

ORIGINAL

Disposal Services Contract

Executed between

City of Oakland

and

Waste Management of Alameda County, Inc.

July 1, 2015



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CITY OF OAKLAND

This Disposal Services Contract ("Contract") is entered into February 20, 2015 (the "Effective Date") by and between the CITY OF OAKLAND, a California municipal corporation ("CITY") and WASTE MANAGEMENT OF ALAMEDA COUNTY, INC., a California corporation ("CONTRACTOR").

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1. DEFINITIONS

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

1.01 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household appliances, including appliances containing Freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, Large Plant Debris, and corrugated cardboard. Bulky Goods may also include E-Waste, U-Waste and materials generated from minor home repairs and other similar materials. Except for Bulky Goods Collected at CITY Facilities, Bulky Goods must be generated at the Service Address wherein the Bulky Goods are Collected. Bulky Goods do not include items herein defined as Unacceptable Waste or Construction and Demolition Debris, except as defined above.

1.02 Change in Law. The adoption, promulgation, or modification of any generally applicable and enforceable federal, state, local joint power authority (JPA), or foreign rule, law, regulation, ordinance, order, judgment, decree, permit or administrative agency guidelines (excluding orders, judgments, and decrees specific to a particular facility) (collectively, "Laws") duly adopted and promulgated officially in writing for uniform application occurring after January 9, 2013. Change in Law does not include changes initiated by CONTRACTOR. Change in Law shall not include (i) Laws enacted or adopted prior to January 9, 2013, or (ii) Laws particular to the solid waste and recycling hauling, processing and disposal industry that are enacted or finally adopted or approved prior to the Effective Date of this Contract but initially become effective after such date.

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

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

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

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

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

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

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

1.10 CONTRACTOR. WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

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

1.12 Disposal/Dispose. The final Processing and disposition of Mixed Materials, Garbage and Residue received from the Collection Contractor(s) and CITY by CONTRACTOR under the terms of this Contract onto land located at the Disposal Facility, including but not limited to placement as alternative daily cover, road construction, slope stabilization, or other beneficial uses. Disposal does not include transformation using incineration, pyrolysis, distillation, gasification, biological conversion or other similar methodologies unless authorized by CITY.

1.13 Disposal Facility or Landfill. The Altamont Landfill located at 10840 Altamont Pass Road, Livermore, California 94551 that is that is owned and operated by CONTRACTOR, as further described in Exhibit 6.

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

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

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

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

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

1.19 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the

party claiming the excuse from its obligations due to such event, to the extent such event has a significant and material adverse effect on the ability of a party to perform its obligations thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by or directed at CONTRACTOR or CONTRACTOR's employees or subcontractors. Force Majeure shall include a Change in Law if such Change in Law prohibits a party's performance hereunder. Notwithstanding the foregoing, (i) no event relating to a Disposal Facility, other than a Disposal Facility operated by CONTRACTOR or a related party of CONTRACTOR, or the delivery of Garbage, Mixed Materials and/or Residue to that facility shall constitute a Force Majeure under this contract unless (and then only to the extent) that such event prevents the delivery of or acceptance of Garbage, Mixed Materials and Residue to or by that facility; (ii) no failure of performance by any subcontractor of CONTRACTOR shall be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as provided herein, no event which merely increases CONTRACTOR'S cost of performance shall be a Force Majeure; and (iv) no event, the effects of which could have been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall be a Force Majeure.

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

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

1.22 Guarantor. USA Waste of California, Inc.

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

1.24 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include those wastes defined as Hazardous Waste in Oakland Municipal Code Section 8.28.010 or as subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, State or local law, excluding de minimis quantities of waste of a type and amount normally found in residential Garbage after implementation of programs for the safe Collection, recycling, treatment and Disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code. Hazardous Waste shall include, but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined, regulated or listed (directly or by reference) by applicable local, State or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or

“toxic substances,” or similarly identified as hazardous to human health or the environment, including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC section 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC section 6901 et seq.; (iv) the Clean Water Act, 33 USC section 1251 et seq.; (v) California Health and Safety Code section 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC section 7901 et seq.; and (vii) California Water Code section 13050; all rules and regulations adopted and promulgated pursuant to such statutes, and future amendments to or recodifications of such statutes, and any regulations adopted pursuant to these statutes after the date of this Contract, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances; any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products. The parties intend that this definition not be limited to any particular statutory or regulatory regime and that it be construed as broadly as possible.

1.25 Household Hazardous Waste (“HHW”). Any Hazardous Waste generated at a single family or multi-family service address within the CITY, including, but not limited to, cleaning products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, fluorescent lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers, automobile batteries, household batteries, adhesives, and Universal Waste.

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

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

1.28 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or untreated and unpainted wood with a diameter of more than six (6) inches and not more than two (2) feet, or a length of more than four (4) feet and no more than six (6) feet, or weighing not more than seventy-five (75) pounds.

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

1.30 Maximum Service Rates. Those maximum service rates approved by CITY and included in the then-current Mixed Materials and Organics Collection Services Contract with the CITY of Oakland.

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

258 1.32 Mixed Materials and Organics (MM&O) Collection Contractor. The company
259 holding a current Mixed Materials and Organics Collection Services Contract with the CITY of
260 Oakland.

261 1.33 Mixed Materials Residue. Materials remaining after the Processing of Mixed
262 Materials that cannot reasonably be Diverted from the Landfill.

263 1.34 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food
264 ware, compostable food containers, compostable paper, horse stable matter, etc. Organic
265 Materials do not include items herein defined as Unacceptable Waste.

