating years;

1589 17.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1)
1590 the proposed assignee has at least ten (10) years of Mixed Materials, Garbage and Residue
1591 Disposal experience on a scale equal to or exceeding the scale of operations conducted by
1592 CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not
1593 suffered any significant citations or other censure from any federal, State or local agency having
1594 jurisdiction over its Mixed Materials, Garbage and Residue Disposal operations due to any
1595 significant failure to comply with State, federal or local environmental laws and the assignee has
1596 provided CITY with a complete list of such citations and censures; (3) the proposed assignee
1597 has at all times conducted its operations in an environmentally safe and conscientious fashion;
1598 (4) the proposed assignee conducts its Mixed Materials, Garbage and Residue Disposal
1599 practices in accordance with sound management practices in full compliance with all federal,
1600 State and local laws regulating the Disposal of Mixed Materials, Garbage and Residue including
1601 hazardous substances; and, (5) of any other information required by CITY to ensure the
1602 proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

1603 17.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to
1604 consider any proposed assignment if CONTRACTOR is in default at any time during the period
1605 of consideration.

1606 17.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
1607 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
1608 assignment, the corporate guaranty provided in Section 1.23 and Exhibit 3 and the performance
1609 security provided in Article 8 shall remain in effect unless CITY in its sole discretion consents to
1610 adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR
1611 shall not be released from liability under this Contract.

1612 17.05 Subcontractor. The use of a subcontractor to perform services under this
1613 Contract shall not constitute delegation of CONTRACTOR's duties provided that
1614 CONTRACTOR has received prior written authorization from CITY to subcontract such services
1615 and the Contract Manager has approved a subcontractor who will perform such services.
1616 CONTRACTOR shall be responsible for directing the work of CONTRACTOR's subcontractors
1617 and any compensation due or payable to CONTRACTOR's subcontractor shall be the sole

1618 responsibility of CONTRACTOR. CITY shall have the right to require the removal of any
1619 approved subcontractor for reasonable cause. No subcontractors have been approved by
1620 CITY.

1621 **ARTICLE 18. COMPLIANCE WITH LAWS**

1622 18.01 In the performance of this Contract, CONTRACTOR shall comply with all
1623 applicable laws, regulations, ordinances and codes of the federal, State and local governments,
1624 including without limitation those of CITY.

1625 18.02 CITY shall provide written notice to CONTRACTOR of any planned amendment
1626 to the CITY Ordinances that would affect the performance of CONTRACTOR'S services or
1627 obligations pursuant to this Contract, in which case Change in Law could apply. Such notice
1628 shall be provided at least thirty (30) calendar days prior to the Oakland City Council's approval
1629 of such an amendment.

1630 **ARTICLE 19. WAIVER**

1631 19.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term
1632 covenant or condition of this Contract shall not be deemed to be a waiver of any other term,
1633 covenant or condition or any subsequent breach or violation of the same or of any other term,
1634 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other
1635 monies which may become due from CONTRACTOR to CITY shall not be deemed to be a
1636 waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

1637 **ARTICLE 20. POINT OF CONTACT**

1638 20.01 The day-to-day dealings between CONTRACTOR and CITY shall be between
1639 CONTRACTOR and the Contract Manager.

1640 **ARTICLE 21. NOTICES**

1641 21.01 Except as provided herein, whenever either party desires to give notice to the
1642 other, it must be given by written notice by registered or certified mail, or by other methods
1643 designated for next day delivery with proof of receipt, addressed to the party for whom it is
1644 intended, at the place last specified and to the place for giving of notice in compliance with the
1645 provisions of this paragraph. For the present, the parties designate the following as the
1646 respective persons and places for giving of notice:

1647 As to CITY:
1648 City Administrator
1649 Office of the City Administrator
1650 CITY OF OAKLAND
1651 One Frank Ogawa Plaza, Third Floor
1652 Oakland, CA 94612
1653 Telephone: (510) 238-3301
1654 E-mail: cityadministrator@oaklandnet.com

