

Processing, Transfer and Disposal Service Agreement

Executed Between

City of Albany

and

Waste Management of Alameda County, Inc.

November 1, 2011



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Processing, Transfer and Disposal Service Agreement

Disposal Service Agreement

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1 **CITY OF ALBANY**

2 This Processing, Transfer and Disposal Agreement (Agreement) is entered into this first
3 (1st) day of November, 2011 by and between the City of Albany, a charter City and California
4 municipal corporation ("CITY") and Waste Management of Alameda County, Inc., a California
5 Corporation, ("CONTRACTOR").

6 **RECITALS**

7 **WHEREAS;** CITY enters this Agreement with CONTRACTOR, under which CONTRACTOR
8 receives Discarded Materials generated within the CITY at the Transfer Station for Processing,
9 Transfer, and Disposal; and,

10 **WHEREAS;** the City Council of the City of Albany determines, pursuant to its police powers,
11 that obtaining a long-term commitment for Processing, Transfer and Disposal, of Discarded
12 Materials generated in the CITY is in the best interests of the health, safety and wellbeing of the
13 citizens of the CITY; and,

14 **WHEREAS;** the State of California, through enactment of the California Integrated Waste
15 Management Act of 1989 (California Public Resources Code Section 40000, et. seq.) also
16 recognizes the important health and safety consideration to long-term planning for local
17 government's adequate Disposal needs. The California Integrated Waste Management Act of
18 1989 declares that the responsibility for management of Solid Waste is a shared responsibility
19 between the State and local governments. The State requires local governments to make
20 adequate provision for at least fifteen (15) years of Solid Waste Disposal capacity to preserve
21 the health, safety and well-being of the public. The California Integrated Waste Management
22 Act of 1989 also authorizes local governments to enter into exclusive franchise contracts to
23 provide Solid Waste handling services for the health, safety and wellbeing of its citizens
24 (California Public Resources Code Section 40059); and,

25 **WHEREAS;** this Agreement also advances the objectives of the federal government to
26 encourage environmentally sound solid waste management (Resource Conservation and
27 Recovery Act of 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.); and,

28 **WHEREAS;** the Transfer Station is intended to be the principal facility for the Processing and
29 Transfer of Discarded Materials generated in the CITY; and,

30 **WHEREAS;** the Disposal Facility is intended to be the principal facility for the Disposal of
31 Discarded Materials generated in the CITY; and,

32 **WHEREAS;** the CONTRACTOR guarantees permitted capacity at the Transfer Station and
33 Disposal Facility for up to twenty (20) years for Processing, Transfer, and Disposal of all
34 Discarded Materials generated in the CITY; and,

35 **WHEREAS;** the City Council of the City of Albany determines that in order to provide adequate
36 Processing, Transfer and Disposal, capacity, it is in the best interests of the CITY to secure a
37 commitment from CONTRACTOR for the right to a portion of the Transfer Station and Disposal
38 Facility's current Processing, Transfer, and Disposal, capacity on the terms and subject to the



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39 conditions set out in this Agreement. The intent of this provision is, in part, for the CITY to
40 contribute to preventing the substantial environmental, aesthetic, health, and safety problems
41 that may be created from increasing volumes of Solid Waste in this country; and,

42 **WHEREAS**, the CONTRACTOR has represented that it has the experience and ability to
43 provide for Processing, Transfer and Disposal of Discarded Materials, at the rates provided for
44 herein; and

45 **WHEREAS**, the CITY has entered into a Collection Service Agreement with CONTRACTOR to
46 provide Collection services within the CITY; and,

47 **WHEREAS**; the CONTRACTOR receives tipping fees from the CITY'S Collection Contractor for
48 the acceptance and processing of Collected Material at the Transfer Station and for the Transfer
49 of the unprocessed Discarded Materials to the Disposal Facility for final Disposal; and,

50 **WHEREAS**, the CITY determined that the CONTRACTOR has proposed to provide Processing
51 and Transfer services at the Transfer Station and Disposal services at the Disposal Facility in a
52 manner and on terms which are in the best interest of the CITY and its residents and
53 businesses, taking into account the qualifications and experience of the CONTRACTOR, and
54 the fees for providing such services; and,

55 **WHEREAS**, the CITY wishes to engage the CONTRACTOR to provide the services specified
56 within this Agreement, in accordance with the terms and conditions of this Agreement; and,

57 **WHEREAS**, the City Council of the City of Albany declares its intention of maintaining
58 reasonable rates for the Processing, Transfer or Disposal of Discarded Materials.

59 Now therefore, in consideration of the mutual promises, covenants, and conditions contained in
60 this Agreement and for other good and valuable consideration, the CITY and CONTRACTOR
61 agree as follows.
62

63 **ARTICLE 1. Definitions**

64 For the purpose of this Processing, Transfer and Disposal Agreement, ("Agreement"), the
65 definitions contained in this Article shall apply unless otherwise specifically stated. When not
66 inconsistent with the context, words used in the present tense include the future, words in the
67 plural include the singular, and words in the singular include the plural. Use of the masculine
68 gender shall include the feminine gender.

69 1.01 Agreement. The written document and all amendments thereto, between CITY
70 and CONTRACTOR, governing the provision of Processing, Transfer and Disposal Services as
71 provided herein, including all exhibits hereto, as it may be amended from time to time.

72 1.02 Agreement Administrator. The City Manager or his/her designee.

73 1.03 Alternative Daily Cover (ADC). Disposal Facility cover material, other than
74 Compostable Material and at least six (6) inches of earthen material, placed on the surface of
75 the active face of the refuse fill area at the end of each operating day to control vectors, fires,
76 odor, blowing litter, and scavenging as defined in Section 20164 of the California Code of
77 Regulations.

78 1.04 Bulky Items. Large discarded items including, but not limited to, Major
79 Appliances, furniture, un-mounted tires, carpets, mattresses, and other oversize materials
80 whose large size precludes or complicates their handling by normal Collection, Processing, or
81 Disposal methods, but can be Collected without the assistance of special loading equipment
82 (such as forklifts or cranes) and without violating collection vehicle legal load limits. Bulky Items
83 do not include abandoned automobiles, large auto parts or trees.

84 1.05 Business Days. Days during which CITY offices are open to do business with
85 the public.

86 1.06 Change in Law. Any of the following events or conditions which has a material
87 and adverse effect on the performance by the Parties of their respective obligations under this
88 Agreement (except for payment obligations):

89 1.06.1 The enactment, adoption, promulgation, issuance, modification, or written
90 change in administrative or judicial interpretation on or after the effective date of any applicable
91 law; or

92 1.06.2 The order or judgment of any governmental body, on or after the Effective
93 Date, to the extent such order or judgment is not the result of willful or negligent action, error or
94 omission or lack of reasonable diligence of the CITY or of the CONTRACTOR, whichever is
95 asserting the occurrence of a Change in Law; provided, however, that the contesting in good
96 faith or the failure in good faith to contest any such order or judgment shall not constitute or be
97 construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

98 1.07 CITY. The City of Albany, a charter city and a municipal corporation, and all the
99 territory lying within the municipal boundaries of the CITY as presently existing or as such,
100 boundaries may be modified during the Term. Unless otherwise specified in this Agreement any
101 action authorized or required by the CITY may be taken by the City Council or by an agent
102 designated by the City Council.

103 1.08 Collection Contractor. The company holding a current Collection Service
104 Agreement with the City of Albany.



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105 1.09 Compostable Material. Organics, and Yard Waste, which are segregated from
106 Solid Waste at the source of generation by the Collection Contractor customer.

107 1.10 Compostable Materials Processing Facility. The Davis Street Transfer Station or
108 such other alternative facility as may be set forth in Exhibit 4.

109 1.11 Construction and Demolition Debris (C&D). Discarded building materials,
110 packaging, and rubble resulting from construction, remodeling, repair or demolition operations
111 on any pavements, houses, Commercial buildings, or other structures. Construction refers to
112 SIC Codes 1521 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795.

113 1.12 CONTRACTOR. Waste Management of Alameda County, Inc., a corporation
114 organized and operating under the laws of the State of California and its officers, directors,
115 employees, agents, companies, and subcontractors.

116 1.13 Debris Box. An open-top metal Container with a capacity of six (6) to fifty (50)
117 cubic yards that is serviced by a roll-off collection vehicle.

118 1.14 Designated Waste. Non-Hazardous Waste which may pose special Disposal
119 problems because of its potential to contaminate the environment and which may be Disposed
120 of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the
121 California Department of Health Services. Designated Waste consists of those substances
122 classified as Designated Waste by the State of California, in California Code of Regulations Title
123 23, Section 2522.

124 1.15 Discarded Material. Solid Waste, Recyclable Materials, Organic Materials, or
125 Construction and Demolition Debris placed by a Generator in a receptacle and/or at a location
126 that is designated for Collection pursuant to the CITY'S Municipal Code.

127 1.16 Disposal. The final processing and disposition of Solid Waste and processing
128 residuals received by CONTRACTOR under the terms this Agreement. Disposal does not
129 include the use of Organic Materials as ADC so long as CITY and State regulations consider
130 ADC use of Organic Materials as diversion.

131 1.17 Disposal Facility. The Altamont Landfill and Resource Recovery Facility located
132 at 10840 Altamont Pass Road, Livermore, CA that is owned and operated by CONTRACTOR.

133 1.18 Food Scraps. Those materials that will decompose and/or putrefy including: (i)
134 all kitchen and table food waste, and animal or vegetable waste that attends or results from the
135 storage, preparation, cooking or handling of food stuffs, and (ii) paper waste contaminated with
136 food (such as, but not limited to, paper plates, napkins, pizza boxes, and paper towels
137 contaminated with food).

138 1.19 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,
139 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a
140 public enemy, wars, blockades, riots, or other industrial disturbances, eminent domain,
141 condemnation or other taking, or other events of a similar nature, not caused or maintained by
142 the CITY or CONTRACTOR, which event is not reasonably within the control of the party
143 claiming the excuse from its obligations due to such event, to the extent such event has a
144 significant and material adverse effect on the ability of a party to perform its obligations
145 thereunder. Force Majeure shall not include power outages, fuel shortages, Labor Actions
146 conducted by the CONTRACTOR, CONTRACTOR'S employees or directed at the
147 CONTRACTOR or subcontractor. Force Majeure shall include a Change in Law if such Change
148 in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) no event

149 relating to the Transfer Station or Disposal Facility or the delivery of Discarded Material to those
150 facilities shall constitute a Force Majeure under this Agreement unless (and then only to the
151 extent) that such event prevents the delivery of or acceptance of Discarded Material to or by
152 those facilities; (ii) no failure of performance by any subcontractor of the CONTRACTOR shall
153 be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as
154 provided herein, no event which merely increases CONTRACTOR'S cost of performance shall
155 be a Force Majeure; and (iv) no event, the effects of which could have been prevented by
156 reasonable precautions, including compliance with agreements and applicable laws, shall be a
157 Force Majeure.

158 1.20 Generator. Any Person as defined by the Public Resources Code, whose act or
159 process produces Solid Waste, Recyclable Materials, or Organic Materials as defined in the
160 Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

161 1.21 Guarantor. USA Waste of California, Inc. a Delaware Corporation and its
162 officers, directors, employees, agents, companies, and subcontractors.

163 1.22 Guaranty Agreement. The agreement contained in Exhibit 3, which is attached
164 to and included in this Agreement that is executed by the Guarantor guaranteeing the timely and
165 full performance of CONTRACTOR'S obligations.

166 1.23 Hazardous Waste. All substances defined as Hazardous Waste, acutely
167 Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and
168 Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications
169 of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental
170 Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act
171 (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations
172 promulgated thereunder.

173 1.24 Household Hazardous Waste. Any Hazardous Waste generated at a residential
174 premises within the CITY, including, but not limited to, automotive fluids, paints, varnishes,
175 solvents, pesticides, fertilizers, and batteries, except Recyclable Materials, waste oil or waste oil
176 filters, cell phones, household batteries and compact florescent lights received under the terms
177 of this Agreement.

178 1.25 Infectious Waste. Biomedical waste generated at hospitals, public or private
179 medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks,
180 mortuaries, veterinary facilities and other similar establishments that are identified in Health and
181 Safety Code Section 25117.5.

182 1.26 Labor Actions. Strikes, work stoppage or slowdown, sickout, lockout, picketing or
183 other concerted job action.

184 1.27 Major Appliance. Any residential device, including, but not limited to, washing
185 machines, clothes dryer, hot water heaters, dehumidifiers, conventional ovens, microwave
186 ovens, stoves, refrigerators, freezers, air-conditioners, trash compactors, and residential
187 furnaces discarded by residential Generators.

188 1.28 Organic Materials ("Organics"). Those Discarded Materials that will decompose
189 and/or putrefy and that the CITY'S Municipal Code permits, directs, and/or requires Generators
190 to separate from Solid Waste and Recyclable Materials for Collection in specially designated
191 Containers for Organic Materials Collection. Organic Materials include Yard Trimmings and
192 Food Scrap such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings,
193 branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of



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194 organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish
195 waste, paper contaminated with Food Scrap, pieces of unpainted and untreated wood, and
196 pieces of unpainted and untreated wallboard. No Discarded Material shall be considered to be
197 Organic Materials, however, unless such material is separated from Solid Waste and
198 Recyclable Material.

199 1.29 Party or Parties. The CITY and CONTRACTOR, individually or together.

200 1.30 Person(s). Any individual, firm, association, organization, partnership,
201 corporation, business trust, joint venture, the United States, the State of California, the County
202 of Alameda, and special purpose districts.

203 1.31 Processing. To prepare, treat, or convert through some special method.

204 1.32 Processing, Transfer and Disposal Services. The receipt and acceptance of all
205 Discarded Materials delivered under the terms of this Agreement to the Transfer Station and the
206 Processing and safe and lawful Transfer of such material to the Disposal Facility.

207 1.33 Recyclable Materials. Those materials that the City Code permits, directs and/or
208 requires Generators to set out in Recyclable Materials containers for Collection for the purpose
209 of Recycling. No Discarded Materials shall be considered Recyclable Materials unless such
210 material is separated from Solid Waste and Organic Materials. Recyclable Materials shall
211 include, but not be limited to: newspaper (including inserts, coupons, and store advertisements);
212 mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown
213 paper bags, brown paper, paperboard, paper egg cartons, telephone books, grocery bags,
214 colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other
215 similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of
216 any color (including brown, clear, and green glass bottles and jars); aluminum (including
217 beverage containers, foil, food containers, small pieces of scrap metal); small pieces of scrap
218 metal weighing less than ten (10) pounds and fitting into the Recyclable Materials Collection
219 container; steel, tin or bi-metal cans; plastic containers (no. 1 to 7); other rigid plastic which is
220 no more than fifteen (15) inches long in any dimension, except for expanded polystyrene (EPS),
221 plastic utensils and plastic clothes hangers; aseptic beverage boxes, dry cell household
222 batteries when placed in a sealed clear heavy-duty bag and set out for Collection in the manner
223 prescribed herein; cell phones when placed in a sealed clear heavy-duty bag and set out for
224 Collection in the manner prescribed herein; and those materials added by the CONTRACTOR
225 or CITY from time to time.

226 1.34 Recyclable Materials Processing Facility. The Davis Street Transfer Station or
227 such other alternative facility as may be set forth in Exhibit 4.

228 1.35 Salvageable Material. Those Discarded Materials that may be reused in their
229 existing form or may be reused after some form of Processing including, but not limited to,
230 Organic Materials and Recyclable Materials.