266 1.35 Organic Materials Residue. Materials remaining after the Processing of Organic
267 Materials that cannot reasonably be Diverted from the Landfill.

268 1.36 Person. An individual, association, partnership, corporation, joint venture, the
269 United States, the State of California, any municipality or other political subdivision thereof, or
270 any other entity whatsoever.

271 1.37 Plant Debris. Any vegetative matter resulting from normal yard and landscaping
272 maintenance or unpainted and untreated wood that is not more than four (4) feet in its longest
273 dimension or more than six (6) inches in diameter or weighs less than seventy-five (75) pounds
274 per individual piece and can be handled by two (2) persons. Plant Debris includes palm, yucca,
275 cactus, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees and other forms
276 of horticultural waste. Plant Debris does not include items defined herein as Unacceptable
277 Waste.

278 1.38 Post-Closure. All activities and related costs during the period subsequent to the
279 closure of the Disposal Facility or portions of the Disposal Facility in accordance with applicable
280 laws and permits.

281 1.39 Processing or Process. An operation or series of operations, whether involving
282 equipment, manual labor, or mechanical or biological processes that sorts, enhances, upgrades,
283 concentrates, decontaminates, packages or otherwise prepares Recyclable Materials, Organic
284 Materials, Mixed Materials or Bulky Goods and returns marketable elements thereof to the
285 economic mainstream in the form of raw material for new, reused or reconstituted products.
286 Processing begins at the time Mixed Materials, Recyclable Materials, Bulky Goods or Organic
287 Materials are delivered to the Processing Facility and ends when the Processed materials are
288 sold or reused, and the Residue is properly Disposed.

289 1.40 Recovered Materials. Recyclable Materials or Organic Materials removed at the
290 Disposal Facility from Garbage, Mixed Materials or Residue and directed to recycling, reuse or
291 compost processing.

292 1.41 Recyclable Materials. Those materials designated in this Contract or by CITY for
293 Collection and Processing under the MM&O or RR Collection Service Contracts which are
294 segregated from Mixed Materials by the CITY or service recipient at the source of generation.
295 Recyclable Materials include newspaper, mixed paper (including white and colored paper,
296 magazines, telephone books, chipboard, junk mail, and high grade paper) glass containers,
297 metal containers (ferrous, non-ferrous, and bi-metal Containers including empty aerosol
298 containers), aluminum foil and trays, milk and juice cartons, soup and juice boxes, all narrow
299 neck rigid plastic containers, non-bottle rigid plastics, and corrugated cardboard. CITY and
300 CONTRACTOR may mutually agree to include additional materials or remove materials from
301 this list of Recyclable Materials.

302 1.42 Recyclable Materials Residue. Materials remaining after the Processing of
303 Recyclable Materials that cannot reasonably be Diverted from the Landfill.

304 1.43 Residential Recycling (RR) Contractor. The company holding a current
305 Residential Recyclable Materials Collection Services Contract with the CITY of Oakland.

306 1.44 Residue. Mixed Materials Residue, Organic Materials Residue and Recyclable
307 Materials Residue.

308 1.45 Ton/Tonnage. A unit of measure for weight equivalent to two thousand (2,000)
309 standard pounds where each pound contains sixteen (16) ounces.

310 1.46 Universal Waste ("U-Waste"). Materials that the California Department of Toxic
311 Substances Control considers Universal Waste, (California Code of Regulations Title 22, Div
312 4.5, Ch 23) including materials such as batteries, thermostats, lamps, cathode ray tubes,
313 computers, telephones, answering machines, radios, stereo equipment, tape players/recorders,
314 phonographs, video cassette players/recorders, compact disc players/recorders, calculators,
315 some appliances, aerosol cans, fluorescent lamps, certain mercury-containing devices and such
316 other items as may be added from time to time.

317 1.47 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous
318 Waste, the acceptance or handling of which would cause a violation of any permit condition or
319 legal or regulatory requirement, damage or threatened damage to CONTRACTOR'S equipment
320 or facilities, or present a substantial endangerment to the health or safety of the public or
321 CONTRACTOR'S employees; provided, that de minimis quantities or waste of a type and
322 amount normally found in Garbage, Mixed Materials, or Residue after implementation of
323 programs for the safe Processing, treatment, and Disposal of Household Hazardous Waste
324 shall not constitute Unacceptable Waste.

325 1.48 Work Day. Any day, Monday through Saturday that is not a holiday as set forth
326 in Section 5.06 of this Contract.

327 **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF** 328 **CONTRACTOR**

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

331 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly
332 existing and in good standing under the laws of the state of California. It is qualified to transact
333 business in the State of California and has the corporate power to own its properties and to
334 carry on its business as now owned and operated and as required by this Contract.

335 2.02 Corporate Authorization. CONTRACTOR has full legal right, power and authority
336 to execute, deliver and perform its obligations under this Contract. The Board of Directors of
337 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its
338 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this
339 Contract. The Persons signing this Contract on behalf of CONTRACTOR have authority to do
340 so.