1655 With copies to:
1656
1657 Director of Public Works

1658 Public Works Agency
1659 CITY OF OAKLAND
1660 250 Frank Ogawa Plaza, Suite 4314
1661 Oakland, CA 94612
1662 Telephone (510) 238-4470
1663 E-mail: blevin@oaklandnet.com
1664

1665 City Attorney
1666 Office of the City Attorney
1667 CITY OF OAKLAND
1668 One Frank Ogawa Plaza, Sixth Floor
1669 Oakland, CA 94612
1670 Telephone: (510) 238-3601
1671 E-mail: info@oaklandcityattorney.org
1672

1673 Director of Finance and Management
1674 Finance and Management Agency
1675 CITY OF OAKLAND
1676 150 Frank Ogawa Plaza, Suite 5215
1677 Oakland, CA 94612
1678 Telephone: (510) 238-2220
1679 E-mail: sjohnson@oaklandnet.com

1680 As to CONTRACTOR:

1681 [Title]
1682 [Company]
1683 [Street Address]
1684 [City, State, Zip]
1685 [Telephone: (xxx) xxx-xxxx]
1686 [E-mail:]
1687

1688 21.02 Notices shall be effective when received at the address as specified above.
1689 Changes in the respective address to which such notice is to be directed may be made by
1690 written notice with a courtesy copy provided by email. The original of items that are transmitted
1691 by email must also be mailed as required herein.

1692 **ARTICLE 22. NONDISCRIMINATION**

1693 22.01 Nondiscrimination. In the performance of all work and services under this
1694 Contract, CONTRACTOR shall not discriminate against any person on the basis of such
1695 person's race, color, religion/religious creed, sex/gender, pregnancy, marital status, age,
1696 national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation,
1697 gender identity, military or veteran status, or status in any other group protected by federal,
1698 State or local law. CONTRACTOR shall comply with all applicable local, State and federal laws
1699 and regulations regarding nondiscrimination, including those prohibiting discrimination in
1700 employment.

1701

ARTICLE 23. CONTRACTOR'S RECORDS

1702 23.01 CONTRACTOR shall maintain all documents and records that demonstrate
1703 performance under this Contract for a minimum period of five (5) years, or for any longer period
1704 required by law, from the date of termination or completion of this Contract.

1705 23.02 Any records or documents required to be maintained pursuant to this Contract
1706 shall be made available for inspection, copy or, audit at any time during regular business hours,
1707 upon written request by the Contract Manager, City Attorney, City Auditor, CITY Administrator,
1708 or a designated representative of any of these officers. Copies of such documents shall be
1709 provided to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless
1710 an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR'S
1711 address indicated for receipt of notices in this Contract.

1712 23.03 Where CITY has reason to believe that such records or documents may be lost
1713 or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business,
1714 CITY may, by written request or demand of any of the above named officers, require that
1715 custody of the records be given to CITY and that the records and documents be maintained in
1716 CITY offices. Access to such records and documents shall be granted to any party authorized
1717 by CONTRACTOR, CONTRACTOR'S representatives or CONTRACTOR'S successor-in-
1718 interest.

1719

ARTICLE 24. QUALITY OF PERFORMANCE OF CONTRACTOR

1720 24.01 Liquidated Damages. The parties further acknowledge that consistent and
1721 reliable Disposal Services are of utmost importance to CITY and that CITY has considered and
1722 relied on CONTRACTOR'S representations as to its quality of service commitment in awarding
1723 the Contract to it. The parties further recognize that some quantified standards of performance
1724 are necessary and appropriate to ensure consistent and reliable service and performance. The
1725 parties further recognize that if CONTRACTOR fails to achieve the performance standards, or
1726 fails to submit required documents in a timely manner, CITY, Collection Contractor(s) and
1727 CITY'S residents and businesses will suffer damages, and that it is and will be impractical and
1728 extremely difficult to ascertain and determine the exact amount of damages. Therefore, without
1729 prejudice to CITY'S right to treat such non-performance as an event of default under Article 11
1730 the parties agree that the liquidated damages amounts defined in this Article represent
1731 reasonable estimates of the amounts of such damages considering all of the circumstances
1732 existing on the effective date of this Contract, including the relationship of the sums to the range
1733 of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual
1734 damages would be costly or impractical. In placing their initials at the places provided, each
1735 party specifically confirms the accuracy of the statements made above and the fact that each
1736 party has had ample opportunity to consult with legal counsel and obtain an explanation of the
1737 liquidated damage provisions at the time that the Contract was made.