231 1.36 Solid Waste. All "Solid Waste" as defined in California Public Resources Code,
232 Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder that the City
233 Code requires Generators within the City to set out for Collection. Excluded from the definition
234 of Solid Waste are Construction and Demolition Debris, Hazardous Waste, Infectious Waste,
235 Designated Waste, Source Separated Recyclable Materials, Source Separated Organic
236 Materials, and radioactive waste. Notwithstanding any provision to the contrary, "Solid Waste"
237 may include de minimis volumes or concentrations of waste of a type and amount normally
238 found in residential Solid Waste after implementation of programs for the safe collection,

239 recycling, treatment and disposal of Household Hazardous Waste in compliance with Section
240 41500 and 41802 of the California Public Resources Code. Solid Waste includes Salvageable
241 Materials only when such materials are included for collection in a Solid Waste container.

242 1.37 Source Separated. The segregation, by the Generator, of materials designated
243 for separate collection for some form of Recycling, composting, recovery, or reuse

244 1.38 Ton (or Tonnage). A unit of measure for weight equivalent to two thousand
245 (2,000) standard pounds where each pound contains sixteen (16) ounces.

246 1.39 Transfer. The transporting of Discarded Material received at the Transfer Station
247 to the Disposal Facility for final Disposal.

248 1.40 Transfer Station. The facility designated by CONTRACTOR and approved by
249 CITY for the receipt, Processing, and Transfer of the Discarded Materials Collected by the
250 Collection Contractor. The Davis Street Transfer Station has been designated by
251 CONTRACTOR as the Transfer Station and approved by CITY pursuant to this Agreement.

252 1.41 Un-permitted Materials. Materials that the Transfer Station or Disposal Facility
253 may not receive under its permits.

254 1.42 Work Day. Any day, Monday through Friday that is not a holiday as set forth in
255 Section 5.07 of this Agreement.

256 1.43 Yard Trimmings. Those Discarded Materials that will decompose and/or putrefy,
257 including but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead
258 plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and
259 other types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard
260 Trimmings shall be placed in the Organic Materials container for collection and shall not exceed
261 six (6) inches in diameter and five (5) feet in length.

262 **ARTICLE 2. Term of Agreement**

263 2.01 Initial Term. The term of this Agreement shall continue in full force for a period of
264 twenty (20) years, subject to applicable law from 12.01 a.m. on November 1, 2011 to midnight of
265 October 31, 2031, unless the Agreement is extended by CITY pursuant to Section 2.02 or
266 terminated in accordance with the provision so of this Agreement.

267 2.02 Extension of Term. At CITY'S sole discretion, CITY may extend this Agreement
268 on one (1) or more occasions beyond October 31, 2031 provided that the combined extension
269 period(s) do not exceed five (5) years or extend beyond October 31, 2036. If the CITY extends
270 the Agreement, it shall give written notice to CONTRACTOR one hundred eighty (180) calendar
271 days prior to the initial expiration date or extended expiration date of this Agreement. The
272 CITY'S written notice shall specify the number of years by which it elects to extend the term of
273 this Agreement and the revised expiration date of the Agreement.

274 2.02.1

275 2.03 Effective Date and Commencement Date. The effective date of this Agreement
276 shall be the date the latter of the two Parties signs the Agreement. The commencement date
277 shall be November 1, 2011 and shall be the date on which CONTRACTOR initiates provision of
278 Processing, Transfer and Disposal Services required by this Agreement. Between the effective
279 date and commencement date, CONTRACTOR shall perform all activities necessary to prepare
280 itself to start Processing, Transfer and Disposal Services required by this Agreement on the
281 commencement date.



282 2.04 Conditions to Effectiveness of Agreement. The obligation of CITY to permit this
283 Agreement to become effective and to perform its undertakings provided for in this Agreement is
284 subject to the satisfaction of all the conditions below, each of which may be waived, in written
285 form, in whole or in part by CITY.

286 2.04.1 Accuracy of Representations. The representations and warranties made
287 in Article 3 of this Agreement are true and correct on and as of the effective date.

288 2.04.2 Absence of Litigation. There is no litigation pending on the effective date
289 in any court challenging the award or execution of this Agreement or seeking to restrain or
290 enjoin its performance.

291 2.04.3 Furnishings of Insurance and Performance Bond. CONTRACTOR has
292 furnished evidence of the insurance and performance bond required by Article 7 that is
293 satisfactory to the CITY.

294 2.04.4 Effectiveness of City Council Action. The City Council shall have taken
295 action approving this Agreement and all Parties shall have signed the Agreement pursuant to
296 applicable law prior to or on the effective date, provided that no restraining order of any kind has
297 been issued

298 **ARTICLE 3. Representations and Warranties of CONTRACTOR**

299 3.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly
300 existing and in good standing under the laws of the State. It is qualified to transact business in
301 the State and has the power to own its properties and to carry on its business as now owned
302 and operated and as required by this Agreement.

303 3.02 Corporate Authorization. CONTRACTOR has the authority to enter this
304 Agreement and perform its obligations under this Agreement. The Board of Directors of
305 CONTRACTOR (or the shareholders, if necessary) has taken all actions required by law, its
306 articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
307 The Person signing this Agreement on behalf of CONTRACTOR represents and warrants that
308 they have authority to do so. This Agreement constitutes the legal, valid, and binding obligation
309 of the CONTRACTOR.

310 3.03 Agreement Will Not Cause Breach. To the best of CONTRACTOR'S knowledge
311 after reasonable investigation, the execution or delivery of this Agreement or the performance
312 by CONTRACTOR of its obligations hereunder does not conflict with, violate, or result in a
313 breach: (i) of any law or governmental regulation applicable to CONTRACTOR; or (ii) any term
314 or condition of any judgment, order, or decree of any court, administrative agency or other
315 governmental authority, or any Agreement or instrument to which CONTRACTOR is a party or
316 by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default
317 thereunder.

318 3.04 No Litigation. To the best of CONTRACTOR'S knowledge after reasonable
319 investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or
320 by any court or governmental authority, commission, board, agency or instrumentality decided,
321 pending or threatened against CONTRACTOR wherein an unfavorable decision, ruling or
322 finding, in any single case or in the aggregate, would:

323 3.04.1 Materially adversely affect the performance by CONTRACTOR of its
324 obligations hereunder;

325 3.04.2 Adversely affect the validity or enforceability of this Agreement; or
326 3.04.3 Have a material adverse effect on the financial condition of
327 CONTRACTOR, or any surety or entity guaranteeing CONTRACTOR'S performance under this
328 Agreement.

329 3.05 No Adverse Judicial Decisions. To the best of CONTRACTOR'S knowledge after
330 reasonable investigation, there is no judicial decision that would prohibit this Agreement or
331 subject this Agreement to legal challenge.

332 3.06 No Legal Prohibition. To the best of CONTRACTOR'S knowledge after
333 reasonable investigation, there is no applicable law in effect on the date CONTRACTOR signed
334 this Agreement that would prohibit the CONTRACTOR'S performance of its obligations under
335 this Agreement and the transactions contemplated hereby.

336 3.07 CONTRACTOR'S Statements. CONTRACTOR'S proposal and any other
337 supplementary information submitted to the CITY, which the CITY has relied on in negotiation
338 and entering into this Agreement, do not: (i) contain any untrue statement of a material fact, or
339 (iii) omit to state a material fact that is necessary in order to make the statements made, in light
340 of the circumstances in which they were made, not misleading.

341 3.08 CONTRACTOR'S Investigation. CONTRACTOR has made an independent
342 investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement
343 and the work to be performed hereunder. CONTRACTOR has taken such matters into
344 consideration in entering this Agreement to provide services in exchange for the compensation
345 provided for under the terms of this Agreement.

346 3.09 Ability To Perform. CONTRACTOR possesses the business, professional, and
347 technical expertise to Transport, Process, and Dispose the Discarded Materials generated in the
348 CITY. CONTRACTOR possesses the equipment, facility(ies), and employee resources required
349 to perform its obligations under this Agreement.

350 **ARTICLE 4. Obligations of CITY**

351 4.01 General. CITY and CONTRACTOR acknowledge that CITY will not be
352 responsible for the payment of tipping fees for Discarded Materials delivered to the Transfer
353 Station or Disposal Facility by Collection Contractor. CITY contractually controls the delivery of
354 Discarded Materials Collected in CITY by the Collection Contractor and shall direct Collection
355 Contractor to deliver such Discarded Materials to the Transfer Station. CONTRACTOR
356 acknowledges that CITY has no ability to direct individuals who self-haul to use the Transfer
357 Station or Disposal Facility and does not contractually control the Collection Contractor's
358 residue from its Recyclable and Compostable Materials processing activities. Except as set
359 forth below, Discarded Materials shall not be delivered by CITY to the Disposal Facility, except
360 in an emergency.

361 4.02 CITY Self-Haul. CITY may self-haul Discarded Materials generated by or at any
362 building, structure, yard, park, or any other facility owned, leased, or operated by CITY to the
363 Transfer Station. CITY shall not deliver Discarded Materials to the Disposal Facility except in an
364 emergency.

365 4.03 Hazardous Material Programs. CITY shall contractually require its Collection
366 Contractor to develop and implement a load inspection program to detect and discover
367 Hazardous Waste and Household Hazardous Waste and shall prohibit Collection Contractor
368 from knowingly delivering such material to the Transfer Station or Disposal Facility. CITY shall



369 encourage its residents to participate in the Alameda County Household Hazardous Waste
370 Program that provides residents with a place for safe Recycling, treatment, and/or disposition of
371 Household Hazardous Waste. The parties recognize, however, that CITY cannot assure
372 CONTRACTOR that such programs will prevent any amount of Hazardous Waste or Household
373 Hazardous Waste from being delivered to the Transfer Station or Disposal Facility.

374 **ARTICLE 5. Obligations of CONTRACTOR**

375 5.01 General. During the term of this Agreement, and consistent with Section 5.14
376 herein, CONTRACTOR shall provide Processing, Transfer and Disposal Services under the
377 terms and conditions of this Processing, Transfer and Disposal Service Agreement.
378 CONTRACTOR shall perform its obligations with respect to Processing, Transfer and Disposal
379 Services hereunder in accordance with sound management and operations practice, regulatory
380 and permit requirements, applicable law, the provisions hereof, and covenants, conditions, and
381 restrictions pertaining to the Processing, Transfer or Disposal of Solid Waste.

382 5.02 Facility Permits.

383 5.02.1 Existing Permits. CONTRACTOR shall obtain, at its own expense, all
384 permits and licenses required by law or ordinance and maintain same in full force and effect
385 throughout the term of this Agreement. CONTRACTOR shall provide proof of such permits,
386 licenses or approvals and shall demonstrate compliance with the terms and conditions of such
387 permits, licenses and approvals upon the request of the Contract Administrator.

388 5.02.1.1 CONTRACTOR shall keep CITY fully informed, in a timely
389 manner, of its progress in securing permits, or renewals of permits, which occur during the term
390 of this Agreement as they pertain to the Processing, Transfer or Disposal operations at the
391 Transfer Station or Disposal Facility as appropriate in accordance with this Agreement and the
392 costs related thereto.

393 5.02.1.2 CONTRACTOR shall provide CITY, upon CITY'S request,
394 with copies of any applications that CONTRACTOR submits to any regulatory body in
395 connection with the issuance of new permits, or the extension, revision or modification of
396 existing permits with respect to the Transfer Station or Disposal Facility.

397 5.03 CONTRACTOR Compliance with Permits. CONTRACTOR shall comply with all
398 permits, terms, and conditions of such permits as they may be amended or superseded
399 (including any mitigation measures) related to the operation and maintenance of the Transfer
400 Station or Disposal Facility. CONTRACTOR shall be solely responsible for paying any fines or
401 penalties imposed by governmental agencies for CONTRACTOR'S noncompliance with permit
402 terms or CONTRACTOR'S failure to obtain necessary permits for the Transfer Station or
403 Disposal Facility.

404 5.04 Operations. CONTRACTOR, at its cost and expense, shall operate the Transfer
405 Station and Disposal Facility in the manner required by applicable law and permits.
406 CONTRACTOR'S responsibilities for the Transfer Station and Disposal Facility shall include, but
407 are not limited to, the following:

408 5.04.1 Operation, management, and maintenance of the Transfer Station and
409 Disposal Facility will comply with sound management and operations practice, regulatory and
410 permit requirements, applicable law, standard industry practices, and covenants, conditions and
411 restrictions pertaining to the site;

412 5.04.2 Provision, operation, and maintenance of all equipment, rolling stock, and
413 supplies necessary for operations, and environmental monitoring;

414 5.05 Days and Hours of Operation. CONTRACTOR shall operate the Transfer
415 Station and Disposal Facility for the receipt, Processing and Transfer of Discarded Materials in
416 accordance with the days and hours of operation as set forth in all permits. At a minimum,
417 CONTRACTOR shall accept Discarded Materials delivered by the Collection Contractor Monday
418 through Friday from 6:00 a.m. to 5:00 p.m. In addition, on Saturday, CONTRACTOR shall
419 accept Discarded Material delivered by the Collection Contractor which was collected from
420 normally scheduled Saturday route activity or as the result of collection on a Saturday due to a
421 Holiday. CONTRACTOR may not reduce the hours or total number of hours for acceptance of
422 Discarded Materials delivered by the Collection Contractor required by the Agreement without
423 the concurrence of CITY and Collection Contractor except such changes required by a change
424 in the Transfer Station or Disposal Facility permits.

425 5.06 Emergency Services. In the event of a tornado, major storm, earthquake, fire,
426 natural disaster, or other such event, the Agreement Administrator may require CONTRACTOR
427 to extend the hours of operation in order to accept materials from CITY'S Collection Contractor.
428 However, CONTRACTOR shall not be required to extend the hours of operation to the extent
429 that such extension would cause CONTRACTOR to violate its permit(s).

430 5.07 Holidays. CONTRACTOR shall not be required to accept Solid Waste from the
431 Collection Contractor at the Transfer Station on New Years Day, Labor Day, Thanksgiving Day
432 and Christmas Day.

433 5.08 Traffic Control and Direction. CONTRACTOR shall provide necessary signs and
434 personnel to assist drivers to proper unloading areas. CONTRACTOR shall provide and
435 maintain signs for the convenience of vehicles using the Transfer Station so that vehicles travel,
436 queue, unload, exit in a safe manner. CONTRACTOR will operate the facility using best efforts
437 and operating practices to facilitate the safe and efficient traffic flow at the Transfer Station to
438 ensure that no vehicles queue on public streets in the normal course of business.

439 5.09 Average Processing Time.

440 5.09.1 In the event CONTRACTOR is not the Collection Contractor as defined
441 under this Agreement, CONTRACTOR shall operate the Transfer Station so that all Collection
442 Contractor Collection vehicles are processed, unloaded, and exited from the facility no more
443 than twenty (20) minutes, on average, after arriving at the scale house and mounting the scale
444 to weigh-in. (For purposes of this Section 5.09.1, "on average" shall be calculated on a monthly
445 basis.)

446 5.09.2 In the event CONTRACTOR is the Collection Contractor, but CITY has
447 exercised its authority to have other personnel Collect and deliver Discarded Materials to the
448 Transfer Station as a result of a strike or other labor unrest, CONTRACTOR shall operate the
449 Transfer Station so that all Collection vehicles delivering Discarded Materials from CITY are
450 processed, unloaded, and exited from the facility no more than twenty (20) minutes, on average,
451 unless CITY has approved a strike implementation plan specifying a longer time period, after
452 arriving at the scale house and mounting the scale to weigh-in.

453 5.10 Scale Operation.