341 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of
342 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been
343 duly executed and delivered by CONTRACTOR in accordance with the authorization of its

Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

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

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

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

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

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

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

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

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

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

ARTICLE 3. TERM OF CONTRACT

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

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

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

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

ARTICLE 4. OBLIGATIONS OF CITY

4.01 General. CITY and CONTRACTOR acknowledge that CITY will not be responsible for the payment of Disposal Tipping Fees for Mixed Materials, Garbage or Residue that the Collection Contractor(s) deliver to the Disposal Facility. CITY contractually controls the delivery of Mixed Materials and Garbage Collected in CITY and Residue from Mixed Materials Processing activities by the MM&O Collection Contractor and shall direct the MM&O Collection Contractor to deliver such Mixed Material, Garbage or Mixed Material Residue to the Disposal Facility. CONTRACTOR acknowledges that CITY has no ability to direct individuals who self-haul to use the Disposal Facility. CITY may utilize CITY staff and vehicles to haul Mixed Materials, Garbage, Bulky Goods or other materials generated by or at any building, structure, yard, park, or any other facility owned, leased, or operated by CITY to the Disposal Facility. CONTRACTOR shall bill CITY for CITY-hauled loads at no more than the then current Disposal Tipping Fee, as calculated under this Contract, for the type of material being hauled.

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

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

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

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

5.02 Facility Permits.

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

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

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

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

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

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

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

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

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

477 5.05 Emergency Services. In the event of a tornado, major storm, earthquake, fire,
478 natural disaster or other such event, the Contract Manager may require CONTRACTOR to
479 extend the hours of operation in order to accept materials from CITY'S Collection Contractor(s).
480 However, CONTRACTOR shall not be required to extend the hours of operation to the extent
481 that such extension would cause CONTRACTOR to violate its permit(s).

482 5.06 Holidays. CONTRACTOR shall not be required to accept Mixed Materials,
483 Garbage or Residue from the Collection Contractor(s) at the Disposal Facility on January 1,
484 Thanksgiving Day and December 25.

485 5.07 Average Turnaround Time.

486 5.07.1 In the event CONTRACTOR is not the MM&O Collection Contractor as
487 defined under this Contract, CONTRACTOR shall operate the Disposal Facility so that all
488 MM&O Collection Contractors' vehicles are processed, unloaded, and exited from the facility no
489 more than twenty (20) minutes, on average, after arriving at the scale house and mounting the
490 scale to weigh-in. For purposes of this 5.07.1, "on average" shall be calculated on a monthly
491 basis.

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

500 5.08 Scale Operation.

501 5.08.1 Weighing Standards and Procedures. The scale house(s) at the Disposal
502 Facility entrance shall serve as the location for weighing vehicles and charging Tipping Fees as
503 provided herein. All weighing shall be conducted by CONTRACTOR or its agents by a licensed
504 weigh master. CONTRACTOR scale house personnel shall be responsible for inspecting the
505 Mixed Materials, Garbage and Residue delivered to the Disposal Facility. The Collection
506 Contractor(s)' vehicles shall be charged Tipping Fees based on the Tonnage of Mixed
507 Materials, Garbage and Residue accepted by the Disposal Facility and the applicable Disposal
508 Tipping Fees as set forth in Exhibit 1 which is attached to and included in this Contract.
509 CONTRACTOR shall weigh and record inbound weights of all Collection Contractor(s) vehicles
510 when the vehicles arrive at the Disposal Facility. In addition, CONTRACTOR shall weigh and
511 record outbound weights of such vehicles for which CONTRACTOR does not maintain tare
512 weight information. CONTRACTOR shall provide each driver with a receipt showing the date,
513 time, and quantity and type of Mixed Materials, Garbage or Residue delivered to the Disposal

Facility and the Tipping Fee charged for such material. The scale house computer system shall compile information into various reports, which typically include for each transaction, date of receipt, inbound and (as applicable) outbound times, documentation of the Tipping Fee charged, inbound and outbound weights of vehicle, vehicle identification number, hauler identification and/or classification, customer account, material type, vehicle type, weight of load, and invoice number.

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

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

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

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

5.08.5 Estimates. Pending substitution of portable scales or during power outages, CONTRACTOR shall estimate the Tonnage of Mixed Materials, Garbage and Residue delivered to the Disposal Facility by utilizing the arithmetic average of that vehicle's recorded Tons of Mixed Materials, Garbage or Residue delivered on its preceding three (3) deliveries, on

the same day of the week, to the Disposal Facility, with the exception that the estimate of Tonnage in roll-off boxes shall be made by multiplying the estimated number of cubic yards of Mixed Materials, or Garbage delivered per non-compacted roll-off box by 0.25 Tons per cubic yard or compacted roll-off box by 0.50 Tons per cubic yard or such other amounts as may be agreed to in writing between CONTRACTOR and CITY.

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

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

5.08.7 Records. CONTRACTOR shall maintain scale records that provide information such as, but not limited to, date of receipt, inbound and, (as applicable) outbound time, inbound and outbound weights of vehicles, Tipping Fee charged, vehicle identification number, vehicle type, type of material, hauler identification and/or classification, type, and weight. CONTRACTOR shall also maintain records of all outbound materials that provide information such as, but not limited to material type, weight, destination and revenue from sale of materials. CONTRACTOR'S records shall, to the extent practical, include the above information for all Oakland material delivered by self-haulers.

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

5.10 Ownership of Materials. Once Mixed Materials, Garbage or Residue are delivered to the Disposal Facility by Collection Contractor(s), ownership and possession of such material shall transfer directly from the Collection Contractor(s) to CONTRACTOR. CONTRACTOR is hereby granted the right to retain, recycle, Process, Dispose, subject to the limitations set forth in Section 1.12 on allowable Disposal methodologies, and otherwise use such materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by CONTRACTOR. Such right shall include CONTRACTOR'S right to retain any benefit resulting from its right to retain, recycle, Process, Dispose, or reuse the Mixed Materials, Garbage or Residue.