1738 CITY Initial Here _____ CONTRACTOR Initial Here _____

1739 24.01.1 CONTRACTOR agrees to pay (as liquidated damages and not as
1740 penalty) the following amounts:

Liquidated Damages	
Item	Amount

Liquidated Damages		
Item		Amount
a.	Failure to maintain minimum operation hours or days. (Section 5.04)	\$1,000 per Work Day.
b.	Failure to turnaround Collection Contractor vehicles at the Disposal Facility as set forth in Section 5.07.	\$100 per occurrence.
c.	Failure to provide adequate primary and alternate capacity to accept and Dispose of Mixed Materials, Garbage and/or Residue. (Sections 5.12 and 5.13)	\$10,000 per calendar day.
d.	Failure to submit complete and accurate required reports to CITY in a timely manner. (Sections 5.14 and 5.15)	\$300 per calendar day.
e.	Failure to correct submittal of inaccurate data within three (3) Work Days (or such other time period as may be agreed to in writing between CITY and CONTRACTOR) of written notification by CITY as set forth in Section 5.16.	\$500 per incident per calendar day.
f.	omitted	\$150 per calendar day.
g.	Failure to comply with the insurance provisions of this Contract as set forth in Article 7.	\$500 per incident per calendar day.
h.	Failure to cure non-compliance with the provisions of this Contract in the manner and time set forth in the Contract (Various Articles).	\$150 per incident per calendar day.

1741

1742 24.02 CITY may determine the occurrence of events giving rise to liquidated damages
 1743 through the observation of its own employees or representative or investigation of complaints by
 1744 Collection Contractor(s).

1745 24.03 Liquidated damages shall apply to service disruptions caused by a
 1746 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

1747 24.04 Procedure for Review of Liquidated Damages. Before assessing liquidated
 1748 damages pursuant to Items b and c of this Article 24, the CITY and CONTRACTOR shall meet
 1749 and confer regarding these specific areas of substandard performance. If, despite such
 1750 meeting, incidents of the type(s) addressed at the meeting continue to occur, the CITY may
 1751 proceed to assess liquidated damages as provided above.

1752 24.04.1 The assessment shall become final unless, within thirty (30)
 1753 calendar days of the date of the notice of assessment, CONTRACTOR provides a written
 1754 request for a meeting with the Contract Manager to present evidence that the assessment
 1755 should not be made.

1756 24.04.2 The Contract Manager shall schedule a meeting between
1757 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as
1758 reasonably possible after timely receipt of CONTRACTOR'S request.

1759 24.04.3 The CITY Administrator or the CITY Administrator's designee shall
1760 review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated
1761 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
1762 be provided to CONTRACTOR.

1763 24.04.4 In the event CONTRACTOR does not submit a written request for
1764 a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract
1765 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
1766 later than ten (10) Work Days following final determination. If CITY does not receive
1767 CONTRACTOR'S payment within the ten (10) Work Day period, CITY may proceed against the
1768 letter of credit required by Section 24.04 of this Contract

1769 24.04.5 CITY'S assessment or Collection of liquidated damages shall not
1770 prevent CITY from exercising any other right or remedy, including the right to terminate this
1771 Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth
1772 in this Contract.

1773 **ARTICLE 25. LABOR PEACE**

1774 25.01 General. CITY has determined that the level of vulnerability of the proposed
1775 Contract to labor disputes is sufficient to warrant that labor peace is essential to the proprietary
1776 interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
1777 CONTRACTOR'S Employee and Labor Relations Plan set forth in Exhibit 5 to this Contract.