454 5.10.1 Weighing Standards and Procedures. The scale house(s) at the Transfer
455 Station entrance shall serve as the location for weighing vehicles and charging tipping fees as
456 provided herein. All weighing shall be conducted by CONTRACTOR or its agents by a licensed



457 weigh master. CONTRACTOR scale house personnel shall be responsible for inspecting the
458 Discarded Materials delivered to the Transfer Station. The Collection Contractor vehicles shall
459 be charged tipping fees based on the Tonnage of Discarded Materials accepted by the Transfer
460 Station and the applicable Disposal or Processing rates as set forth in Exhibit 1 which is
461 attached to and included in this Agreement. CONTRACTOR shall weigh and record inbound
462 weights of all Collection Contractor vehicles when the vehicles arrive at the Transfer Station. In
463 addition, CONTRACTOR shall weigh and record outbound weights of such vehicles for which
464 CONTRACTOR does not maintain tare weight information. CONTRACTOR shall provide each
465 driver with a receipt showing the date, time, and quantity and type of Discarded Materials
466 delivered to the Transfer Station and the tipping fee charged for such material. The scale house
467 computer system shall compile information into various reports which typically include for each
468 transaction, documentation of the tipping fee charged, weight of vehicle, vehicle identification
469 number, customer account, material type, route number, vehicle type, and origin of Discarded
470 Materials.

471 5.10.2 Maintenance and Operation. CONTRACTOR shall maintain, in
472 accordance with applicable law, at least two (2) State certified motor vehicle scales at the
473 Transfer Station. All scales shall be linked to a centralized computer recording and billing
474 system which shall be compatible with CONTRACTOR'S systems and account for tracking all
475 incoming and outgoing materials. CONTRACTOR shall operate such scales during facility
476 receiving hours, established in Section 5.05, provided that CONTRACTOR shall provide CITY
477 with access to weighing information at all times and copies thereof on the next Business Day on
478 which the scale house is open.

479 5.10.3 Vehicle Tare Weights. Between the time this Agreement is executed and
480 November 1, 2011, CONTRACTOR shall weigh and determine the unloaded ("tare") weight of
481 each Collection Contractor vehicle to be used to deliver Discarded Materials to the Transfer
482 Station beginning November 1, 2011. Before November 1, 2011, CONTRACTOR shall provide
483 CITY and Collection Contractor with a report listing vehicle tare weight information, which shall
484 include, at a minimum, hauler name, tare weight, vehicle identification number, and date tare
485 weight was determined. CONTRACTOR shall, at least every six (6) months, reweigh and revise
486 tare weights for all Collection Contractor vehicles used to deliver Discarded Materials to the
487 Transfer Station.

488 5.10.3.1 When new vehicles are placed into service and
489 immediately after any significant repairs to vehicles by the Collection Contractor, the
490 CONTRACTOR shall promptly weigh such vehicles and determine the tare weight of each
491 vehicle. Within ten (10) Business Days of weighing, CONTRACTOR shall provide CITY and
492 Collection Contractor with a report listing vehicle tare weight information. CONTRACTOR,
493 CITY, and Collection Contractor shall have the right to request re-weighing of vehicles up to two
494 (2) times per year, unless there is reasonable suspicion or evidence that tare weights are not
495 accurate, in which case, tare weights may be updated more frequently to ensure accuracy.

496 5.10.4 Substitute Scales. To the extent practicable, if either scale is inoperable,
497 being tested or otherwise unavailable, all vehicles shall be weighed on the remaining operating
498 scale. To the extent that both the scales are inoperable, being tested, or otherwise unavailable,
499 CONTRACTOR shall substitute portable scales until the permanent scales are replaced or
500 repaired. CONTRACTOR shall arrange for any inoperable scale to be repaired as soon as
501 possible and, in any event, within three (3) Work Days of the failure of the permanent scale.
502 CONTRACTOR shall arrange to immediately obtain a temporary substitute scale(s) should the
503 repair of the permanent scale require more than twelve (12) hours.

504 5.10.5 Estimates. Pending substitution of portable scales or during power
505 outages, CONTRACTOR shall estimate the Tonnage of Discarded Materials delivered to the
506 Transfer Station or Disposal Facility by utilizing the arithmetic average of that vehicle's recorded
507 Tons of Discarded Materials delivered on its preceding three (3) deliveries, on the same day of
508 the week, to the Transfer Station, with the exception that the Tonnage estimated in Debris
509 Boxes shall be made by multiplying the estimated number of cubic yards of Discarded Materials
510 delivered per Debris Box by twenty five one hundred (0.25) Tons per cubic yard for mixed Solid
511 Waste or such other amounts as may be agreed to in writing between CONTRACTOR and
512 CITY.

513 5.10.5.1 All information required by this Article shall continue to be
514 recorded for each delivery of Discarded Materials to the Transfer Station during any period the
515 scales are out of service.

516 5.10.6 Testing. CONTRACTOR shall test and calibrate all scales in accordance
517 with applicable law, but at least every twelve (12) months. Upon CITY request, CONTRACTOR
518 shall provide CITY with copies of test results. CONTRACTOR shall further test and calibrate
519 any or all scales upon written request therefore by CITY, within three (3) Work Days of such
520 request. If such test results indicate that the scale or scales complied with applicable law, CITY
521 shall reimburse CONTRACTOR the direct costs of such tests. If such test results indicate that
522 the scale or scales did not comply with applicable law, CONTRACTOR shall bear the costs
523 thereof and CONTRACTOR shall at its own cost adjust and correct, consistent with the results
524 of such test, all weight measurements recorded and tipping fees calculated, charged and paid,
525 as the case may be, from the date of such request.

526 5.10.7 Records. CONTRACTOR shall maintain scale records that provide
527 information such as, but not limited to, date of receipt, inbound and outbound time, inbound and
528 outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials
529 received, type of material, hauler identification and/or classification, type, weight, destination of
530 material (i.e., to material recovery operations), and destination of outbound materials.

531 5.11 Personnel. CONTRACTOR shall engage and train qualified and competent
532 employees, including managerial, supervisory, clerical, maintenance, and operating personnel,
533 in numbers necessary and sufficient for operation of the Transfer Station and Disposal Facility
534 and to perform CONTRACTOR'S obligations hereunder.

535 5.12 Ownership of Materials. Once Discarded Materials are delivered to the Transfer
536 Station by Collection Contractor, ownership and possession of such material shall transfer
537 directly from the Collection Contractor to CONTRACTOR. CONTRACTOR is hereby granted
538 the right to retain, recycle, Process, Dispose of and otherwise use such materials, or any part
539 thereof, in any lawful fashion or for any lawful purpose desired by CONTRACTOR and such
540 right shall include CONTRACTOR'S right to retain any benefit resulting from its right to retain,
541 recycle, Process, Dispose of, or reuse the Discarded Materials.

542 5.13 Rejection of Un-permitted Material.

543 5.13.1 Inspection. CONTRACTOR shall use standard industry practices to
544 endeavor to detect and discover Un-permitted Material and shall not knowingly accept Un-
545 permitted Material at the Transfer Station. CONTRACTOR shall comply with the inspection
546 procedures contained in its permit requirements. CONTRACTOR shall promptly modify such
547 procedure to reflect any changes in permits or applicable law.



548 5.13.2 Un-permitted Materials Handling and Costs. CONTRACTOR shall
549 arrange for or provide transportation and delivery to an appropriately permitted facility of all Un-
550 permitted Materials that are accepted at the Transfer Station. CONTRACTOR is solely
551 responsible for handling and arranging transport and disposition of any Un-permitted Material
552 that is contained in or with Discarded Materials accepted by the CONTRACTOR, and for all
553 related costs.

554 5.13.3 Remedies for Rejected Materials. If CONTRACTOR rejects material
555 delivered to the Transfer Station by Collection Contractor, because it contains Un-permitted
556 Material including Hazardous Materials, CONTRACTOR shall direct Collection Contractor to
557 remove and dispose of it in a safe and lawful manner, at the sole expense of the Collection
558 Contractor. In the event that Un-permitted Material is delivered to the Transfer Station,
559 CONTRACTOR shall be entitled to pursue whatever remedies, if any, it may have against
560 Collection Contractor's bringing such Un-permitted Material to the Transfer Station, provided
561 that in no case shall CITY be considered to have brought such Un-permitted Material to the
562 Transfer Station. In the event the Collection Contractor delivers Un-permitted Materials on a
563 frequent or continuous basis and the Collection Contractor refuses to provide for the proper
564 handling and disposition of such Un-permitted Material, CONTRACTOR shall provide written
565 notice to CITY of such refusal by Collection Contractor. Nothing herein shall excuse
566 CONTRACTOR from the responsibility of handling such Un-permitted Materials in a lawful
567 manner and to arrange for the proper disposition of such materials.

568 5.13.4 Notification. In the event CONTRACTOR is not the Collection Contractor
569 and CONTRACTOR rejects delivered materials, CONTRACTOR shall immediately notify the
570 Collection Contractor verbally and then follow such verbal notification with written notice. The
571 written notice will identify: the date and time of occurrence; material type; material weight or
572 volume; characterization of material; and CONTRACTOR'S reason for rejection of the delivered
573 material.

574 5.14 Reservation of Transfer and Disposal Capacity. CONTRACTOR guarantees its
575 ability to accept, Process, Transfer and Dispose all Discarded Materials delivered to the
576 Transfer Station by the Collection Contractor for twenty (20) years from November 1, 2011.
577 CONTRACTOR shall be responsible for reasonably estimating the quantity of capacity that it
578 shall be required to provide to accept, Process, Transfer and Dispose of all Discarded Materials
579 generated in CITY over the term of the Agreement. CITY makes no representations, and is
580 under no obligation, regarding the quantity or composition of the Discarded Materials delivered
581 to the Transfer Station by the Collection Contractor.

582 5.15 Alternate Transfer Station or Disposal Facility.

583 5.15.1 If CONTRACTOR becomes unable to accept Discarded Materials
584 generated in CITY at the Transfer Station because it did not use reasonable business efforts in
585 resisting changes, alterations and amendments to permits, or due to reasons within its control
586 and which could have been avoided by the exercise of due care, or as the result of any labor
587 unrest, including but not limited to, strike, work stoppage or slowdown, sick-out, lockout,
588 picketing, or other concerted job action conducted by CONTRACTOR, CONTRACTOR'S
589 employees or subcontractors, then and only if, and to the extent, CONTRACTOR is actually
590 prevented from accepting, Processing and/or Transferring Discarded Materials at the Transfer
591 Station because of a concerted labor action, CONTRACTOR shall (i) accept, Process, Transfer
592 and Dispose of such Discarded Materials at another Transfer Station or Disposal Facility owned
593 by it (or by another company which is owned and controlled, directly or indirectly, by
594 CONTRACTOR), as set forth in Exhibit 4, at the then-current tipping fees in effect under this

595 Agreement, and shall pay any additional transportation costs incurred by Collection Contractor
596 in delivering the Discarded Materials to the other Transfer Station or Disposal Facility, or (ii)
597 shall arrange for all Discarded Materials to be accepted, and Disposed at a disposal facility not
598 owned by it or an affiliated company, as set forth in Exhibit 4, in which case CONTRACTOR
599 shall pay any difference in the fees charged at such disposal facility plus any additional
600 transportation costs incurred in delivering Discarded Materials to the disposal facility, and the
601 then-current tipping fees in effect under this Agreement. If as a result of a labor action directed
602 at CONTRACTOR, CONTRACTOR makes arrangements that allow for continued operation of
603 the Transfer Station during the labor action, then it shall not be obligated to provide an
604 alternative Transfer Station or Disposal Facility and CITY shall be required to direct all
605 Discarded Materials to the Transfer Station or Disposal Facility providing operations at the
606 Transfer Station or Disposal Facility are consistent with the requirements under this Agreement.

607 5.15.2 If CONTRACTOR, despite using reasonable business efforts to resist
608 changes, alterations and amendments to permits under Section 5.02, becomes unable to
609 accept, Process, Transfer and Dispose Discarded Materials generated in CITY at the Transfer
610 Station or Disposal Facility, or if CONTRACTOR becomes unable to accept, Process, Transfer
611 and Dispose Discarded Materials at the Transfer Station or Disposal Facility as the result of an
612 event of Force Majeure as defined herein then CONTRACTOR shall, to the extent it is legally
613 able to do so, offer to accept, Process, Transfer and Dispose, of Discarded Materials at another
614 disposal facility or a transfer station owned by it (or by another company which is owned and
615 controlled, directly or indirectly, by CONTRACTOR), as set forth in Exhibit 4, at the then-current
616 tipping fees in effect under this Agreement. CONTRACTOR has no obligation, however, to pay
617 for additional transportation costs incurred by the Collection Contractor. CITY has no obligation
618 to accept such offer and, if CITY rejects such an offer, CITY may terminate this Agreement by
619 giving written notice in the manner as set forth in Article 13 of this Agreement. Such termination
620 shall be effective thirty (30) calendar days after CITY has given notice.

621 5.16 Monthly Report. Beginning on November 1, 2011, and monthly during the term
622 of this Agreement, CONTRACTOR shall provide a complete and accurate monthly report no
623 later than twenty (20) calendar days after the end of the reporting month. Therefore, the first
624 report will be due no later than December 20, 2011 for the reporting month of November 2011.
625 The report shall include the total Tonnage of Discarded Materials generated in the CITY that
626 was accepted, Processed, and Transferred at the Transfer Station and Disposed at the Disposal
627 Facility. The information shall be listed separately for each material type and each Generator
628 type and shall also list separate data for materials generated in the CITY delivered by other
629 companies or small vehicles, and self-hauled materials. In addition, the monthly report shall
630 include the following using an allocation methodology, where appropriate, that is acceptable to
631 CITY:

632 5.16.1 Tonnage information by material type for material accepted at the
633 Transfer Station;

634 5.16.2 Tonnage information and location of material transferred for Disposal;

635 5.16.3 Number and nature of rejected loads during the month;

636 5.16.4 Number and nature of occurrences in which CONTRACTOR identified
637 Hazardous Waste inadvertently accepted; and

638 5.16.5 Number and nature of any notice of violations.



639 5.17 Annual Report of Transfer Station Activity. Beginning February 15, 2012 and
640 annually thereafter during the term of this Agreement, CONTRACTOR shall submit a complete
641 and accurate annual report of Transfer Station activity to CITY. Annual reports shall be
642 submitted no later than forty-five (45) calendar days after the end of each calendar year.
643 Therefore, the first report will be due no later than February 15, 2012 for the reporting year of
644 November 2011 through December 2011. This report shall contain all items required by this
645 Section which, at a minimum, include the following: A list of parties that CONTRACTOR has
646 guaranteed capacity to through written agreements, the annual estimated Tonnage to be
647 delivered by each party, and the term of the CONTRACTOR'S capacity commitment. In the
648 event CONTRACTOR has agreements with private companies, the name of the party may be
649 withheld from the list; however, the annual tonnage estimate and term of the commitment must
650 be provided.

651 5.17.1 The annual report shall include information on amounts of Discarded
652 Materials delivered to the Transfer Station, Transferred and Disposed, Recycled or diverted and
653 other information which CITY may request in order to meet its obligations under the California
654 Waste Management Act of 1989.

655 5.17.2 The annual report shall also include the identification of severe market
656 depressions for Recyclable Materials and contingency plans for such events and a list of
657 Recyclable Materials brokers and buyers used by the CONTRACTOR or subcontractor.

658 5.18 Correction of Reports. In the event CONTRACTOR is notified in writing by CITY
659 of the need to resubmit a corrected monthly or annual report, as set forth in Section 5.16 or 5.17
660 above, CONTRACTOR shall submit the corrected report within three (3) Business Days of the
661 written notification.