5.11 Rejection of Unacceptable Waste.

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

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

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

629 5.11.4 Notification. In the event CONTRACTOR is not the Collection
630 Contractor(s) and CONTRACTOR rejects delivered materials, CONTRACTOR shall
631 immediately notify the Collection Contractor(s) verbally and then follow such verbal notification
632 with written notice. The written notice will identify: the date and time of occurrence; material
633 type; material weight or volume; characterization of material; and CONTRACTOR'S reason for
634 rejection of the delivered material.

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

645 5.13 Alternate Disposal Facility.

646 5.13.1 If CONTRACTOR becomes unable to accept Mixed Material, Garbage
647 and Mixed Materials Residue generated in CITY at the Disposal Facility because it did not use
648 reasonable business efforts in resisting changes, alterations and amendments to permits, or
649 due to reasons within its control and which could have been avoided by the exercise of due
650 care, or as the result of any labor unrest, including but not limited to, strike, slowdown, sick-out,
651 picketing, or other concerted job action conducted by CONTRACTOR, CONTRACTOR'S
652 employees or subcontractors, then and only if, and to the extent, CONTRACTOR is actually

prevented from accepting, Processing and/or transferring Mixed Materials, Garbage and Mixed Materials Residue at the Disposal Facility because of a concerted labor action, CONTRACTOR shall (i) accept, and Dispose of such Mixed Materials, Garbage and Mixed Materials Residue at another Disposal Facility owned by it (or by another company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees in effect under this Contract, and shall pay any additional transportation costs incurred by the MM&O Collection Contractor in delivering the Mixed Materials, Garbage and Mixed Materials Residue to the other Disposal Facility, or (ii) shall arrange for all Mixed Materials, Garbage and Mixed Materials Residue to be accepted, and Disposed at a disposal facility not owned by it or an affiliated company, in which case CONTRACTOR shall pay any difference in the fees charged at such disposal facility plus any additional transportation costs incurred in delivering Mixed Materials, Garbage and Mixed Materials Residue to the disposal facility, and the then-current Disposal Tipping Fees in effect under this Contract. If as a result of a labor action directed at CONTRACTOR, CONTRACTOR makes arrangements that allow for continued operation of the Disposal Facility during the labor action, then it shall not be obligated to provide an alternative Disposal Facility and CITY shall be required to direct all Mixed Materials, Garbage and Mixed Materials Residue to the Disposal Facility, providing operations at the Disposal Facility are consistent with the requirements under this Contract.

5.13.2 If CONTRACTOR, despite using reasonable business efforts to resist changes, alterations and amendments to permits under Section 5.02, becomes unable to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue generated in CITY at the Disposal Facility, or if CONTRACTOR becomes unable to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue at the Disposal Facility as the result of an event of Force Majeure as defined herein then CONTRACTOR shall, to the extent it is legally able to do so, offer to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue at another disposal facility owned by it (or by another company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees in effect under this Contract. CONTRACTOR has no obligation, however, to pay for additional transportation costs incurred by the MM&O Collection Contractor. CITY has no obligation to accept such offer and, if CITY rejects such an offer, CITY may terminate this Contract by giving written notice in the manner as set forth in Article 21 of this Contract. Such termination shall be effective thirty (30) calendar days after CITY has given notice.

5.14 Monthly Report. Beginning on July 1, 2015, and monthly during the term of this Contract, CONTRACTOR shall provide a complete and accurate monthly report no later than twenty (20) calendar days after the end of the reporting month. Therefore, the first report will be due no later than August 20, 2015 for the reporting month of July 2015. The report shall be prepared in an electronic format in a form approved by the Contract Manager and shall, if requested by CITY, include data that can be uploaded by CITY. The report shall include the total Tonnage of Mixed Materials, Garbage and Residue generated in the CITY that was accepted and Disposed at the Disposal Facility and shall also list other applicable information, including date of receipt, inbound and outbound time, inbound and outbound weights of vehicles, Disposal Tipping Fee charged, vehicle identification number, vehicle type, type of material, hauler identification type, and weight, separately for each of the following categories for material Collected by the Collection Contractor(s) within CITY: residential Garbage, Mixed Materials, Mixed Materials Residue, residential Organic Materials Residue, or residential Recyclable Materials Residue, commercial Garbage, Mixed Materials, or Residue, and CITY Garbage, Mixed Materials, or Residue. In addition, the report shall include Tonnage information for materials generated in the CITY delivered by other companies, small vehicles, CITY hauled

materials, and other self-haulers, Recovered Materials and destination of outbound materials. The monthly report shall also include the following using an allocation methodology, where appropriate, that is acceptable to CITY:

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

5.14.2 Number and nature of rejected loads during the month;

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

5.14.3.1 Number and nature of occurrences in which CONTRACTOR identified Hazardous Waste inadvertently accepted; and

5.14.3.2 Number and nature of any notices of violation.

5.15 Annual Report of Disposal Facility Activity. Beginning February 15, 2016, and annually thereafter during the term of this Contract, CONTRACTOR shall submit a complete and accurate annual report of Disposal Facility activity to CITY. Annual reports shall be submitted no later than forty-five (45) calendar days after the end of each full or partial calendar year. Therefore, the first report will be due no later than February 15, 2016, for the partial calendar year of July 2015 through December 2015. The report shall be prepared in an electronic format in a form approved by the Contract Manager and shall, if requested by CITY, include data that can be uploaded by CITY. This report shall contain all items required by Section 5.14 in addition to the following: a list of parties that CONTRACTOR has guaranteed capacity to through written agreements, the annual estimated Tonnage to be delivered by each party, and the term of CONTRACTOR'S capacity commitment. In the event CONTRACTOR has agreements with private companies, the name of the party may be withheld from the list; however, the annual Tonnage estimate and term of the commitment must be provided.