1778 **ARTICLE 26. SEVERABILITY**

1779 26.01 If any provision of this Contract or the application of it to any Person or situation
1780 shall to any extent be held invalid or unenforceable, the remainder of this Contract and the
1781 application of such provisions to persons or situations other than those as to which it shall have
1782 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,
1783 and shall be enforced to the fullest extent permitted by law.

1784 **ARTICLE 27. RIGHT TO REQUIRE PERFORMANCE**

1785 27.01 The failure of either party at any time to require performance by the other of any
1786 provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by
1787 a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding
1788 breach of such provision or as a waiver of any provision itself.

1789 **ARTICLE 28. DISPUTE RESOLUTION**

1790 28.01 Except for a CONTRACTOR Default under Article 11, and except as provided
1791 below in Section 28.01.3, should any dispute arise under this Contract, including but not limited
1792 to the performance and obligations of the parties, or service or compensation changes, such
1793 disputes shall be resolved by the following procedures:

1794 28.01.1 The parties shall resolve their disputes informally to the maximum
1795 extent possible and shall attempt to resolve such disputes in a cooperative and mutually

1796 satisfactory manner. Either party shall give the other written notice of such dispute, and also
1797 provide written notice to the Contract Manager. The Contract Manager shall then schedule a
1798 meeting between CONTACTOR and the CITY Administrator or the CITY Administrator's
1799 designee as soon as reasonably possible. In the event such dispute cannot be resolved by the
1800 parties themselves within thirty (30) days of their first meeting, either party may propose the
1801 appointment of a mediator. The parties shall agree on a mediator within 30 days of either
1802 party's request for mediation.

1803 28.01.2 Mediation. If the disputing parties cannot informally resolve the
1804 dispute, they shall attempt to resolve such dispute through non-binding mediation for a period
1805 not to exceed ninety (90) days from the date of their last informal meeting, absent a written
1806 agreement to extend the time of non-binding mediation.

1807 28.01.2.1 The party desiring mediation shall give written notice thereof to
1808 the other party to this Contract, specifying the dispute to be mediated.

1809 28.01.2.2 The mediation shall be held at Oakland, California, or at such
1810 other location as may be mutually agreed among the parties. The mediation shall be conducted
1811 and a mediator chosen pursuant to the rules of JAMS Mediation Rules.

1812 28.01.2.3 At least ten (10) days before the date of the mediation, each
1813 side shall provide the mediator with a statement of its position and copies of all supporting
1814 documents. Each party shall send to the mediation a person who has authority to bind the
1815 party. If a subsequent dispute will involve third parties, such as insurers or subcontractors, they
1816 shall also be asked to participate in the mediation.

1817 28.01.2.4 Should mediation be unsuccessful, and if the dispute does not
1818 concern valuation items for which binding arbitration is required in Section 28.01.3, then a party
1819 may commence an adversarial proceeding before any court of competent jurisdiction in the
1820 County of Alameda. Disputes that concern valuation items defined in Section 28.01.3 shall
1821 proceed with binding arbitration procedures as set forth below.

1822 28.01.3 Binding Arbitration. This Section only applies to disputes over
1823 "Valuation Items," which are defined herein as disputes over a specific amount of money or
1824 compensation that is due or owed by either party, and the dispute arises under one of the
1825 following provisions of this Contract: Article 6 and Section 5.20.2.. Disputes relating to
1826 Valuation Items shall be referred to binding arbitration upon mutual written approval of the
1827 disputing parties. If the disputing parties do not mutually agree in writing to binding arbitration, a
1828 party may commence an adversarial proceeding before any court of competent jurisdiction in
1829 the county of Alameda.