662 5.19 Right to Enter Transfer Station and Observe Operations. Upon reasonable
663 written notice of not less than twenty-four (24) hours, CITY and its designated representative(s)
664 shall have the right to enter, observe and inspect the Transfer Station at any time during
665 operations; conduct studies or surveys of the Transfer Station; meet with the Transfer Station
666 manager(s) or their representatives at any time; and meet with other employees upon request,
667 which request shall not be unreasonably denied by CONTRACTOR, provided that CITY and its
668 representatives comply with CONTRACTOR'S reasonable safety and security rules and shall
669 not interfere with the work of CONTRACTOR or its subcontractors. However, in the event the
670 Transfer Station manager is not on the premises at the time CITY or its designated
671 representative(s) visit CONTRACTOR'S facility, CITY or its designated representative shall not
672 be able to inspect some or all areas of the facility and CONTRACTOR shall not be in breach of
673 this Agreement. In such case, CITY shall give notice requesting access to the site and
674 CONTRACTOR shall arrange for CITY or its designated representative(s) to conduct the on-site
675 inspection within twenty-four (24) hours of such notice. Upon CITY request, CONTRACTOR
676 shall make personnel available to accompany CITY employees on inspections. CONTRACTOR
677 shall ensure that its employees cooperate with CITY and respond to CITY 'S reasonable
678 inquiries.

679 5.20 Provision of Emergency Services. CONTRACTOR shall provide emergency
680 services, at CITY'S request, in the event of major accidents, disruptions, or natural calamities.
681 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours
682 of notification by CITY, or as soon thereafter as is reasonably practical, in light of the
683 circumstances. Emergency services, which exceed CONTRACTOR'S obligations under this
684 Agreement including, but not limited to, obligations related to facility receiving hours, the types
685 and quantities of permitted materials accepted at the Transfer Station or Disposal Facility, the

686 nature of resource recovery activities, and transfer requirements, shall be compensated through
687 a modification to the scope of services using procedures set forth herein.

688 5.21 Modifications to Scope of Service.

689 5.21.1 General. CITY may direct CONTRACTOR to perform additional services
690 (including, but not limited to, performance of additional resource recovery activities) or modify
691 the manner in which CONTRACTOR performs existing services (including, but not limited to, the
692 modifications to or elimination of services, subject to CONTRACTOR'S continued exclusive
693 rights hereunder). CONTRACTOR'S Disposal rates shall be increased or decreased, as
694 appropriate, to give effect to these adjustments.

695 5.21.2 Proposal for Modification of Services. Within sixty (60) calendar days of
696 CITY request for a proposal, CONTRACTOR shall present its proposal to modify existing
697 services. At a minimum, the proposal shall contain a complete description of the following:

698 5.21.2.1 Program objectives and goals to be used in measuring the
699 success of the program as discussed in Section 5.21.5 below;

700 5.21.2.2 Methodology to be employed (changes to equipment,
701 manpower, staffing, etc.);

702 5.21.2.3 Equipment to be utilized (equipment number, types,
703 capacity, age, etc.);

704 5.21.2.4 Labor requirements (changes in number of employees by
705 classification);

706 5.21.2.5 Provision for program publicity, education, and marketing
707 (if appropriate);

708 5.21.2.6 Estimate of the impact of the service modification
709 (increased Diversion tonnage, reduced costs, increased public service, etc.); and

710 5.21.2.7 Five (5) year projection of the financial results of the
711 program's operations in an operating statement format including documentation of the key
712 assumptions underlying the projections and the support for those assumptions, giving full effect
713 to the savings or costs to existing services.

714 5.21.2.8 Proposed tip fees that reflect the service change with
715 supporting documentation of the calculation and justification for the change in Rates.

716 5.21.3 CITY'S Review. Within ninety (90) calendar days of receiving
717 CONTRACTOR'S proposal, CITY shall review and comment on, and approve or disapprove of
718 the modification to the scope of services. CITY and CONTRACTOR may mutually agree to
719 extend the time period for review due to the complexity of the scope of service modification
720 under consideration, the time needed for the review or approval, or for other reasonable
721 reasons.

722 5.21.3.1 CITY may request the assistance of an independent third
723 party to review the proposal. The reasonable costs of such review shall be paid by
724 CONTRACTOR if the modification to the scope of services is initiated by CONTRACTOR or, by
725 CITY if the modification to the scope of services is initiated by CITY. CONTRACTOR'S refusal
726 to pay the reasonable cost of review of a CONTRACTOR-initiated proposal shall be grounds for
727 CITY rejection of such proposal.



728 5.21.3.2 CITY may request copies of, or access to,
729 CONTRACTOR'S operating and business records reasonably required to verify the
730 reasonableness and accuracy of the impacts associated with a modification to the scope of
731 services. CONTRACTOR shall fully cooperate with CITY'S request and provide CITY and its
732 agent(s) copies of or access to CONTRACTOR'S records.

733 5.21.4 Approval of Modification to Scope of Services. Upon CITY approval or
734 determination, CITY will issue a notice approving the modification to the scope of service and
735 documenting any change to CONTRACTOR'S tipping fees, and approved change to
736 CONTRACTOR'S obligations hereunder. The parties shall prepare a written amendment to the
737 Agreement documenting any and all changes resulting from the modification to the scope of
738 services. No adjustment in CONTRACTOR'S Disposal or Processing rates, change in
739 CONTRACTOR'S obligations, or change in scope of services shall become effective absent
740 such CITY approval or determination.

741 5.21.5 Termination for Cause. CITY shall have the right to terminate a
742 program for cause, at no cost to CITY or CITY'S ratepayers if the CONTRACTOR is not
743 achieving the program's agreed to and defined goals and objectives. Prior to such termination
744 CITY shall meet and confer with CONTRACTOR for a period of up to ninety (90) calendar days
745 to resolve CITY'S concerns. Thereafter, CITY may terminate the program if CITY reasonably
746 believes CONTRACTOR cannot meet or is not meeting the agreed to and defined project goals
747 and objectives. Notwithstanding these changes, CONTRACTOR shall continue the program
748 during the ninety (90) day period unless instructed in writing by CITY to discontinue the
749 program.

750 5.21.6 Termination without Cause. CITY shall also have the right to terminate a
751 program without cause. Prior to such termination, and as a condition of the termination, CITY
752 shall reimburse CONTRACTOR for all costs incurred for implementation and performance of the
753 program that were identified in the program proposal prepared and submitted by
754 CONTRACTOR and agreed to by CITY which will have not been funded or otherwise recovered
755 through program compensation at the time the program is terminated.

756 5.22 Recovered Materials. CONTRACTOR shall use reasonable efforts to operate
757 the Transfer Station so as to segregate Salvageable Materials. CONTRACTOR shall document
758 the quantity of Salvageable Materials removed from the Solid Waste delivered by the Collection
759 Contractor for recycling and the quantity of such material diverted from Disposal.
760 CONTRACTOR shall calculate the quantity of Salvageable Materials diverted from Disposal on
761 a monthly basis using a methodology acceptable to CITY and shall report thereon in
762 accordance with reporting requirements in Sections 5.16 and 5.17. CONTRACTOR shall
763 provide resource recovery programs as may be agreed between the CITY and CONTRACTOR
764 to divert Recoverable Materials from Disposal.

765 5.23 Recovered Materials Revenues. CONTRACTOR shall retain all revenues
766 generated from the sale of Salvageable Materials.

767 5.24 Other Services. CONTRACTOR shall provide additional services not otherwise
768 contemplated under this Agreement at a price to be mutually agreed upon between Agreement
769 Administrator and CONTRACTOR. In the event CONTRACTOR and Agreement Administrator
770 cannot agree on terms, conditions and price of such service or program CITY shall have the
771 right to procure the service of other vendors or contractors to provide the requested service or
772 program at a location other than CONTRACTOR'S Transfer Station or Disposal Facility.

773 5.25 CITY Delivered Materials. CONTRACTOR shall accept, Process, Transfer and
774 Dispose of dirt and debris, Bulky Items, whole tires, and other Discarded Materials which are
775 collected by CITY crews and delivered by CITY vehicles to the Transfer Station at no charge to
776 CITY.

777 5.26 Holiday Trees. Holiday trees delivered to the Transfer Station by the Collection
778 Contractor or self hauled by residents of the CITY shall be used to produce mulch or Compost
779 Product or diverted from landfill Disposal in an alternative manner to count as diversion in
780 accordance with the Act with the exception that holiday trees may not be used as ADC or for
781 transformation fuel without prior written approval from the CITY.

782 5.27 Handling Major Appliances. Major Appliances shall be reused and Recycled, or
783 as a last resort, Disposed by CONTRACTOR in accordance with requirements of applicable
784 law. Any changes to such regulations made after the Effective Date shall be addressed as
785 though they are a Change in Law.

786 5.28 Construction and Demolition Debris Collection. CONTRACTOR shall Process
787 C&D from the Collection Contractor so that fifty (50) percent (measured by weight) of the C&D
788 delivered by the Collection Contractor is diverted from Disposal through reuse or Recycling.
789 CONTRACTOR shall track the C&D Tonnage Processed, Disposed, and diverted and provide
790 supporting documentation (in the form of Processing and Disposal Site weigh tickets) if
791 requested by the CITY. If CONTRACTOR fails to meet the fifty (50) percent diversion
792 requirement on a quarterly basis, the CONTRACTOR shall pay the CITY Liquidated Damages
793 as described in Section 16.02.

794 5.29 Agreement Negotiation Fee. No later November 15, 2011, CONTRACTOR shall
795 submit agreement negotiation fees to the CITY in the amount of twenty thousand dollars
796 (\$20,000.00).

797 **ARTICLE 6. Transfer Station Tipping Fees**

798 6.01 Transfer Station Tipping Fee Elements. The Transfer Station tipping fees shall
799 be comprised of up to two (2) elements: 1) a tipping fee element, and 2) a government fee
800 element.

801 6.01.1 Adjustments to the Tipping Fee Element. Except as provided in this
802 Article, the tipping fee element shall not be adjusted over the term of this Agreement.

803 6.01.1.1 RRI Adjustment Through May 1, 2031. Beginning on May
804 1, 2012 and annually thereafter through the term of this Agreement, the tipping fee element of
805 the Transfer Station tipping fees shall be adjusted by the Refuse Rate Index Adjustment as set
806 forth in Exhibit 2 except that the adjustment shall never be more than seven and one half (7.5)
807 percent in any year regardless of the calculated RRI adjustment exclusive of changes in
808 governmental or regulatory fees or assessments which shall be a pass-through. However, in in
809 any year that the RRI, including any prior year adjustment is more than seven and one half (7.5)
810 percent, the amount above seven and one half (7.5) percent, up to ten (10) percent shall be
811 carried over to the next adjustment period and added to the calculated RRI for that period.
812 However, the RRI adjustment for the last rate period of this Agreement shall include any unused
813 RRI carry forward without limitation. In the event the RRI adjustment is less than zero (0)
814 percent, the RRI adjustment for that year shall be zero (0) percent and the negative amount
815 shall not be carried forward to the next adjustment period.

816 6.02 Regulatory Costs. The tipping fee element established under Section 6.01



817 includes all costs associated with complying with all federal and State statutes, and CITY and
818 County ordinances concerning public health, safety and environmental issues and all laws,
819 regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any
820 governmental agency having jurisdiction over the disposition of Discarded Materials that are in
821 force on the effective date of this Agreement, including any current provisions which become
822 effective on or which require compliance by a date after the effective date of this Agreement.

823 6.02.1 Changes in Regulatory Costs. If CONTRACTOR or CITY believes that
824 complying with laws or governmental regulations enacted after the effective date of this
825 Agreement will increase or decrease the costs of operating the facility, including but not limited
826 to those costs associated with closure and post-closure obligations relating to tonnage received
827 after the effective date of the Change in Law then CONTRACTOR or CITY may request an
828 adjustment to the appropriate tipping fee element relating to costs associated with tonnage
829 delivered after the Change in Law or regulation, by submitting to the other party its proposed
830 method for complying with the new or modified regulations, the estimated cost of compliance
831 relating to costs associated with tonnage delivered after the Change in Law or regulation, and
832 the associated per-Ton adjustment necessary to the tipping fee element. As part of this
833 process, CONTRACTOR shall provide CITY with access to only those operational and financial
834 records specifically supporting the change in costs required to address changes in regulatory
835 requirements.

836 6.02.2 CONTRACTOR shall then submit the proposed method of compliance to
837 the appropriate regulatory agency(ies). If the agency (ies) approves that method without
838 conditions, the tipping fee element may be adjusted.

839 6.02.3 If the requesting agency(ies) does not approve the methodology,
840 CONTRACTOR will implement the method of compliance which is approved by the regulatory
841 agency(ies) and resubmit its estimate of cost impacts to Transfer Station or Disposal Facility
842 operations and proposed tipping fee element adjustment for CITY'S review and written
843 approval. CITY and CONTRACTOR shall meet and confer in good faith to reach agreement on
844 the cost of compliance and the corresponding adjustment to the tipping fee element.

845 6.03 Government Fees. The Transfer Station tipping fees include the government fee
846 elements are set forth in Exhibit 1.

847 6.04 Changes in Government Fee Elements. Government fee elements shall be
848 adjusted each May 1st, beginning May 1, 2012, as needed so that they equal the then current
849 government fees required to be paid by CONTRACTOR.

850 6.05 Payment of Governmental Fees. CONTRACTOR shall pay, when and as due,
851 any and all governmental fees to the appropriate federal, State, regional, or local governmental
852 entities which levied the fees, and shall provide CITY with proof of such payments promptly
853 upon request.

854 6.06 Payment of Taxes. CONTRACTOR shall pay, when and as due, any and all
855 governmental assessments, or taxes incurred as a result of CONTRACTOR'S provision of
856 services under this Agreement, including estimated taxes, and shall provide CITY with proof of
857 such payments promptly upon request.

858 6.06.1 Disposal Facility Closure/Post Closure Funding. CONTRACTOR
859 acknowledges and agrees that from November 1, 2011 going forward, the rates adequately fund
860 the CITY'S liability for Disposal Facility closure/post closure costs.

861 6.07 Maximum Tipping Fee. CONTRACTOR and CITY agree that regardless of the
862 effect of the adjustments to the Transfer Station tipping fee elements as set forth in this Article
863 6, the "Total per Ton Solid Waste Disposal Rate", "Total per Ton Recyclable Materials
864 Processing Rate" and "Total per Ton Organics Processing Rate" as set forth in Exhibit 1 and as
865 may be adjusted under the terms of this Agreement, shall never exceed the rate offered to the
866 general public, (the posted gate rate) for the delivery of Solid Waste, Recyclable Materials, or
867 Organics to the Transfer Station.

868 **ARTICLE 7. Indemnity, Insurance, and Performance Bond**

869 7.01 General Indemnification. CONTRACTOR shall indemnify, defend with counsel
870 acceptable to the CITY, protect and hold harmless City Council, the CITY, its officers,
871 employees, volunteers, and agents (collectively, indemnitees) from and against all claims,
872 damages (including but not limited to special, consequential, natural resources and punitive
873 damages), injuries, costs, (including without limit any and all response, remediation and removal
874 costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative
875 proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys'
876 expert witness fees and costs incurred in connection with defending against any of the foregoing
877 or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred
878 or suffered by, or asserted against, indemnitees arising from or attributable to the acts or
879 omissions of Contractor whether or not negligent or otherwise culpable, in connection with or
880 related to the performance of this Agreement, including without limit damages arising from or
881 attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of
882 whether undertaken due to governmental action) concerning any hazardous substance or
883 Hazardous Waste Collected in the CITY. Notwithstanding the foregoing, however,
884 CONTRACTOR shall be required to indemnify the CITY for the costs for any claims arising from
885 the Disposal of Discarded Materials at the Disposal Facility, from Processing of Recyclable
886 Materials at the Recyclable Materials Processing Facility, and/or from Processing Organic
887 Materials at the Compostable Materials Processing Facility including, but not limited to, claims
888 arising under the Comprehensive Environmental Response, Comprehensive and Liability Act
889 (CERCLA) unless claim is a direct result of CONTRACTOR'S actions or negligence. This
890 indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional
891 wrongful acts and negligence of indemnitees, and as provided below. The foregoing indemnity
892 is intended to operate as an Agreement pursuant to §107(e) of the Comprehensive
893 Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and
894 California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify
895 CITY from liability.