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

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

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

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

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

766 5.20 Maximum Service Rates.

767 5.20.1 Consistent with the limitations provided by Public Resources Code
768 section 40059.2 and the obligations of CONTRACTOR set forth above, the following provisions
769 are intended to address issues of defense and acceptance of the tender of defense and
770 indemnity by CITY in the event that CITY and/or CONTRACTOR are named in any lawsuit (a)
771 challenging CITY's setting of Maximum Service Rates for Collection Services under the MM&O
772 Contract, provided that CONTRACTOR is also the MM&O Collection Contractor, or of the
773 Disposal Tipping Fees under this Contract, (b) impacting the ability of CONTRACTOR to collect
774 or retain Disposal Tipping Fees, and/or (c) in connection with the application of the California
775 Constitution to the imposition, payment, or collection of Disposal Tipping Fees for services
776 provided by CONTRACTOR under this Contract ("Maximum Service Rates Lawsuit").

777 5.20.2 In the event of a Maximum Service Rates Lawsuit, CITY shall actively
778 defend such lawsuit, and CONTRACTOR agrees to cooperate with CITY to the extent practical
779 and/or necessary. CONTRACTOR and CITY further agree to toll, during the pendency of any
780 Maximum Service Rates Lawsuit, all cross claims against each other which are inconsistent with
781 the Contract, including, but not limited to the tolling of any claim filed under the California
782 Government Code. CONTRACTOR shall have no obligation to defend any lawsuit based on
783 Maximum Service Rates, Disposal Tipping Fees, or that otherwise addresses any portion of the
784 rates proposed by CONTRACTOR or the award of the Contract by CITY. In the event said
785 lawsuit results in the reduction or elimination of any portion of the proposed rates by
786 CONTRACTOR, the remedies set forth in the provisions below shall apply.

787 5.20.3 Nothing in this Section is intended to imply that any action of CITY or
788 CONTRACTOR with regard to adoption, imposition or collection of Disposal Tipping Fees is
789 violative of any laws, regulations or Constitutional provisions. These provisions are merely
790 intended as a statement of an agreed upon process for defense and allocation of risks between
791 CITY and CONTRACTOR in the event of a Maximum Service Rates Lawsuit, regardless of the
792 merit or lack of merit of any of the claims set forth therein.

793 5.20.4 CITY and CONTRACTOR agree, as more fully set forth in the Recitals to
794 this Contract, that proper Disposal of Garbage and Residue is fundamental to the protection of
795 the public health, safety and the well-being of the residents of CITY. CITY'S responsibility for
796 ensuring the adequacy of these sanitation services in part provides the justification for the
797 granting of an exclusive franchise to CONTRACTOR. This exclusive grant creates an
798 obligation, subject to the terms and conditions of the Contract, that Disposal Services are
799 continued to be provided even under difficult or adverse circumstances, such as but not limited
800 to, natural disaster, labor unrest, and any period where legal actions impact the effectiveness of
801 portions of this Contract.

802 5.20.4.1 Specifically, with reference to any Maximum Service Rates
803 Lawsuit, such legal actions shall not be considered a Change in Law or Force Majeure event
804 excusing CONTRACTOR'S performance, except as otherwise excused as set forth below.

805 5.20.4.2 During the pendency of any such litigation, and in the event a
806 court of competent jurisdiction or other regulatory agency sets aside, invalidates or stays all or a
807 portion of the Disposal Tipping Fees, then CITY and CONTRACTOR agree to undertake the
808 following:

809 5.20.4.2.1. CITY and CONTRACTOR agree to immediately
810 meet and confer to negotiate in good faith any modifications to CONTRACTOR's obligations
811 under this Contract to ensure provision of basic Disposal Services and enable CONTRACTOR
812 to continue to bill and collect for the ongoing cost of services, including its return on capital and
813 costs of operations. Nothing in this Contract, including those provisions relating to CITY's
814 regulation of Disposal Tipping Fees, shall be read to limit CONTRACTOR's right to bill and
815 collect for the cost of continuing provision of Disposal Service.

816 5.20.4.2.2. CONTRACTOR shall provide basic Disposal
817 Services. For the purposes of this Section 5.20, basic Disposal Services are those minimum
818 services necessary to protect human health and the environment within the CITY as agreed to
819 by and between CITY and CONTRACTOR. In the event CITY and CONTRACTOR are unable
820 to agree on basic Disposal Services within a period not to exceed two weeks from that date on
821 which a court of competent jurisdiction or other regulatory agency with authority reduces
822 Disposal Tipping Fees, CONTRACTOR shall have the authority to make adjustments in
823 services to mitigate against any revenue impacts resulting from a Maximum Service Rates
824 Lawsuit. CONTRACTOR shall also have the right to implement all lawful "self-help" actions in
825 order to receive payment for providing basic Disposal Services. CITY shall continue to provide
826 nuisance abatement and may also take other urgency actions as necessary to facilitate
827 CONTRACTOR'S continuation of basic Disposal Services and ability to obtain compensation
828 therefor. The intent of this provision is to ensure that CONTRACTOR continues to receive
829 compensation, including its rate of return, consistent with that specified in the Contract for the
830 level of services provided. If certain services are reduced and/or eliminated as a result of a
831 Maximum Service Rates Lawsuit, CITY agrees that during the term of the elimination of said
832 services it shall not contract with any other company or party to provide these services and will
833 contract only with CONTRACTOR to restore said services either during or after the conclusion
834 of the Maximum Service Rates Lawsuit. If CITY finds it necessary to procure eliminated
835 services, it shall do so from CONTRACTOR at commercially reasonable rates.