1830 28.01.3.1 Binding arbitration proceedings shall be in accordance with
1831 California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined
1832 Arbitration Rules, and the terms of section 28.01.3 and its subsections. In the event of any
1833 inconsistency, the terms of section 28.01.3 and its subsections shall control. The arbitration
1834 shall be administered by JAMS and conducted in the County of Alameda. If the parties are
1835 unable to select an arbitrator within twenty (20) days after delivering written notice requesting
1836 arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable
1837 to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause,
1838 the parties may mutually designate another arbitration organization with similar procedures to
1839 serve as the provider of arbitration. If the parties cannot agree on the arbitration organization,
1840 the Presiding Judge of the Alameda County Superior Court shall designate such an organization
1841 upon the petition of either party.

1842 28.01.3.2 The arbitrator shall be independent of, and unaffiliated
1843 with, each party and shall not ever have been an employee of either party, under contract with
1844 either party in the past five (5) years or acted as an arbitrator for such party within the past five
1845 (5) years.

1846 28.01.3.3 Within twenty (20) days after initiation of the arbitration, if
1847 not previously done so under the terms of this Contract, the parties shall each submit to each
1848 other and the arbitrator their respective relevant value for the item subject to the valuation
1849 dispute, with such supporting information as is reasonably necessary to support such suggested
1850 value. If the two (2) valuations so submitted differ by less than or equal to ten (10) percent of
1851 the higher of the two, the average of the two shall become the agreed upon amount for
1852 purposes of this Contract and the arbitration shall not be continued. If the two valuations differ
1853 by more than ten (10) percent of the higher of the two, then the arbitrator shall make a
1854 determination of the relevant value and submit such determination to both the parties. This third
1855 valuation will then be averaged with the closer of the two previous valuations and the result shall
1856 be the relevant value. In no event shall the resolution of a valuation dispute result in a valuation
1857 higher than that which was set forth by Contractor (e.g., a impact of a "material" disclosure or a
1858 higher tip fee adjustment). The final arbitrated value shall be binding on the parties.

1859 28.01.3.4 The arbitrator shall have the authority and power to award
1860 costs, including attorneys' fees and costs to the prevailing party. Unless otherwise awarded by
1861 the arbitrator, the parties shall evenly split the cost of any arbitration under this Article.

1862 28.01.3.5 By agreeing to binding arbitration, the parties irrevocably
1863 and voluntarily waive any right they may have to a trial by jury to the extent permitted by law.

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Acknowledgement of waiver of rights by trial by jury if proceeding with
binding arbitration pursuant to Section 28.01.3 of this Contract.

CITY OF OAKLAND

CONTRACTOR

1871 28.01.4 During the pendency of any dispute under this Article, all
1872 applicable time periods directly related to the dispute shall be tolled until its resolution; provided,
1873 however, that no tolling shall apply to any matters other than those directly related to the dispute
1874 and such tolling shall not entitle a party to breach, default, or fail to perform its obligations under
1875 this Contract.

1876

ARTICLE 29. ALL PRIOR CONTRACTS SUPERSEDED

1877 29.01 This document incorporates and includes all prior negotiations, correspondence,
1878 conversations, agreements and understandings applicable to the matters contained in this
1879 Contract and the parties agree that there are no commitments, agreements or understandings
1880 concerning the subject matter of this Contract that are not contained in this document or in the
1881 Collection Service Contracts which are being executed simultaneously with this document.
1882 Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated
1883 upon any prior representations or agreements, whether oral or written.

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ARTICLE 30. HEADINGS

30.01 Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

ARTICLE 31. EXHIBITS

31.01 Each Exhibit referred to in this Contract forms an essential part of this Contract. Each such Exhibit is a part of this Contract and each is incorporated by this reference.

ARTICLE 32. EFFECTIVE DATE

32.01 This Contract shall become effective at such time as it is properly executed by CITY and CONTRACTOR and CONTRACTOR shall begin Disposal Services, as covered herein, as of July 1, 2015.

IN WITNESS WHEREOF, CITY and CONTRACTOR have duly authorized execution of this Contract and have executed the Contract as of the dates set forth below.