896 7.01.1 This provision is in addition to all other provisions in this Agreement and
897 is intended to survive the expiration or earlier termination of this Agreement. Nothing in this
898 paragraph shall prevent CITY from seeking indemnification or contribution from Persons or
899 entities other than indemnitees, for any liabilities incurred by CITY or the indemnitees. As
900 appropriate, CONTRACTOR'S Guaranty Agreement shall extend to the indemnification
901 obligation hereunder.

902 7.02 AB 939 Indemnification. In addition to all other relief provided CONTRACTOR
903 and CITY under this Agreement, CONTRACTOR agrees to defend, indemnify, and hold
904 harmless, City Council, the CITY, its officers, employees, volunteers, and agents from and
905 against all fines and/or penalties imposed by the California Integrated Waste Management
906 Board if the requirements of the Act are not met by the CONTRACTOR with respect to the



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907 waste stream Collected under this Agreement, and such failure is (i) due to the failure of
908 CONTRACTOR to meet its obligations under this Agreement or (ii) due to CONTRACTOR
909 delays in providing information that prevents CONTRACTOR or CITY from submitting reports
910 required by the Act in a timely manner.

911 7.03 Proposition 218 Indemnification. CONTRACTOR shall indemnify, defend and
912 hold harmless City Council, the CITY, its officers, employees, agents, and volunteers,
913 (collectively, indemnitees) from and against all claims, damages, injuries, costs, including
914 demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings,
915 interest fines, charges, penalties and expenses (including reasonable attorneys' and expert
916 witness fees, expenditures for investigation and administration) and costs of any kind
917 whatsoever paid, imposed upon, endured or suffered by or assessed against any of the
918 indemnitees resulting in any form from the CITY'S setting or approval of maximum rates for
919 service under this Agreement or in connection with the application of California Constitution,
920 Article XIIC and Article XIID to the imposition, payment or collection of maximum rates and
921 fees for services provided by CONTRACTOR under this Agreement. Notwithstanding the
922 foregoing, this indemnity shall not extend to any addition to or increase in maximum rates that
923 are not associated with the cost of providing service under this Agreement except for a
924 reasonable franchise fee.

925 7.04 Insurance.

926 7.04.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

927 7.04.1.1 Insurance Services Office form number GL 0002 covering
928 Commercial General Liability and Insurance Services Office form number GL 0404 covering
929 Broad Form Comprehensive General Liability; or Insurance Services Office Commercial
930 General Liability coverage ("occurrence" form CG 0001).

931 7.04.1.2 Insurance Services Office form number CA 0001 (or
932 equivalent) covering Automobile Liability, code 1 "any auto", and endorsement CA 0025.

933 7.04.1.3 Workers' Compensation insurance as required by the
934 Labor Code of the State of California and Employers Liability insurance.

935 7.04.1.4 Commercial Crime Insurance

936 7.04.1.5 Pollution Legal Liability.

937 7.04.2 Minimum Limits of Insurance. CONTRACTOR shall maintain limits no
938 less than:

939 7.04.2.1 Commercial General Liability: five million dollars
940 (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property
941 damage.

942 7.04.2.2 Automobile Liability: five million dollars (\$5,000,000)
943 combined single limit per accident for bodily injury and property damage.

944 7.04.2.3 Workers' Compensation and Employers Liability: Workers'
945 compensation limits as required by the Labor Code of the State of California and Employers
946 Liability limits of five million dollars (\$5,000,000) for each employee per accident or disease.

947 7.04.2.4 Commercial Crime Insurance covering employee
948 dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside) with limits of
949 twenty five million dollars (\$25,000,000) per occurrence.

950 7.04.2.5 Pollution Legal Liability: ten million dollars (\$10,000,000)
951 for bodily injury, property damage, and remediation of contaminated site.

952 7.04.3 Deductibles and Self-Insured Retentions. Any deductibles or self-insured
953 retentions shall be for the account of the CONTRACTOR and payment of such shall be made
954 entirely by CONTRACTOR without contribution from the CITY. The deductible provisions of the
955 policies are secured by adequate financial instruments as required by the carrier.

956 7.04.4 Other Insurance Provisions. The policies are to contain, or be endorsed
957 to contain, the following provisions:

958 7.04.4.1 Commercial General Liability and Automobile Liability
959 Coverages.

960 7.04.4.1.1. The CITY, its officials, employees and volunteers
961 are to be covered as additional insureds as respects: liability arising out of activities performed
962 by or on behalf of the CONTRACTOR; products and completed operations of the
963 CONTRACTOR; premises owned, leased or used by the Contractor; or automobiles owned,
964 leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no special
965 limitations on the scope of protection afforded to the CITY, its officials, employees, or
966 volunteers. The automobile liability is endorsed to contain MCS-90 coverage.

967 7.04.4.1.2. The CONTRACTOR'S insurance coverage shall be
968 primary insurance as respects the CITY, its officials, employees, and volunteers. Any insurance
969 or self-insurance maintained by the CITY, its officials, employees, or volunteers shall be excess
970 of the CONTRACTOR'S insurance and shall not contribute with it.

971 7.04.4.1.3. Coverage shall state that the CONTRACTOR'S
972 insurance shall apply separately to each insured against whom claim is made or suit is brought,
973 except with respect to the limits of the insurer's liability.

974 7.04.4.2 Workers' Compensation and Employers Liability Coverage.
975 The insurer shall agree to waive all rights of subrogation against the CITY, its officers,
976 employees, and volunteers for losses arising from work performed by the CONTRACTOR for
977 the CITY.

978 7.04.4.3 All Coverages. Each insurance policy required by this
979 clause shall be endorsed to state that coverage shall not be cancelled except after thirty (30)
980 calendar days' prior written notice by certified mail, return receipt requested, has been given to
981 the CITY.

982 7.04.5 Acceptability of Insurers. The insurance policies required by this Section
983 7.04 shall be issued by an insurance company or companies authorized to do business in the
984 State of California and with a rating in the most recent edition of Best's Insurance Reports of
985 size category VII or larger and a rating classification of A or better.

986 7.04.6 Verification of Coverage. CONTRACTOR shall furnish CONTRACTOR'S
987 insurance agent a copy of these specifications, and direct the agent to provide the CITY with
988 certificates of insurance and with original endorsements affecting coverage required by this
989 clause. Issuance of documentation indicates the Contractor's insurance complies with these
990 provisions. The certificates and endorsements for each insurance policy are to be signed by a
991 Person authorized by that insurer to issue coverage on its behalf. The certificates and
992 endorsements are to be received and approved by the CITY before work commences.



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993 7.04.6.1 Upon request of CITY, CONTRACTOR shall allow City
994 Attorney to review and return, but not to copy, any and all insurance policies, together with all
995 endorsements, required under the terms of this Agreement.

996 7.04.7 Required Endorsements.

997 7.04.7.1 The Workers' Compensation policy shall contain an
998 endorsement in substantially the following form:

999 "Thirty calendar days' prior written notice shall be given to the City of Albany in the event of
1000 cancellation, or non-renewal of this policy. Such notice shall be sent to:

1001 City Manager
1002 City of Albany
1003 1000 San Pablo Avenue
1004 Albany, CA 94706"

1005 7.04.7.2 The Commercial General Liability Business and
1006 Automobile Liability policies shall contain endorsements in substantially the following form:

1007 "Thirty calendar days' prior written notice shall be given to the City of Albany in the event of
1008 cancellation, or non-renewal of this policy. Such notice shall be sent to:

1009 City Manager
1010 City of Albany
1011 1000 San Pablo Avenue
1012 Albany, CA 94706"

1013 7.04.7.2.1. As respects to Commercial General Liability policy,
1014 "The City of Albany, its officers, employees, and agents are additional insureds on this policy."
1015 The CITY requires form CG2010 1185.

1016 7.04.7.2.2. As respects to Commercial General Liability policy,
1017 and the liabilities assumed by CONTRACTOR under this Agreement, "This policy shall be
1018 considered primary insurance as respects any other valid and collectible insurance maintained
1019 by the City of Albany, including any self-insured retention or program of self-insurance, and any
1020 other such insurance shall be considered excess insurance only."

1021 7.04.8 Delivery of Proof of Coverage. Simultaneously with the execution of this
1022 Agreement, CONTRACTOR shall furnish the CITY certificates of each policy of insurance
1023 required hereunder, in form and substance satisfactory to CITY. Such certificates shall show
1024 the type and amount of coverage, effective dates and dates of expiration of policies and shall
1025 have all required endorsements. If the CITY requests to review each policy together with all
1026 endorsements such review shall be provided as set forth in Section 7.04.6.1 above.

1027 7.04.8.1 Renewal certificates will be furnished periodically to CITY
1028 to demonstrate maintenance of the required coverage throughout the term of this Agreement.

1029 7.04.9 Other Insurance Requirements.

1030 7.04.9.1 If any services are delegated to a Subcontractor, the
1031 CONTRACTOR shall require such Subcontractor to provide statutory workers' compensation
1032 insurance and employer's liability insurance for all of the Subcontractor's employees engaged in
1033 the work in accordance with Section 7.04.2.2 and Section 7.04.4.2. The liability insurance
1034 required by Section 7.04.2.2 shall cover all Subcontractors or the Subcontractor must furnish
1035 evidence of insurance provided by it meeting all of the requirements of this Section 7.04.

1036 7.04.9.2 The CONTRACTOR shall comply with all requirements of
1037 the insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from
1038 any obligation under this Agreement. If any claim exceeding the amount of any deductibles or
1039 self-insured reserves is made by any third person against the CONTRACTOR or any
1040 Subcontractor on account of any occurrence related to this Agreement, the CONTRACTOR
1041 shall promptly report the facts in writing to the insurance carrier and to the CITY.

1042 7.04.9.3 If CONTRACTOR fails to procure and maintain any
1043 insurance required by this Agreement, the CITY may take out and maintain, at the
1044 CONTRACTOR'S expense, such insurance as it may deem proper and deduct the cost thereof
1045 from any monies due the CONTRACTOR.

1046 7.04.9.4 Any failure to comply with reporting provisions of the
1047 policies shall not relieve CONTRACTOR of its obligation to cover an otherwise insurable loss.

1048 7.04.10 Notice of Policy Changes. CONTRACTOR shall provide thirty (30)
1049 calendar days' prior written notice to CITY in the event of suspension, voiding, cancellation or
1050 reduction in coverage, or limits of this policy.

1051 7.04.11 The Commercial General and Automobile Liability insurance
1052 required by this Article shall be written on an "occurrence," rather than a "claims made" basis, if
1053 such coverage is obtainable. If it is not obtainable, CONTRACTOR must arrange for a thirty-six
1054 (36) month "tail coverage" to protect the CITY from claims filed after the expiration or
1055 termination of this Agreement relating to incidents which occurred prior to such expiration or
1056 termination.

1057 7.05 Performance Bond. CONTRACTOR shall furnish a performance bond to ensure
1058 performance of this Agreement and each and every condition of this Agreement in a form
1059 acceptable to CITY no more than thirty (30) days after execution of this Agreement. The
1060 performance bond shall be equal to five million dollars (\$5,000,000) to remain in force for the
1061 duration of this Agreement. The premium for the bond described above shall be paid by
1062 CONTRACTOR. The Surety or Sureties shall be a company or companies satisfactory to CITY.
1063 Any surety shall be duly authorized to conduct business in the State of California.

1064 7.06 Corporate Guarantee. In addition to the performance bond required in Section
1065 7.05, CONTRACTOR is required to obtain Guaranty, and Guarantor has agreed to guarantee
1066 CONTRACTOR'S performance of this Agreement, including CONTRACTOR'S indemnification
1067 obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached as
1068 Exhibit 3. The Guaranty Agreement is being provided concurrently with CONTRACTOR'S
1069 execution of this Agreement.

1070 **ARTICLE 8. Default and Remedies**

1071 8.01 Termination. CITY may cancel this Agreement, except as otherwise provided
1072 below in this Section, by giving CONTRACTOR thirty (30) calendar days advance written notice,
1073 to be served as provided in Article 13, upon the happening of any one of the following events:

1074 8.01.1 CONTRACTOR shall take the benefit of any present or future insolvency
1075 statute, or shall make a general assignment for the benefit of creditors, or file a voluntary
1076 petition in bankruptcy court or a petition or answer seeking an arrangement for its reorganization
1077 or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other
1078 law or statute of the United States or any state thereof, or consent to the appointment of a
1079 receiver, trustee or liquidator of all or substantially all of its property; or



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1080 8.01.2 By order or decree of a Court, CONTRACTOR shall be adjudged
1081 bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of
1082 the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its
1083 indebtedness under the Federal bankruptcy laws or under any law or statute of the United
1084 States or of any state thereof, provided that if any such judgment or order is stayed or vacated
1085 within sixty (60) calendar days after the entry thereof, any notice of default shall be and become
1086 null, void and of no effect; unless such stayed judgment or order is reinstated in which case,
1087 said default shall be deemed immediate; or

1088 8.01.2.1 By, or pursuant to, or under the authority of any legislative
1089 act, resolution or rule or any order or decree of any Court or governmental board, agency or
1090 officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all
1091 or substantially all of the property of CONTRACTOR, and such possession or control shall
1092 continue in effect for a period of sixty (60) calendar days; or

1093 8.01.3 CONTRACTOR has defaulted, by failing or refusing to pay in a timely
1094 manner the administrative charges or other monies due CITY and said default is not cured
1095 within thirty (30) calendar days of receipt of written notice by CITY to do so; or

1096 8.01.4 CONTRACTOR has defaulted by allowing any final judgment for the
1097 payment of money related to performance under this Agreement to stand against it unsatisfied
1098 and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY
1099 to do so; or

1100 8.01.5 In the event that the monies due CITY under Section 8.01.3 above or an
1101 unsatisfied final judgment under Section 8.01.4 above is the subject of a judicial proceeding,
1102 CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in the
1103 form acceptable to the CITY Attorney; or

1104 8.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or observe
1105 the terms, conditions or covenants in this Agreement or any of the rules and regulations
1106 promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the
1107 instructions of the Contract Administrator relative thereto and said default is not cured within
1108 thirty (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the
1109 nature of such default, the same cannot be remedied within thirty (30) calendar days following
1110 receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to
1111 commence the remedy of such default within said thirty (30) calendar days following such
1112 written notice or having so commenced shall fail thereafter to continue with diligence the curing
1113 thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default
1114 cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to
1115 cure said default, and such default will be cured within a reasonable period of time; or

1116 8.01.7 CONTRACTOR fails to perform its obligations under this Agreement, and:
1117 (i) if the failure or refusal of CONTRACTOR to perform Processing, Transfer and Disposal
1118 Services required by this Agreement has created an imminent threat to public health and is not
1119 cured within (2) Business Days after receiving written notice from CITY specifying the breach; or
1120 (ii) in the case of any other breach of the Agreement, the breach continues for more than thirty
1121 (30) calendar days after receiving written notice from CITY for the correction thereof, provided
1122 that where such breach cannot be cured within such thirty (30) calendar day period,
1123 CONTRACTOR shall not be in default of this Agreement if CONTRACTOR shall have
1124 commenced such action required to cure the particular breach within thirty (30) calendar days
1125 after such notice, and it continues such performance diligently until completed. However, if

1126 CONTRACTOR has complied with its obligations to arrange and pay for Processing, Transfer
1127 and Disposal of Discarded Materials at an alternative Transfer Station and Disposal Facility as
1128 set forth in Section 5.15, it shall not be in default of this Agreement.