836 5.20.4.2.3. In connection with providing basic Disposal
837 Services, CONTRACTOR shall continue to charge for the cost of providing such services.
838 CONTRACTOR shall, in coordination with CITY, reduce its charges in an amount corresponding
839 to any CITY fee or charge set aside, invalidated, or stayed by such court, regulatory agency, or

otherwise agreed to. CONTRACTOR's reduced charges, to the extent they correspond to the Disposal Tipping Fees allowed under this Contract minus any such fee or charge set aside, are intended to generate revenue to CONTRACTOR not less than CONTRACTOR'S anticipated return on investment for the applicable calendar year. CONTRACTOR shall thereafter not be required to remit the amount of any disallowed fee or charge, provided it is not collected.

5.20.4.2.4. CONTRACTOR shall not be obligated to refund for any amount of previously collected fees or charges later set aside or invalidated by a court. CONTRACTOR and CITY deem the Disposal Tipping Fees to fix the actual reasonable cost of service as these rates and the escalation methodology set forth in this Contract are the result of a multi-year open competition for CITY's franchise Disposal Services. Any CITY fees or charges set aside by any court or CITY during the pendency of any Maximum Service Rates Lawsuit shall, to the extent they are collected, be paid into an escrow account established by CITY, which shall be made available for use pursuant to order of the court, or in the absence of such order to address CONTRACTOR's losses, if any, consistent with CITY's obligations set forth below.

5.20.4.2.5. If by virtue of an order by a court of competent jurisdiction, an order issued by a regulatory agency with authority, or pursuant to or an agreement between petitioner/plaintiff and CITY that affects all or a portion of the Disposal Tipping Fees, and this results in a loss to CONTRACTOR not otherwise recovered through a temporary reduction in services, CITY shall implement, with CONTRACTOR's consent, methods to recapture any losses that CONTRACTOR sustained under this Section 5.20. Such methods may include an adjustment in future Disposal Tipping Fees, a reduction in, or adjustment to, services and/or other obligations under the Contract, or such other lawful methods which may be agreed to by CITY and CONTRACTOR. Any method selected shall be designed to produce revenues that ensure CONTRACTOR fully recoups any and all demonstrated losses within no more than two years from that date on which Disposal Tipping Fees were reduced (or within two years following the trial court's determination in the event of a Maximum Service Rates Lawsuit), or, by the termination date of said Contract if less than two (2) years remain on the Term. CONTRACTOR shall have the right to terminate the Contract upon twelve (12) months written notice after the two (2) year period for recoupment of CONTRACTOR losses has expired, in the event CONTRACTOR has not been made whole for the demonstrated losses and no satisfactory agreement to address this shortfall has been reached between CONTRACTOR and CITY.

5.20.4.2.6. Nothing herein is intended to imply that California Constitution Articles XIII(C) or (D) apply to the Disposal Tipping Fees provided for under this Contract. The foregoing paragraphs are merely intended as a contractual allocation of risks in the event of an unanticipated event affecting the ability to impose or collect Disposal Tipping Fees.

5.21 Modifications to Scope of Service.

5.21.1 General. CITY may direct CONTRACTOR to perform additional services (including, but not limited to, performance of resource recovery activities) or modify the manner in which CONTRACTOR performs existing services (including, but not limited to, the modifications to or elimination of services). CONTRACTOR'S Disposal Tipping Fee shall be increased or decreased, as appropriate, to give effect to costs and losses (including but not limited to the recovery by CONTRACTOR of all costs and revenue losses associated with stranded assets and/or unrecovered capital) of these adjustments.

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

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

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

5.21.3.2 Methodology to be employed (changes to equipment, staffing, etc.);

5.21.3.3 Equipment to be utilized (equipment number, types, capacity, age, etc.);

5.21.3.4 Labor requirements (changes in number of employees by classification);

5.21.3.5 Provision for program publicity, education, and marketing (if appropriate);

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

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

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

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

5.21.4 Termination for Cause. CITY shall have the right to terminate a program for cause, at no cost to CITY or CITY'S ratepayers if CONTRACTOR is not achieving the program's agreed to and defined goals and objectives as approved by CITY in accordance with Section 5.20.3. Prior to such termination CITY shall meet and confer with CONTRACTOR for a period of up to ninety (90) calendar days to resolve CITY'S concerns. Thereafter, CITY may terminate the program if CITY reasonably believes CONTRACTOR cannot meet or is not

meeting the agreed to and defined project goals and objectives. Notwithstanding these changes, CONTRACTOR shall continue the program during the ninety (90) day period unless instructed in writing by CITY to discontinue the program.

5.21.5 Termination without Cause. CITY shall also have the right to terminate a program without cause. Prior to such termination, and as a condition of the termination, CITY shall reimburse CONTRACTOR for all costs incurred for implementation and performance of the program that were identified in the program proposal prepared and submitted by CONTRACTOR and agreed to by CITY which will have not been funded or otherwise recovered through program compensation at the time the program is terminated. If any program is terminated or discontinued, CONTRACTOR will retain the exclusive right to provide services and handle materials within the scope of this Contract.