CITY OF OAKLAND	[Contractor Company Name]
By: _____	By: _____
[Name, Title]	[Name, Title]
_____	_____
Date	Date

APPROVED AS TO FORM:

[Name, Title]

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INDEX OF EXHIBITS

EXHIBIT 1

APPROVED PER TON DISPOSAL TIPPING FEES

(To be filled in after selection. Rate Sheet contained in Staff Report.)

EXHIBIT 2

DISPOSAL TIPPING FEE ADJUSTMENT METHODOLOGY

(CWS Exhibit 2 attached. WMAC Exhibit 2 attached.)

EXHIBIT 3

GUARANTY AGREEMENT

(Copy attached as Exhibit 18 to MMO Contract.)

EXHIBIT 4

CITY OF OAKLAND REQUIRED FORMS

(To be provided after Council selection.)

EXHIBIT 5

EMPLOYEE AND LABOR RELATIONS PLAN

(Provided in proposals. To be modified and attached within 30 days.)

EXHIBIT 6

REVENUE SHARING PLAN

(No Revenue Sharing Plan offered.)

**Exhibit 2
CWS**

**Exhibit 2
CWS**

CWS Disposal Exhibit 2

Exhibit 2 Annual Rate Adjustment

1. **Disposal Annual Rate Adjustment Calculation.** The Annual Rate Adjustment for the Disposal Contract shall be calculated in the following manner:
 - 1.1. The methodology will be based on the terms of the Contract between CWS and Republic Services once the contract is in place and has been reviewed by the City.

**Exhibit 2
WMAC**

**Exhibit 2
WMAC**

WMAC Disposal Exhibit 2

Exhibit 2 Annual Rate Adjustment

1. **Disposal Annual Rate Adjustment Calculation.** The Annual Rate Adjustment for the Disposal Contract shall be calculated in the following manner:
 - 1.1. There are six (6) Contractor Cost Categories for purposes of the RRI adjustment calculation: Union Labor, Diesel Fuel, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, and All Other. There is an additional one (1) Contractor Cost Category, of which the weighted percent change will be added to the RRI adjustment for purposes of the Annual Rate Adjustment: Government Fees/Taxes – Disposal.
 - 1.2. Within each Cost Category (1-7) are expenses generally described in the attached Operating Cost Statement – Description (the “Allowed Expenses”). Only these Allowable Expenses may be used by Contractor to calculate the annual total of each Cost Category.
 - 1.3. CONTRACTOR will calculate the total of all Allowable Expenses (as defined in Section 6 of this Exhibit 2) for each Cost Category (also defined herein) for the full or partial, as appropriate, calendar year ending December 31. Each Cost Category will then be assigned an “item weight” based on the proportionate share of its Allowable Expenses total to the total of all Allowable Expenses for all Cost Categories (1-7). For example, if the Allowable Expenses of the Diesel Fuel Cost Category total \$100, and the Allowable Expenses within all Cost Categories is \$2,000, then the Diesel Fuel Cost Category’s item weight will be 5%. The Cost Categories shall be reweighed every year based on allowable expenses thereafter from January 1st through December 31st.
 - 1.4. Each Cost Category’s item weight is then multiplied by the percent change of its Cost Indicator to calculate its weighted percentage change. Each Cost Category’s review dates or review years are set forth below. Each Cost Category’s Cost Indicator is set forth in Section 2 below. For those Cost Categories using a review year, the percentage change is the difference in the annual average of the cost indicator index of the preceding review year and the annual average of the cost indicator index of current review year. For those Cost Categories using a review date, the percentage change is the difference in the cost indicator at the previous review date and the cost indicator at the current review date. With regard to those Cost Indicators which are a published index, should such index be discontinued, a successor index shall be selected by mutual agreement of the parties. Successor indices shall be those indices that are most closely equivalent to the discontinued index.