1129 8.02 Effective Date. In the event of the aforesaid events specified above, and except
1130 as otherwise provided in said subsections, termination shall be effective upon the date specified
1131 in CITY'S written notice to CONTRACTOR and upon said date this Agreement shall be deemed
1132 immediately terminated and upon such termination all liability of CITY under this Agreement to
1133 CONTRACTOR shall cease, and CITY shall have the right to call the performance bond and
1134 shall be free to negotiate with other contractors for the operation of the herein specified
1135 services.

1136 8.03 Right to Perform. If this Agreement is suspended and/or terminated due to
1137 CONTRACTOR default, CITY shall have the right to perform and complete, by contract or
1138 otherwise, the work herein or such part thereof as it may deem necessary and incur all
1139 expenses necessary for completion of the work, including, but not limited to, the costs of
1140 Transportation, Processing, and Disposal of Discarded Materials at an alternative Recyclable
1141 Materials Processing Facility, Organics Processing Facility, or Disposal facility, as appropriate,
1142 but not including any right to operate the Transfer Station or Disposal Facility. If such expenses
1143 (including, but not limited to, the costs of transportation to an alternative facility and the actual
1144 fees charged for Processing or Disposal) exceed the amounts which would have been paid to
1145 CONTRACTOR under this Agreement, if it had been fully performed by CONTRACTOR, then
1146 CONTRACTOR shall pay for the remaining term of this Agreement, the amount of such excess
1147 costs to CITY within thirty (30) calendar days of CONTRACTOR'S receipt of a claim for
1148 reimbursement, and evidence of costs incurred, from CITY .

1149 8.04 Immediate Termination. CITY may terminate this Agreement immediately upon
1150 written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the
1151 performance bond as required by this Agreement, CONTRACTOR fails to obtain or maintain
1152 insurance policies endorsements as required by this Agreement, or CONTRACTOR fails to
1153 provide the proof of insurance as required by this Agreement.

1154 8.05 Termination Cumulative. CITY'S right to terminate this Agreement is cumulative
1155 to any other rights and remedies provided by law or by this Agreement.

1156 **ARTICLE 9. Excuse from Performance**

1157 9.01 The Parties shall be excused from performing their respective obligations
1158 hereunder if they are prevented from so performing by reason of floods, earthquakes, other acts
1159 of nature, war, terrorism, civil insurrection, riots, acts of any government (including judicial
1160 action), and other similar catastrophic events which are beyond the control of and not the fault
1161 of the Party claiming excuse from performance hereunder. Labor unrest, including but not
1162 limited to strike, work stoppage or slowdown, sick-out, lock-out, picketing, or other concerted job
1163 action conducted by CONTRACTOR, CONTRACTOR'S employees or directed at
1164 CONTRACTOR or subcontractor is not an excuse from performance and CONTRACTOR shall
1165 be obligated to continue to provide service notwithstanding the occurrence of any or all of such
1166 events. In the case of labor unrest or job action directed at a third party over whom
1167 CONTRACTOR has no control, the inability of CONTRACTOR to provide Processing, Transfer
1168 and Disposal Services due to the unwillingness or failure of the third party to provide reasonable
1169 assurance of the safety of CONTRACTOR'S employees while providing Processing, Transfer
1170 and Disposal Services or to make reasonable accommodations with respect to point of Delivery



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1171 or other operating circumstances to minimize any confrontation with pickets shall, to that limited
1172 extent, excuse performance and provided further that the foregoing excuse shall be conditioned
1173 on CONTRACTOR'S cooperation in providing Processing, Transfer and Disposal Services in
1174 different locations.

1175 9.02 The Party claiming excuse from performance shall, within two (2) Business Days
1176 after such Party has notice of such cause, give the other Party notice of the facts constituting
1177 such cause and asserting its claim to excuse under this Section.

1178 9.03 If either Party validly exercises its rights under this Section, the Parties hereby
1179 waive any claim against each other for any damages sustained thereby.

1180 9.04 The partial or complete interruption or discontinuance of CONTRACTOR'S
1181 services caused by one or more of the events described in this Article shall not constitute a
1182 default by CONTRACTOR under this Agreement. Notwithstanding the foregoing, however, (i)
1183 the existence of an excuse from performance will not affect the CITY'S rights under Section
1184 11.01; and (ii) if CONTRACTOR is excused from performing its obligations hereunder for any of
1185 the causes listed in this Section for a period of thirty (30) calendar days or more, other than as
1186 the result of third party labor disputes where service cannot be provided for reasons described
1187 earlier in this Section, the CITY shall nevertheless have the right, in its sole discretion, to
1188 terminate this Agreement by giving ten (10) calendar days notice to CONTRACTOR unless
1189 CONTRACTOR has demonstrated, by the thirtieth (30th) calendar day, to the satisfaction of the
1190 CITY that the CONTRACTOR will resume services no later than the sixtieth (60th) calendar day
1191 following the date service was interrupted or discontinued by CONTRACTOR.

1192 **ARTICLE 10. Right to Demand Assurances of Performance**

1193 10.01 If CONTRACTOR (i) is the subject of any labor unrest including work stoppage or
1194 slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable
1195 judgment of CITY to be unable to regularly pay its bills as they become due; or (iii) is the subject
1196 of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for
1197 violation of an Applicable Law, and the CITY believes in good faith that CONTRACTOR'S ability
1198 to perform under the Agreement has thereby been placed in substantial jeopardy, the CITY
1199 may, at its option and in addition to all other remedies it may have, demand from
1200 CONTRACTOR reasonable assurances of timely and proper performance of this Agreement, in
1201 such form and substance as the CITY believes in good faith is reasonably necessary in the
1202 circumstances to evidence continued ability to perform under the Agreement. If CONTRACTOR
1203 fails or refuses to provide satisfactory assurances of timely and proper performance in the form
1204 and by the date required by CITY, such failure or refusal shall be an event of default for
1205 purposes of Section 8.01.

1206 **ARTICLE 11. Right to Require Performance**

1207 11.01 The failure of CITY at any time to require performance by CONTRACTOR of any
1208 provision hereof shall in no way affect the right of CITY thereafter to enforce same. Nor shall
1209 waiver by CITY of any breach of any provision hereof be taken or held to be a waiver of any
1210 succeeding breach of such provision or as a waiver of any provision itself.

1211

ARTICLE 12. Point of Contact

1212

12.01 The day-to-day dealings between CONTRACTOR and CITY shall be between CONTRACTOR and the Contract Administrator.

1213

1214

ARTICLE 13. Notices

1215

13.01 All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

1216

1217

1218

1219

If to City:

1220

City Manager

1221

City of Albany

1222

1000 San Pablo Avenue

1223

Albany, CA 94706

1224

With a copy to the City attorney at the same address.

1225

1226

As to CONTRACTOR:

1227

Area Vice President

1228

Waste Management of Alameda County, Inc.

1229

172 98th Street

1230

Oakland, CA 54603

1231

With a copy to

1232

Vice President and Group General Council

1233

USA Waste of California

1234

7025 N. Scottsdale Road, #200

1235

Scottsdale, AZ 85253

1236

13.02 The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

1237

1238

13.03 Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail.

1239

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ARTICLE 14. Assignment

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14.01 Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

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14.02 For purposes of this Section, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of CONTRACTOR'S assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more of the outstanding common stock of CONTRACTOR; (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which CONTRACTOR or

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Processing, Transfer and Disposal Service Agreement

1251 any of its shareholders is a party which results in a change of ownership or control of thirty (30)
1252 percent or more of the value or voting rights in the stock of CONTRACTOR; and (iv) any
1253 combination of the foregoing (whether or not in related, contemporaneous or sequential
1254 transactions) which has the effect of any such transfer or change of ownership and/or control of
1255 CONTRACTOR. For purposes of this Section, the term "proposed assignee" shall refer to the
1256 proposed transferee(s) or other successor(s) in interest pursuant to the assignment.
1257 Assignment shall exclude a change in ownership of CONTRACTOR'S assets or stocks which
1258 occurs for interfamilial planning purposes only and does not involve a change in the
1259 management of the Agreement or services performed thereunder.

1260 14.03 CONTRACTOR acknowledges that this Agreement involves rendering a vital
1261 service to CITY'S residents and businesses, and that CITY has selected CONTRACTOR to
1262 perform the services specified herein based on (i) CONTRACTOR'S experience, skill and
1263 reputation for conducting its Solid Waste, Recyclable Materials, and Organic Materials
1264 management operations in a safe, effective and responsible fashion, at all times in keeping with
1265 Applicable Laws, regulations and good waste management practices, and (ii) CONTRACTOR'S
1266 financial resources to maintain the required equipment and to support its indemnity obligations
1267 to CITY under this Agreement. CITY has relied on each of these factors, among others, in
1268 choosing CONTRACTOR to perform the services to be rendered by CONTRACTOR under this
1269 Agreement.

1270 14.04 If CONTRACTOR requests CITY'S consideration of and consent to an
1271 assignment, the CITY may deny or approve such request in its sole discretion. The CITY does
1272 not have to consider a request by CONTRACTOR for consent to an assignment until
1273 CONTRACTOR has met the following requirements.

1274 14.04.1 CONTRACTOR shall undertake to pay CITY its reasonable
1275 expenses for attorney's fees and investigation costs necessary to investigate the suitability of
1276 any proposed assignee, and to review and finalize any documentation required as a condition
1277 for approving any such assignment;

1278 14.04.2 CONTRACTOR shall furnish CITY with audited financial
1279 statements of the proposed assignee's operations for the immediately preceding three (3)
1280 operating years;

1281 14.04.3 CONTRACTOR shall furnish CITY with satisfactory proof: (i) that
1282 the proposed assignee has at least ten (10) years of Disposal Service management experience
1283 on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR under
1284 this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any
1285 citations or other censure from any Federal, State or local contractor having jurisdiction over its
1286 waste management operations due to any significant failure to comply with state, Federal or
1287 local waste management laws and that the assignee has provided the CITY with a complete list
1288 of such citations and censures; (iii) that the proposed assignee has at all times conducted its
1289 operations in an environmentally safe and conscientious fashion; (iv) that the proposed
1290 assignee conducts its Disposal Service management practices in accordance with sound waste
1291 management practices in full compliance with all Applicable Laws regulating the acceptance,
1292 Processing, Transportation, and Disposal of Discarded Materials, and Hazardous Waste as
1293 identified in Title 22 of the California Code of Regulations; and (v) that any other information
1294 required by CITY demonstrates that the proposed assignee can fulfill the terms of this
1295 Agreement in a timely, safe and effective manner.

1296 14.05 Under no circumstances shall any proposed assignment be considered by CITY
1297 if CONTRACTOR is in default at any time during the period of consideration.

1298 **ARTICLE 15. CONTRACTOR'S Records**

1299 15.01 CONTRACTOR shall maintain all documents and records which demonstrate
1300 performance under this Agreement for a minimum period of five (5) years, or for any longer
1301 period required by law, from the date of termination or completion of this Agreement .

1302 15.02 Any records or documents required to be maintained pursuant to this Agreement
1303 shall be made available for inspection, copy or, audit at any time during regular business hours,
1304 upon written request by the Contract Administrator, the City Attorney, City Auditor, City
1305 Manager, or a designated representative of any of these officers. Copies of such documents
1306 shall be provided to CITY for inspection at the CITY offices when it is practical to do so.
1307 Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at
1308 CONTRACTOR'S address indicated for receipt of notices in this Agreement.

1309 15.03 Where CITY has reason to believe that such records or documents may be lost
1310 or discarded due to the dissolution, disbandment or termination of CONTRACTOR'S business,
1311 CITY may, by written request or demand of any of the above named officers, require that
1312 custody of the records be given to CITY and that the records and documents be maintained in
1313 CITY offices. Access to such records and documents shall be granted to any party authorized
1314 by CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-
1315 interest.

6 **ARTICLE 16. Quality of Performance of Contractor**

1317 16.01 Determination of Damages. CITY and CONTRACTOR agree, that as of the time
1318 of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain
1319 the extent of damages which shall be incurred by CITY as a result of a breach by
1320 CONTRACTOR of its obligations under this Agreement. The factors relating to the
1321 impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
1322 substantial damage results to the Collection Contractor or CITY who are denied services or
1323 denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration,
1324 and deprivation of the benefits of the Agreement to the Collection Contractor or CITY for whose
1325 benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are
1326 incapable of measurement in precise monetary terms; (iii) that exclusive services might be
1327 available at substantially lower costs than alternative services and the monetary loss resulting
1328 from denial of services or denial of quality or reliable services is impossible to calculate in
1329 precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other
1330 remedies are, at best, a means of future correction and not remedies which make the Collection
1331 Contractor or CITY whole for past breaches.

1332 16.02 Liquidated Damages. The parties further acknowledge that consistent and
1333 reliable Processing, Transfer and Disposal Services are of utmost importance to CITY and that
1334 CITY has considered and relied on CONTRACTOR'S representations as to its quality of service
1335 commitment in awarding the Agreement to it. The parties further recognize that some quantified
1336 standards of performance are necessary and appropriate to ensure consistent and reliable
1337 service and performance. The parties further recognize that if CONTRACTOR fails to achieve
1338 the performance standards, or fails to submit required documents in a timely manner, CITY,
1339 Collection Contractor and CITY'S residents and businesses will suffer damages and that it is



Processing, Transfer and Disposal Service Agreement

1340 and will be impractical and extremely difficult to ascertain and determine the exact amount of
 1341 damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an
 1342 event of default under Article 8, the parties agree that the liquidated damages amount defined in
 1343 this Section represent reasonable estimates of the amount of such damages considering all of
 1344 the circumstances existing on the effective date of this Agreement, including the relationship of
 1345 the sums to the range of harm to CITY that reasonably could be anticipated and the anticipation
 1346 that proof of actual damages would be costly or impractical. In placing their initials at the places
 1347 provided, each party specifically confirms the accuracy of the statements made above and the
 1348 fact that each party has had ample opportunity to consult with legal counsel and obtain an
 1349 explanation of the liquidated damage provisions at the time that the Agreement was made.

1350 CITY Initial Here _____ CONTRACTOR Initial Here _____

1351 16.02.1 CONTRACTOR agrees to pay (as liquidated damages and not as
 1352 penalty) the following amounts:

Liquidated Damages		
	Item	Amount
a.	Failure to turnaround Collection Contractor vehicles at the Transfer Station as set forth in Section 4.09.	\$100 per occurrence.
b.	Failure to submit complete and accurate reports to the CITY. (Sections 4.16 and 4.17)	\$100 per calendar day in excess of 20 days.
c.	Failure to submit required reports to the CITY in a timely manner. (Sections 4.16 and 4.17)	\$300 per calendar day.
d.	Failure to maintain minimum operation hours or days. (Section 4.05)	\$100 per Work Day.
e.	Failure to provide adequate primary and alternate capacity to accept, Transfer and Dispose of Solid Waste. (Sections 4.14 and 4.15)	\$1,000.00 per day.
f.	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 4.18.	\$500.00 per incident per day.
g.	Failure to cure non-compliance with the provisions of this Agreement in the manner and time set forth in Section 8.01.6.	\$150.00 per incident per day.
h..	Disposal of Recyclable Materials or Organic Materials without written approval of the CITY	\$250/ ton disposed

Processing, Transfer and Disposal Service Agreement

1340 and will be impractical and extremely difficult to ascertain and determine the exact amount of
 1341 damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an
 1342 event of default under Article 8, the parties agree that the liquidated damages amount defined in
 1343 this Section represent reasonable estimates of the amount of such damages considering all of
 1344 the circumstances existing on the effective date of this Agreement, including the relationship of
 1345 the sums to the range of harm to CITY that reasonably could be anticipated and the anticipation
 1346 that proof of actual damages would be costly or impractical. In placing their initials at the places
 1347 provided, each party specifically confirms the accuracy of the statements made above and the
 1348 fact that each party has had ample opportunity to consult with legal counsel and obtain an
 1349 explanation of the liquidated damage provisions at the time that the Agreement was made.