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

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

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

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

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

5.27 Cessation of Disposal Services to MM&O Contractor. CONTRACTOR may cease to provide Disposal Services to CITY'S MM&O Contractor, only after giving CITY thirty (30) calendar days advance written notice, to be served as provided in Article 21, upon the happening of the following event

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

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

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

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

5.28.3 If necessary, CONTRACTOR shall provide disposal at an alternate Disposal Facility pursuant to Section 5.13.

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

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

ARTICLE 6. DISPOSAL TIPPING FEE

6.01 Disposal Tipping Fee. Except as provided in Section 6.04 with respect to a Change in Law, the Disposal Tipping Fee established under this Section 6.01 includes all costs associated with complying with all federal and State statutes, and CITY and County ordinances concerning public health, safety and environmental issues and all laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the disposition of Mixed Materials, Garbage or Residue that are in force on the Effective Date of this Contract, including any current provisions that become effective on or which require compliance by a date after the Effective Date of this Contract. The Disposal Tipping Fee comprises two (2) elements: 1) a Disposal Fee Element, and 2) a Government Fee Element.

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

6.01.1.1 Annual Adjustment to Disposal Fee Element Prior to Start of Disposal Services The Disposal Fee Element of the Disposal Tipping Fee as set forth in Exhibit 1 to this Contract shall be adjusted on July 1, 2015, by the annual change in the Consumer Price Index - All Urban Consumers, Series ID cuura422sa0, Not Seasonally adjusted, San Francisco - Oakland-San Jose, California for the prior calendar year, January 1, 2014, through December 31, 2014.

6.01.1.2 Annual Disposal Fee Element Adjustment. Beginning on July 1, 2016, and annually thereafter, the Disposal Fee Element of the Disposal Tipping Fee shall be adjusted by the RRI adjustment as set forth in Exhibit 2. From and after the date that Waste Management of Alameda County, Inc. or any affiliate thereof ceases to be the MM&O Collection Contractor, except for those adjustments to the Disposal Fee Element with respect to Changes in Law as specifically set forth in Section 6.04 of this Contract, the Disposal Fee Element adjustment shall never increase or decrease by more than six (6) percent in any year regardless of the calculated adjustment. If the six (6) percent limit is applied to adjustments in the Disposal Fee Element of the Disposal Tipping Fee in any year, the difference between six (6) percent and the percentage by which the Disposal Fee Element of the Disposal Tipping Fee would have been increased or decreased in the absence of the six (6) percent limit will not be considered in any future year.

6.01.1.3 Disposal Tip Fee Element Adjustment for July 1, 2025; July 1, 2035; and July 1, 2040. In the event of a Change in Law and other legal restraints that would allow the Disposal Facility to receive municipal solid waste from origins outside Alameda County, the City and County of San Francisco and the City of San Ramon (collectively, the "Existing Jurisdictions") in substantial quantities and CONTRACTOR ceases to be MM&O Collection Contractor, then CITY may review the July 1, 2025 Disposal Fee Element to determine whether an adjustment, either positive or negative, is warranted. The review shall be based upon franchised municipal solid waste disposal agreements entered into by CONTRACTOR after the date of this Contract for disposal periods of at least five (5) years, and which involve annual volumes of municipal solid waste greater than forty-five thousand (45,000) tons, and/or annual volumes of municipal solid waste greater than forty-five thousand (45,000) tons arriving from transfer stations outside of the Existing Jurisdictions. The purpose of such review is to consider whether the CITY's Disposal Tipping Fee is in line with the disposal tipping fees charged by CONTRACTOR for municipal solid waste disposal that meets the comparison criteria herein. Should CITY determine an adjustment may be warranted, the parties agree to meet and confer in good faith to negotiate an appropriate adjustment, if any. However, any such adjustment to the Disposal Fee Element shall be limited to no more than twelve (12) percent of CONTRACTOR's Disposal Fee Element in the immediately prior year. A review based on the same criteria would be conducted for the July 1, 2035 and July 1, 2040 Disposal Fee Elements, should this Contract be extended. For purposes of price comparisons hereunder, only those disposal agreements, or disposal components of franchise agreements meeting the comparison criteria herein shall be considered.

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

6.02.1 Changes in Government Fee Elements. Government Fee Elements shall be adjusted each July 1 as needed, so that they equal the then current government fees required to be paid by CONTRACTOR. In the event of a new government fee, or a change in an existing government fee, which becomes effective at some time other than July 1 of any year, CONTRACTOR shall be compensated for such change through the inclusion of a "Retroactive Element" in the next rate adjustment. CITY and CONTRACTOR agree that the

"Retroactive Element" shall be an amount needed to compensate CONTRACTOR for increases in fees paid during the period from the inception of the fee increase through the subsequent June 30 and shall not include interest, overhead or any other costs of any type. The "Retroactive Element" shall only be included in the rate structure for twelve (12) months or that period necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve (12) months, and shall be removed prior to calculating the rates to be set as of the subsequent July 1. However, no governmental fees or charges to which CONTRACTOR agrees contractually or negotiates shall be passed through to customers unless agreed to in writing by CITY.

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

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

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

6.04.1 The Disposal Fee Element in Exhibit 1 includes all costs associated with complying with all existing laws, governmental regulations and permits applicable to the Disposal Facility as of the date of this Contract and including requirements that may be imposed on permits for which CONTRACTOR has applied for including amendments to permits, as of the Effective Date of this Contract. The purposes of this Section 6.04 are (a) to specify the costs of compliance with laws and governmental regulations that are included in the Disposal Fee Element, as well as other similar costs, whose increase may not result in an increase in the Disposal Fee Element, (b) to identify those laws and governmental regulations that may be enacted in the future, a proportionate share of the cost of which may be the basis for an increase in the Disposal Fee Element, and (c) to specify the method by which CITY'S proportionate share of such costs will be determined.

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

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

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

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

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

6.04.2.5 Costs attributable to permits and amendments to permits, (i) which have been issued to CONTRACTOR, or (ii) for which CONTRACTOR has applied for by the Effective Date of this Contract (attached as Exhibit 4).