Item	Cost Category	Previous Year or Date	Review Current Year or Date
1	Union Labor	July 1 of previous	July 1 of current

WMAC Disposal Exhibit 2

		calendar year	calendar year
2	Diesel Fuel	December 31 of next previous calendar year	December 31 of previous calendar year
3	CNG Fuel	December 31 of next previous calendar year	December 31 of previous calendar year
4	Vehicle Replacement	December 31 of next previous calendar year	December 31 of previous calendar year
5	Vehicle Maintenance	December 31 of next previous calendar year	December 31 of previous calendar year
6	All Other	December 31 of next previous calendar year	December 31 of previous calendar year
7	Government Fees/Taxes - Disposal	July 1 of previous calendar year	July 1 of current calendar year

1.5. The weighted percentage change of Cost Categories 1 - 6 are then added together to calculate the RRI adjustment. The weighted percent change of the DISPOSAL Franchise Fees shall be as calculated except where there is negative WMAC revenue for the year as set forth in Section [to be inserted] of the Contract, in which case the Franchise Fee increase is zero. The weighted percent change of Cost Category 7 is then added to the RRI adjustment to calculate the Annual Rate Adjustment.

2. Cost Indicators

<u>Cost Category</u>	<u>Cost Indicator</u> ¹
Union Labor	Projected (as of March 1 st preceding the review date to be effective as of the review date) total Union (Local 70, 1546 and 6 Clerical) wage, health and welfare, and pension costs

¹ With regard to each Cost Indicator under the Disposal RRI which is an index, the Cost Indicator will be the index's twelve-month average for the period ending on the applicable (previous or current) December 31 review year. With regard to the Union Labor Cost Categories, the Cost Indicator will be the projected union labor costs on the applicable (previous or current) July 1 review date.

WMAC Disposal Exhibit 2

	under Waste Management of Alameda County, Inc. collective bargaining agreements for those employees domiciled at 172-98 th Avenue, Oakland, CA. Calculated pursuant to Section 3 below.
Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel (average for 12 months ending on the current review year)
CNG Fuel	Schedule G-NGV-1, compiled and published by the Pacific Gas and Electric Co. Analysis and Rate Department and reported monthly in the "Gas Rate Finder" publication (http://www.pge.com/tariffs) reflecting the sum of the Customer, procurement, transportation and public purpose program charges (average for 12 months ending on the current review year).
Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately (average for 12 months ending on the current review year)
Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks (average for 12 months ending on the current review year)
All Other:	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, CA (average for 12 months ending on the current review year)

Government Fees/Taxes – WMAC to list applicable Government Fees/Taxes

Disposal

3. **Union Labor Cost Indicator.** Annual changes to the Union Labor Cost Indicator shall be calculated by determining the total labor increase for each Union party to a collective bargaining agreement with CONTRACTOR, as follows:

3.1. Local 70 annual total labor increase shall be determined by calculating the percentage change of the sum of the All Classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate²), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for

² Converting monthly amounts to hourly will be done by dividing the monthly amount by 173.

WMAC Disposal Exhibit 2

retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Union Labor employees represented by Local 70.

3.2. Local 1546 annual total labor increase shall be determined by calculating the percentage change of the sum of the Journeyman classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Union Labor employees represented by Local 1546.

3.3. Local 6 Clerical annual total labor increase shall be determined by calculating the percentage change of the sum of the CSR II classification straight time hourly wage rate, monthly health and welfare premium (as converted to a straight time hourly rate), and the straight time hourly pension rate between the previous review date and the current review date. Since this calculation must be performed prior to the July 1st of the current review date, CITY and CONTRACTOR have agreed that the costs for the current review date shall be those costs that are projected as of March 1st preceding the current review date to be effective as of the current review date. Changes that become known after March 1st preceding the current review date shall be incorporated into the RRI adjustment in the next year with no provision for retroactive adjustments. The resulting year over year percentage change shall be multiplied by the percentage of Union Labor employees represented by Local 6 Clerical.

3.4. Once the weighted percentage labor increase for each Union is determined, the above sums shall be added together to determine the overall weighted percentage change of the Union Labor Cost Category to be applied to the Disposal RRI adjustment calculation.