1350 CITY Initial Here BP CONTRACTOR Initial Here [Signature]

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 1352 penalty) the following amounts:

Liquidated Damages		
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c.	Failure to submit required reports to the CITY in a timely manner. (Sections 4.16 and 4.17)	\$300 per calendar day.
d.	Failure to maintain minimum operation hours or days. (Section 4.05)	\$100 per Work Day.
e.	Failure to provide adequate primary and alternate capacity to accept, Transfer and Dispose of Solid Waste. (Sections 4.14 and 4.15)	\$1,000.00 per day.
f.	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 4.18.	\$500.00 per incident per day.
g.	Failure to cure non-compliance with the provisions of this Agreement in the manner and time set forth in Section 8.01.6.	\$150.00 per incident per day.
h..	Disposal of Recyclable Materials or Organic Materials without written approval of the CITY	\$250/ ton disposed

Liquidated Damages		
Item		Amount
i.	Disposal of C&D that should have been diverted to meet the 50% diversion requirement.	\$100/ ton disposed
j.	Disposal or processing of Solid Waste, Recyclable Materials, Organic Materials or C&D at a facility not approved for use under the provisions of this Agreement.	\$250/ ton disposed or processed

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1354 16.03 CITY may determine the occurrence of events giving rise to liquidated damages
 1355 through the observation of its own employees or representative or investigation of complaints by
 1356 Collection Contractor.

1357 16.04 Notification. Liquidated damages will only be assessed after CONTRACTOR has
 1358 been given the opportunity but failed to rectify the conduct subject to liquidated damages
 1359 described in this Agreement. Before assessing liquidated damages, CITY shall give
 1360 CONTRACTOR notice of its intention to do so. The notice will include a brief description of the
 1361 incident(s) and non-performance. The CITY may review (and make copies at its own expense)
 1362 all information in the possession of CONTRACTOR relating to incident(s) and non-performance.
 1363 CITY may, within ten (10) Business Days after issuing the notice, request a meeting with
 1364 CONTRACTOR. CITY may present evidence of non-performance in writing and through
 1365 testimony of its employees and others relevant to the incident(s) and non-performance. CITY
 1366 will provide CONTRACTOR with a written explanation of his or her determination on each
 1367 incident(s) and non-performance prior to authorizing the assessment of liquidated damages
 1368 under this Section 16.04. The decision of CITY shall be final and CONTRACTOR shall not be
 1369 subject to, or required to exhaust, any further administrative remedies.

1370 16.05 Payment. CONTRACTOR shall pay any liquidated damages assessed by CITY
 1371 within ten (10) calendar days of the date the liquidated damages are assessed. If they are not
 1372 paid within the ten (10) day period, the CONTRACTOR shall pay the CITY the liquidated
 1373 damage payment due plus interest compounded daily, where interest shall be calculated using
 1374 the annual yield rate for the California Local Agency Investment Fund most-recently published
 1375 by the California State Treasurer's office; and the CITY shall send written notice to the
 1376 CONTRACTOR and the CONTRACTOR'S performance bond company stating
 1377 CONTRACTOR'S failure to pay liquidated damages and the CITY'S right to terminate the
 1378 Agreement and proceed against the performance bond if payment is not received within ninety
 1379 (90) calendar days of the date liquidated damages were assessed

1380 16.05.1 If the liquidated damages payment is thirty (30) calendar days
 1381 past due, the CONTRACTOR shall pay the CITY double the liquidated damages payment due
 1382 plus interest compounded daily, where interest shall be calculated as described above. If the
 1383 liquidated damages payment is sixty (60) calendar days or more past due, the CITY shall notice
 1384 the CONTRACTOR and the CONTRACTOR'S performance bond company of the CITY'S intent
 1385 to terminate the Agreement and proceed against the performance bond if liquidated damages



1426 be a waiver of any pre-existing or concurrent breach or violation by the other Party of any
1427 provision of this Agreement.

1428 **ARTICLE 21. Representatives of the Parties**

1429 21.01 References in this Agreement to the "CITY" shall mean the City Council and all
1430 actions to be taken by the City shall be taken by the City Council except as provided below.
1431 The City Council may delegate, in writing, authority to the City Manager, the Director of Public
1432 Facilities and Services, and/or to other City officials and may permit such officials, in turn, to
1433 delegate in writing some or all of such authority to subordinate officers. The CONTRACTOR
1434 may rely upon actions taken by such delegates if they are within the scope of the authority
1435 properly delegated to them.

1436 21.02 The CONTRACTOR shall, by the effective date, designate in writing a
1437 responsible representative, who has the authority to bind the Contractor and who shall serve as
1438 the representative of the CONTRACTOR in all matters related to the Agreement and shall
1439 inform the CITY in writing of such designation and of any limitations upon his or her authority to
1440 bind the Contractor. The CITY may rely upon action taken by such designated representative
1441 as actions of the CONTRACTOR unless they are outside the scope of the authority delegated to
1442 him/her by the CONTRACTOR as communicated to CITY.

1443 **ARTICLE 22. Nondiscrimination**

1444 22.01 Nondiscrimination. CONTRACTOR hereby agrees to abide by all local, state and
1445 federal laws and regulations pertaining to discrimination in employment including that no person
1446 shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age
1447 religion, political affiliations or any other non-merit based factors, be subject to discrimination
1448 under this Agreement. Failure to abide by this provision shall be a breach of this Agreement
1449 subject to the provisions of Article 8.

1450 **ARTICLE 23. Criminal Activity of CONTRACTOR**

1451 23.01 Criminal Activity. For purpose of this Section, Criminal Activity shall mean any of
1452 the following events or circumstances:

1453 23.01.1 Convictions. The entry against any CONTRACTOR Party of a
1454 criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality
1455 or regulatory agency of competent jurisdiction based on acts taken in his or her official capacity
1456 on behalf of CONTRACTOR with respect to:

1457 23.01.1.1 Fraud or criminal offense in connection with obtaining,
1458 attempting to obtain, procuring or performing a public or private agreement related to municipal
1459 Solid Waste, Recyclable Materials, or Organic Materials services of any kind (including
1460 Collection, Transportation, transfer, Processing, composting or Disposal), including this
1461 Agreement or any amendment thereto;

1462 23.01.1.2 Bribery or attempting to bribe a public officer or employee
1463 of a local, State, or Federal agency;

1464 23.01.1.3 Embezzlement, extortion, racketeering, false claims, false
1465 statements, forgery, falsification or destruction of records, obstruction of justice, knowingly
1466 receiving stolen property, theft, or misprision (failure to disclose) of a felony;



Processing, Transfer and Disposal Service Agreement

1467 23.01.1.4 Unlawful disposal of Hazardous Waste the occurrence of
1468 which any of CONTRACTOR Party knew or should have known;

1469 23.01.1.5 Violation of antitrust laws, including laws relating to price-
1470 fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade
1471 practices laws, including with respect to inflation of fees for Solid Waste, Recyclable Materials or
1472 Organic Materials Collection, Transportation, Processing, or Disposal;

1473 23.01.1.6 Violation of securities laws;

1474 23.01.1.7 Felonies.

1475 23.01.2 Pleas. Entry of a plea of "guilty," "nolo contendere" or "no contest"
1476 by a Contracting Party based on acts taken in his, her, or its official capacity on behalf of
1477 CONTRACTOR with respect to the conduct described in preceding subdivision (1) of this
1478 Section.

1479 23.02 Notice. CONTRACTOR shall notify CITY in writing within five (5) calendar days
1480 of becoming aware of the occurrence of any Criminal Activity.

1481 23.03 CONTRACTOR'S Cure. Upon occurrence of any Criminal Activity,
1482 CONTRACTOR shall immediately do or cause to be done all of the following:

1483 23.03.1 Terminate from employment or remove from office any offending
1484 individual CONTRACTOR Party, unless otherwise directed or ordered by a court or regulatory
1485 agency of competent jurisdiction or authority, and unless that termination would constitute a
1486 breach of any labor agreement entered into by CONTRACTOR, and

1487 23.03.2 Eliminate participation by any individual offending CONTRACTOR
1488 Party in any management, supervision, or decision activity that affects or could affect, directly or
1489 indirectly, the performance of the CONTRACTOR under this Agreement.

1490 23.03.3 Transfer and Hiring. CONTRACTOR shall not allow or cause to
1491 be allowed the hire or transfer of any individual from any Parent Company or subsidiary
1492 company or business entity of CONTRACTOR who has committed Criminal Activity as a
1493 CONTRACTOR representative, field supervisor, officer, or director who is directly or indirectly
1494 responsible for performance of this Agreement without obtaining prior written consent of CITY,
1495 following full disclosure to CITY of the facts and circumstances surrounding such Criminal
1496 Activity.

1497 23.04 CITY'S Remedy. In the event of any occurrence of Criminal Activity, the CITY, in
1498 its sole discretion, may terminate the Agreement within thirty (30) calendar days written notice to
1499 CONTRACTOR, or may impose other sanctions (which may include financial sanctions,
1500 temporary suspensions, or any other condition deemed appropriate short of termination) as it
1501 will deem proper, in the following events:

1502 23.04.1 CONTRACTOR fails to comply with the foregoing obligation of this
1503 Section, or

1504 23.04.2 The Criminal Activity concerns or relates directly or indirectly to
1505 this Agreement.

1506 23.05 CONTRACTOR shall be given the opportunity to present evidence in mitigation
1507 during the thirty (30) calendar day notice period.

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ARTICLE 24. Binding Arbitration

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24.01 Upon the request by written notice of CONTRACTOR or CITY, unresolved disputes relating respectively to events of default, the CITY'S right to terminate the Agreement, excuse from performance, assurance of performance and liquidated damages, shall be limited to arbitration as described herein. A party to this Agreement alleging a breach of a provision subject to arbitration may initiate arbitration by giving the other party a written arbitration demand notice. The parties shall jointly select a single arbitrator who is knowledgeable of the general subject matter. If the parties are unable to agree upon an arbitrator within thirty (30) Business Days of the arbitration demand notice, the party alleging a breach shall request from the American Arbitration Association a list of five (5) arbitrators who conduct arbitrations in the greater Bay Area. The parties shall alternately strike names from the list until one name remains. The arbitrator whose name remains shall be appointed as the arbitrator.

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24.02 The arbitration of this dispute shall commence no later than ninety (90) calendar days after the appointment of the arbitrator and shall be conducted in a location agreed by the parties, according to the commercial arbitration rules of the American Arbitration Association, except as modified herein. The arbitrator shall set the time and other limits for the presentation of each party's case, memoranda, and other submissions, and shall issue a written decision supported by law and substantial evidence as promptly as circumstances demand and permit. The arbitrator shall have no authority in excess of the authority of a court having jurisdiction over the matter. Additionally, the arbitrator shall not alter, revoke, or suspend any provision, term, or condition of this Agreement. The arbitration award shall be binding and deemed enforceable in any court of competent jurisdiction. Each party acknowledges that it is giving up judicial rights to a jury trial, discovery, and most grounds for appeal under this section.

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24.03 The cost of arbitration incurred pursuant to this paragraph shall be born equally by the parties

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ARTICLE 25. Relationship of Parties

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25.01 The Parties intend that CONTRACTOR shall perform the services required by this Agreement as an independent Contractor engaged by CITY and not as an officer or employee of the CITY nor as a partner of or joint venturer with the CITY. No employee or agent of CONTRACTOR shall be or shall be deemed to be an employee or agent of the CITY. Except as expressly provided herein, CONTRACTOR shall have the exclusive control over the manner and means of conducting and providing Processing, Transfer and Disposal Services under this Agreement, and all Persons performing such services. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither CONTRACTOR nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to CITY employees by virtue of their employment with the CITY.

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ARTICLE 26. Laws to Govern

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



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ARTICLE 27. Consent to Jurisdiction

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27.01 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Alameda County.

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ARTICLE 28. Binding on Successors

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

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ARTICLE 29. Parties in Interest

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

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ARTICLE 30. Entire Agreement

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30.01 This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

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ARTICLE 31. Headings

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

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ARTICLE 32. Reference to Laws

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

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ARTICLE 33. Interpretation

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

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ARTICLE 34. Amendment

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34.01 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

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ARTICLE 35. Exhibits

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35.01 Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is attached hereto and incorporated herein and made part hereof by this reference.

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ARTICLE 36. Counterparts

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

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ARTICLE 37. Effective Date

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37.01 This Agreement shall become effective at such time as it is properly executed by the CITY and the CONTRACTOR and the CONTRACTOR shall begin Processing, Transfer and Disposal Services, as covered herein, as of November 1, 2011.



Processing, Transfer and Disposal Service Agreement

1588 IN WITNESS WHEREOF, the CITY and CONTRACTOR have duly authorized execution of this
1589 Agreement, and have executed the Agreement as of the dates set forth below.

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1591 CITY OF ALBANY

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1595 By: _____

1596 Beth Pollard, City Manager

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1598 _____

1599 Date

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1602 APPROVED AS TO FORM:

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1604 _____
City Attorney

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1606 _____

1607 City Clerk

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WASTE MANAGEMENT OF
ALAMEDA COUNTY, INC. a
California corporation

By: _____

Barry Skolnick, Area Vice President

Date

*See next pg
original signature*

Processing, Transfer and Disposal Service Agreement

1588 IN WITNESS WHEREOF, the CITY and CONTRACTOR have duly authorized execution of this
1589 Agreement, and have executed the Agreement as of the dates set forth below.

1590

1591 CITY OF ALBANY

WASTE MANAGEMENT OF
ALAMEDA COUNTY, INC. a
California corporation

1592

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By: Beth Pollard

By: [Signature]

1596 Beth Pollard, City Manager

Barry Skolnick, Area Vice President

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1598

10-18-11

10-14-11

1599 Date

Date

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1602 APPROVED AS TO FORM:

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[Signature]
City Attorney

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[Signature]
City Clerk, Deputy

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EXHIBITS

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Processing, Transfer and Disposal Service Agreement

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1616 Exhibit 1 Approved Per Ton Tipping Fee

1617 City of Albany

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Effective Date	Solid Waste Disposal Element (\$/ton)	Solid Waste Disposal Government Fee Element	Total per Ton Solid Waste Disposal Rate
November 1, 2011	\$59.18	\$22.155	\$81.335

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Effective Date	Recyclable Processing Element (\$/ton)	Recyclable Government Fee Element	Total per Ton Recyclable Processing Rate
November 1, 2011	\$30.00	\$0.00	\$30.00

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Effective Date	Organics Processing Element (\$/ton)	Organics Processing Government Fee Element	Total per Ton Organics Processing Rate
November 1, 2011	\$73.51	\$1.49	\$75.00

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Effective Date	C&D Processing Element (\$/ton)	C&D Processing Government Fee Element	Total per Ton Organics Processing Rate
November 1, 2011	\$80.01	\$2.99	\$83.00

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Effective Date	Dry Waste Processing Element (\$/ton)	Dry Waste Processing Government Fee Element	Total per Ton Organics Processing Rate
November 1, 2011	\$72.01	\$2.99	\$75.00

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Government Fees MSW	
Agency	11/1/2011
Alameda County Measure D Fee	\$ 8.23
Alameda County Facility Fee	\$ 4.34
Alameda County Hazardous Waste Fee	\$ 2.15
Alameda County LEA Inspection Fee	\$ 0.38
Alameda County Planning Department Inspection Fee	\$ 0.075
California BOE AB939 Fee	\$ 1.40
California Water Board Fee	\$ 0.03
Alameda County Open Space Fee	\$ 1.61
Alameda County Business License Tax	\$ 0.95
Other Fee	
Davis Street Transfer Station (DSTS) Fees	\$ 2.99
Total Government Fees Elements	\$ 22.155

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DSTS Government Fees MSW	
Agency	11/1/2011
DSTS - City of San Leandro Mitigation (Franchise) Fee	\$ 1.11
DSTS San Leandro Business Tax (GW excluded)	\$ 1.50
DSTS - Alameda Co LEA	\$ 0.38
Total DSTS Government Fees Elements	\$ 2.990

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Government Fees Organics	
Agency	11/1/2011
DSTS - City of San Leandro Mitigation (Franchise) Fee	\$ 1.11
DSTS - Alameda Co LEA	\$ 0.38
Total Government Fees Elements	\$ 1.490

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Exhibit 2 Refuse Rate Index

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City of Albany

1631 The "Refuse Rate Index" adjustment shall be calculated in the following manner:

1632 The expenses of the Processing, Transfer and Disposal Services for the designated fiscal
1633 period shall be prepared in the format set forth in the Operating Cost Statement - Description on
1634 the following page of this Exhibit.