3.5. For purposes of clarification with regard to the July 1, 2016 Annual Rate Adjustment, the review years or dates for the Cost Categories will be as follows:

Item	Cost Category	Previous Review Year or Date	Current Review Year or Date
1	Union Labor	July 1, 2015	July 1, 2016
2	Diesel Fuel	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
3	CNG Fuel	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015

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4	Vehicle Replacement	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
5	Vehicle Maintenance	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
6	All Other	Calendar Year Ending December 31, 2014	Calendar Year Ending December 31, 2015
7	Government Fees/Taxes - Disposal	July 1, 2015	July 1, 2016

To calculate the Annual Rate Adjustment, the RRI adjustment is added to the sum of the weighted percentage change (including all Cost Categories) in the Cost Indicators of Cost Category 7. The following is an example Annual Rate Adjustment calculation:

Item	Cost Category	Cost Indicator Percent Change	Item Weight	Weighted Percent Change
1	Union Labor	4.64%	50.06%	2.32%
2	Diesel Fuel	15.70%	0.00%	0.00%
3	CNG Fuel	-0.10%	12.77%	-.01%
4	Vehicle Replacement	3.14%	12.13%	0.38%
5	Vehicle Maintenance	2.67%	11.76%	0.31%
6	All Other	2.24%	12.38%	0.28%
	RRI Adjustment			3.28%
11	Government Fees/Taxes - Disposal	5.13%	0.90%	0.05%
			100%	
	Annual Rate Adjustment			3.33%

The Annual Rate Adjustment is then multiplied by the Diversion Adjustment as appropriate before being applied to the Maximum Collection Service Rates.

4. Operating Cost Statement-Description

Union Labor: List all labor accounts for WMAC's employees domiciled at 172-98th Avenue, Oakland, CA. who are members of Local

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	70, Local 1546 and Local 6 Clerical. Wages – hourly & overtime, Bonuses, Commissions, Other Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Payroll Taxes,
Diesel Fuel:	Clear and/or Dyed Diesel Fuel, Gasoline, Fuel Tax Credit accounts.
CNG Fuel:	LNG and/or CNG fuel, Fuel Tax Credit accounts.
Vehicle Replacement:	Equipment and Support Equipment depreciation accounts. Vehicle Rental Equipment accounts
Vehicle Maintenance:	Building (Maintenance), Tires, Parts & Supplies, Lubricants, Third Party Services, Other.
All Other:	List all other expense accounts related to the services provided under this Contract. Advertising Amortization Bad debt and collection charges Bank charges Building and repairs Computer costs Consulting and professional fees Depreciation Depreciation (non-vehicle) Donations and contributions Dues and subscriptions Environmental compliance Equipment - rental Equipment (Support) - tires, parts, supplies Fines and penalties Fuel (non-diesel and non-CNG) General yard repairs and maintenance Insurance (e.g., general liability, fire, truck damage, and extended coverage) Legal License fees Litigation settlements Lobbying

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Lubricants

Meals and entertainment

Miscellaneous

Non-union labor wages and benefits (e.g., salaries, hourly wages, overtime, bonuses, commissions, safety expense and bonuses, other compensation, compensated absences and vacation, severance, health and welfare insurance, workers compensation premiums and claims, pension and retirement costs, payroll taxes, contract labor, and other employee costs)

Office supplies

Performance bond expense

Permits

Postage

Printing

Procurement card rebates

Real property rent

Registration

Security

Seminars and education

Site monitoring and testing

Taxes

Taxes (real and personal property)

Third party services

Travel

Utilities (e.g., telephone, electricity, gas)

Vehicle licenses and permits

Vehicle transportation costs - license fees, permits, insurance, bridge tolls

Workers compensation premiums and claims

Union labor Workers Compensation Premiums & Claims,

Union Contract Labor, Safety Program Expense and Other Employee Costs (e.g., uniforms, boot allowance, tool allowance).

Government Fees/Taxes –

Disposal:

List type and amount of each Government Fees/Taxes paid