1635 2. The expenses of the Processing, Transfer and Disposal Services shall be broken down
1636 into the following six (6) cost categories: Labor (Teamsters); Labor (Other) Diesel Fuel; Vehicle
1637 Replacement; Vehicle Maintenance and All Other. Each cost category is assigned a weighted
1638 percentage factor on that cost category's proportionate share of the total of the costs shown for
1639 all cost categories.

1640 3. The following indices published by the United States Department of Labor, Bureau of
1641 Labor Statistics (BLS), are used to calculate the adjustment for each cost category except Labor
1642 (Teamsters) and Labor (Other). The change in each index is calculated on a twelve-month
1643 fiscal period in accordance with the terms of the Agreement. In the event any index is
1644 discontinued, a successor index shall be selected by mutual agreement of the parties.
1645 Successor indices shall be those indices that are most closely equivalent to the discontinued
1646 indices as recommended by the BLS.

17	<u>Cost Category</u>	<u>Index</u>
1648	Labor (Teamsters)	Actual values Teamsters Local 70 Union Agreement
1649	Labor (Other)	Series ID: ceu6056210008 Service Producing Industries
1650	Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel
1651	Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle 1652 bodies, for sale separately
1653	Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for 1654 industrial work trucks
1655	All Other	Series ID: cuura422sa0 Consumer Price Index, All Urban 1656 Consumers, All Items – Bay Area

1657 4. The percentage weight for each cost category is multiplied by the change in each
1658 appropriate index, or labor Agreement to calculate a weighted percentage for each cost
1659 category. The weighted percentage changes for each cost category are added together to
1660 calculate the Refuse Rate Index (see Example).

1661



Processing, Transfer and Disposal Service Agreement

- 1662 Operating Cost Statement - Description
- 1663 **Labor (Teamsters):** List all operation and maintenance salary accounts for
1664 Teamster employees.
- 1665 List payroll tax accounts, health and welfare, payroll insurance and
1666 pension accounts directly related to the above salary accounts.
- 1667 **Labor (Other):** List all operation and maintenance salary accounts for
1668 all non-teamster employees
- 1669 List payroll tax accounts, health and welfare, payroll insurance and
1670 pension accounts directly related to the above salary accounts.
- 1671 **Diesel Fuel:** List all diesel fuel accounts.
- 1672 **Vehicle Replacement:**
- 1673 List all collection and collection related vehicle depreciation accounts.
- 1674 List all vehicle lease or rental accounts related to collection or collection
1675 related vehicles.
- 1676 **Vehicle Maintenance:**
- 1677 List all collection or collection related vehicle parts accounts.
- 1678 **All Other:** List all other expense accounts related to the services provided under this
1679 Agreement. This category includes all non-union labor, insurance
1680 including general liability, fire, truck damage, and extended coverage; rent
1681 on property, truck licenses and permits; real and personal property taxes;
1682 telephone and other utilities; employee uniforms; safety equipment;
1683 general yard repairs and maintenance; non-diesel fuel; office supplies;
1684 postage; trade association dues and subscription; advertising; and
1685 miscellaneous other expenses.
- 1686

Processing, Transfer and Disposal Service Agreement

1687 RRI Example

Item #	Category	Data Source	Percentage Change	Item Weight	Weighted Percentage Change
1	Labor (Teamsters)	Actual Values Teamsters Local 70 Union Agreement	3.19%	35.05%	1.12%
2	Labor (Other)	Series ID: ceu6056210008 Service Producing Industries	2.09%	14.00%	0.29%
3	Diesel Fuel	Series ID: wpu057303 #2 Diesel Fuel	4.74%	13.15%	0.62%
4	Vehicle Replacement	Series ID: pcu336211336211 Truck, bus, car, and other vehicle bodies, for sale separately	6.79%	2.57%	0.17%
5	Vehicle Maintenance	Series ID: pcu3339243339243 Parts and attachments for industrial work trucks	0.16%	13.46%	0.02%
6	CPI All Items	Series ID: cuura422sa0 Consumer Price Index, All Urban Consumers, All Items Bay Area	1.70%	21.77%	0.28%
Total				100.00%	2.50%

1688 In this example, the Refuse Rate Index is 2.50%.

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Exhibit 3 Guaranty Agreement

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City of Albany

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THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 2011.

1696

THIS GUARANTY is made with reference to the following facts and circumstances:

1698

A. Waste Management of Alameda County, Inc., hereinafter ("CONTRACTOR") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by USA Waste of California, Inc., a Delaware Corporation (Guarantor).

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B. Contractor and the City of Albany ("CITY") have negotiated an Agreement for Processing, Transfer and Disposal Services dated as of _____, (hereinafter "Agreement").

1704

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C. It is a requirement of the Agreement, and a condition to the CITY entering into the Agreement, that Guarantor guaranty CONTRACTOR'S performance of the Agreement.

1708

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D. Guarantor is providing this Guaranty to induce the CITY to enter into the Agreement.

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NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1714

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the CITY the complete and timely performance, satisfaction and observation by CONTRACTOR of each and every term and condition of the Agreement, which CONTRACTOR is required to perform, satisfy or observe. If CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of CONTRACTOR or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the CITY of any damages, costs or expenses which might become recoverable by the CITY from CONTRACTOR due to its breach of the Agreement.

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2. Guarantor's Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to CONTRACTOR in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

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3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations

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1738



1739 under this Guaranty for any reason whatsoever, including, without limitation: (1) the
1740 insolvency, bankruptcy, reorganization or cessation of existence of CONTRACTOR; (2)
1741 the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any
1742 limitation on any claim in bankruptcy resulting from the actual or purported termination of
1743 the Agreement; (3) any waiver with respect to any of the obligations of the Agreement
1744 guaranteed hereunder or the impairment or suspension of any of the CITY'S rights or
1745 remedies against CONTRACTOR; or (4) any merger or consolidation of CONTRACTOR
1746 with any other corporation, or any sale, lease or transfer of any or all the assets of
1747 CONTRACTOR. Without limiting the generality of the foregoing, Guarantor hereby
1748 waives the rights and benefits under California Civil Code §2819.
1749

1750 The Guarantor hereby waives any and all benefits and defenses under California Civil
1751 Code §2846, 2849, and 2850 as may be amended from time to time, including without
1752 limitation, the right to require the CITY to (a) proceed against CONTRACTOR, (b)
1753 proceed against or exhaust any security or collateral the CITY may hold now or hereafter
1754 hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that
1755 CITY may proceed against Guarantor for the obligations guaranteed herein without
1756 taking any action against CONTRACTOR or any other guarantor or pledgor and without
1757 proceeding against or exhausting any security or collateral the CITY may hold now or
1758 hereafter hold. The CITY may unqualifiedly exercise in its sole discretion any or all rights
1759 and remedies available to it against CONTRACTOR or any other guarantor or pledgor
1760 without impairing the CITY'S rights and remedies in enforcing this Guaranty.
1761

1762 The Guarantor hereby waives and agrees to waive at any future time at the request of
1763 the CITY to the extent now or then permitted by applicable law, any and all rights which
1764 the Guarantor may have or which at any time hereafter may be conferred upon it, by
1765 statute, regulation or otherwise, to avoid any of its obligations under, or to terminate,
1766 cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it
1767 is agreed that the occurrence of any one or more of the following shall not affect the
1768 liability of the Guarantor hereunder: (a) at any time or from time to time, without notice
1769 the Guarantor, performance or compliance herewith is waived; (b) any other of any
1770 provision of its Agreement indemnification with respect to CONTRACTOR'S obligations
1771 under the Agreement or any security therefore is released or exchanged in whole or in
1772 part or otherwise dealt with; or (c) any assignment of the Agreement is effected which
1773 does not require the CITY'S approval.
1774

1775 The Guarantor hereby expressly waives, diligence, presentment, demand for payment or
1776 performance, protest and all notices whatsoever, including, but not limited to, notices of
1777 non-payment or non-performance, notices of protest, notices of any breach or default,
1778 and notices of acceptance of this Guaranty. If all or any portion of the obligations
1779 guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall
1780 continue and remain in full force and effect if all or any part of such payment or
1781 performance is avoided or recovered directly or indirectly from the CITY as a preference,
1782 fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by
1783 Guarantor or CONTRACTOR prior to such avoidance or recovery, and (b) payment in
1784 full of any obligations then outstanding.
1785

1786 4. Term. This Guaranty is not limited to any period of time, but shall continue in full force
1787 and effect until all of the terms and conditions of the Agreement have been fully
1788 performed or otherwise discharged and Guarantor shall remain fully responsible under

1789 this Guaranty without regard to the acceptance by the CITY of any performance bond or
1790 other collateral to assure the performance of CONTRACTOR'S obligations under the
1791 Agreement. Guarantor shall not be released of its obligations hereunder so long as
1792 there is any claim by the CITY against CONTRACTOR arising out of the Agreement
1793 based on CONTRACTOR'S failure to perform which has not been settled or discharged.
1794

1795 5. No Waivers. No delay on the part of the CITY in exercising any rights under this
1796 Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No
1797 notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or
1798 right of the CITY to take other or further action without notice or demand. No
1799 modification or waiver of any of the provisions of this Guaranty shall be effective unless it
1800 is in writing and signed by the CITY and by Guarantor, nor shall any waiver be effective
1801 except in the specific instance or matter for which it is given.
1802

1803 6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor
1804 agrees in the event of Guaranty's breach of its obligations including to pay reasonable
1805 attorney's fees and all other reasonable costs and expenses incurred by the CITY in
1806 enforcing this Guaranty, or in any action or proceeding arising out of or relating to this
1807 Guaranty, including any action instituted to determine the respective rights and
1808 obligations of the parties hereunder.
1809

1810 7. Governing Law: This Guaranty is and shall be deemed to be a contract entered into in
1811 and pursuant to the laws of the State of California and shall be governed and construed
1812 in accordance with the laws of California without regard to its conflicts of laws, rules for
1813 all purposes including, but not limited to, matters of construction, validity and
1814 performance. Guarantor agrees that any suit, action, and other proceeding brought by
1815 the CITY or other party to enforce this Guaranty may be brought and concluded in the
1816 courts of the State of California, in Alameda County or Federal District court for northern
1817 California, which shall have exclusive jurisdiction over such suit, action, or proceeding.
1818 Guarantor appoints the following person as its agents for service of process in California:
1819

1820 _____
1821 With a copy by certified mail to:
1822 _____
1823 _____
1824 _____
1825

1826 8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such
1827 invalidity will have no effect upon the remaining portions of this Guaranty, which shall be
1828 severable and continue in full force and effect.
1829

1830 9. Binding on Successors. This Guaranty shall inure to the benefit of the CITY and its
1831 successors and shall be binding upon Guarantor and its successors, including
1832 transferee(s) of substantially all of its assets and its shareholder(s) in the event of its
1833 dissolution or insolvency.
1834

1835 10. Authority. Guarantor represents and warrants that it has the corporate power and the
1836 authority to give this Guaranty, that its execution of this Guaranty has been authorized
1837 by all necessary action under its Article of Incorporation and By-Laws, and that the
1838 person signing this Guaranty on its behalf has the authority to do so.



Processing, Transfer and Disposal Service Agreement

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11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the CITY: CITY Manager
 CITY of Albany
 1000 San Pablo Avenue
 Albany, CA 94702

with a copy to the CITY Attorney at the same address.

To the Guarantor: Waste Management of Alameda County, Inc.
 Area Vice President
 172 98th Avenue
 Oakland, CA 94603

with a copy to

USA Waste of California, Inc.
Group General Council
7025 N. Scottsdale Rd. #200
Scottsdale, AZ 85253

IN WITNESS WHEREOF, the CITY and Guarantor have executed this Agreement as of the day and year first above written.

Remainder of page intentionally left blank.

Processing, Transfer and Disposal Service Agreement

1867

GUARANTOR: CITY OF ALBANY, a municipal corporation of the State of California

(name of Guarantor)

By: _____
(sign here)

By: _____
City Manager

(print name/title)

By: _____
(sign here)

ATTEST:

(print name/title)

City Clerk

1868

1869

Proper notarial acknowledgment of execution by Guarantor must be attached.

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APPROVED AS TO FORM:

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BY: _____
City Attorney

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1867

GUARANTOR:

CITY OF ALBANY, a municipal corporation of the State of California

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

(name of Guarantor)

By: [Signature]
(sign here)

By: Beth Pollard
City Manager

BARRY SKOLNICK, AREA VICE PRESIDENT
(print name/title)

ATTEST:

By: [Signature]
(sign here)

ROBERT E. LONGO
(print name/title)
Vice President & Assistant Secretary

Eileen Harrington
City Clerk, Deputy

1868

Proper notarial acknowledgment of execution by Guarantor must be attached.

1870

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

1875

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APPROVED AS TO FORM:

1878

1879

BY: [Signature]
City Attorney

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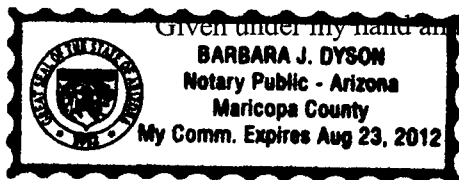
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STATE OF ARIZONA §
COUNTY OF MARICOPA §

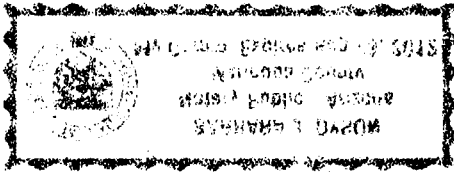
Before me, the undersigned authority, on this day personally appeared, **Robert E. Longo**, known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged to me that he executed the same for the purposes and consideration therein expressed.



Given under my hand and seal of office this 17th day of October, 2011.

[Signature]
Notary Public in and for
THE STATE OF ARIZONA
My Commission Expires: 8-23-12





1885

Exhibit 4 Approved Alternative Facilities

1886

City of Albany

City of Albany Recyclable and Organics Processing Sites				
Primary Locations - Waste Management Sites	Address	City	State	Zip
Davis Street Recycling MRF	2615 Davis Street	San Leandro	CA	94577
Carmel Marina Recycling	11260 Commercial Parkway	Castroville	CA	95012
Madison Lane Transfer Station	1120 Madison lane	Salinas	CA	93907
Redwood Landfill (Organics Processing)	8950 Redwood Highway	Novato	CA	94945
Secondary Locations - Non Waste Management Sites				
Rock Tenn Recycling and Waste Solutions (formerly Smurfit)	800 77th Ave	Oakland	CA	94621
Grover Composting Facility	3401 Gaffery Road	Vernalis	CA	95385
California Waste Solutions	1820 Tenth Street	Oakland	CA	94606
California Waste Solutions	3300 Wood Street	Oakland	CA	94608

1887