1112 6.04.3 The Disposal Fee Element may be increased to reflect CITY'S
1113 proportionate share, determined as provided in Section 6.04.4, of the net increase in the
1114 Disposal Fee Element attributable to the following, to the extent mandated by Changes in Laws:
1115 (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of
1116 performing closure/Post-Closure monitoring at the Disposal Facility, and/or (3) costs caused
1117 directly by, or directly necessary for operations at the Disposal Facility, including costs of site-
1118 specific record keeping and reporting, if such costs (in items (1), (2), and/or (3)) are necessary
1119 to comply with changes to the existing laws and governmental regulations enacted or
1120 promulgated after the Effective Date of this Contract, and not otherwise excluded by virtue of
1121 Section 6.04.2.1, with new laws and governmental regulations enacted or promulgated after the
1122 Effective Date of this Contract and not otherwise excluded by virtue of Section 6.04.2, with new
1123 permits and changes to the terms and conditions contained in existing permits (except as
1124 provided in Section 6.04.2) applicable to the Disposal Facility.

1125 6.04.3.1 This Article is not intended to allow the Disposal Fee
1126 Element to be increased to cover increased overhead and general or administrative expenses
1127 unless they can be specifically identified and related to disposal of Mixed Materials, Garbage or
1128 Residue Collected in CITY, e.g., a laboratory technician added at the regional level, and which
1129 are attributable to Changes in Law.

1130 6.04.4 Proportionate Share of Disposal Facility Costs. To the extent that the net
1131 increase in costs of complying with Changes in Law are attributable to material already in place
1132 at the Disposal Facility at the time such Change in Law occurs, then CITY'S proportionate share
1133 of the present value of such increases in costs shall be determined by multiplying such increase
1134 in costs by a fraction, the numerator of which is the amount of material as of the time of increase
1135 is computed that is deposited at the Disposal Facility which was delivered under this Contract
1136 and the denominator of which is the total amount of material then deposited at the Disposal
1137 Facility from all sources. The costs of compliance with Changes in Law described in this Section
1138 shall be calculated on a "per Ton" basis, amortized over the useful life of the facilities
1139 constructed, and the annual amortization incorporated in the Disposal Tipping Fee over the
1140 remaining term of this Contract. The annual increase in the Disposal Fee Element attributable
1141 to the amortization of such costs shall be determined by dividing CITY'S aggregate
1142 proportionate share of such costs by (i) the remaining term of this Contract and (ii) the average
1143 number of Tons of Mixed Materials and Garbage collected from within CITY'S boundaries
1144 during the preceding year. The annual amortization described in the prior sentence shall be
1145 added to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for
1146 said year as set forth in Section 6.01.1, adjustments to reflect changes in the Governmental
1147 Fees Element as described below, and adjustments to the Disposal Fee Element described in
1148 the following Section.

1149 6.04.4.1 To the extent that the costs of complying with Changes in
1150 Law are attributable to material not yet in place at the Disposal Facility at the time such Change
1151 in Law occurs, then CITY'S proportionate share of such costs shall be determined by multiplying
1152 the present value of such costs by a fraction, the numerator of which is the average number of
1153 Tons of material from CITY Disposed of at the Disposal Facility during the preceding three (3)
1154 years multiplied by the number of years remaining in the term of this Contract and the
1155 denominator of which is the total remaining permitted air space available for Disposal at the
1156 Disposal Facility as of the date of the change. The costs of compliance with Changes in Law
1157 shall be calculated on a "per Ton" basis and amortized over the remaining life of the Disposal
1158 Facility and the annual amortization incorporated in the Disposal Fee Element over the
1159 remaining term of this Contract by adding CITY'S proportionate share of such increases to the

1160 Disposal Fee Element. The annual amortization described in the prior sentence shall be added
1161 to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for said year
1162 as set forth in Section 6.01.1, and to reflect changes in the Governmental Fees Element as
1163 described in the preceding paragraph above. In all cases in which CONTRACTOR requests an
1164 increase in the Disposal Fee Element above that provided for in Section 6.01.1 based on the
1165 costs of compliance with a Change in Law, CONTRACTOR shall provide CITY, on an annual
1166 basis, evidence showing (1) that the work required by the Change in Law has been performed,
1167 (2) the amount of costs actually incurred, and (3) that the costs incurred were necessary to
1168 comply with the Change in Law.

1169 6.04.5 Procedures for Sharing in Cost of Changes in Laws. If CONTRACTOR
1170 believes that complying with Changes in Law will increase the costs of operating the Disposal
1171 Facility, and that it is entitled, under this Article to an increase in the Disposal Fee Element to
1172 reflect the costs of compliance, then it must follow the procedures in this Article before the
1173 Disposal Fee Element will be increased.

1174 6.04.5.1 CONTRACTOR shall give CITY prompt notice (in no case
1175 less than ninety (90) days before their effective date, if possible) of the regulations, specifically
1176 identifying them and describing what changes in operations at the Disposal Facility are required,
1177 when compliance is required, and whether CONTRACTOR or the Disposal Facility is eligible for
1178 any exemptions or variances.

1179 6.04.5.2 CONTRACTOR shall thereafter submit to CITY for review
1180 and comment, its proposed method for complying with the regulations, the estimated cost of
1181 compliance, CITY'S proportionate share thereof, and the associated increase necessary in the
1182 Disposal Fee Element. CITY will act promptly on the submission.

1183 6.04.5.3 CONTRACTOR shall thereafter submit its proposed
1184 method of compliance to the appropriate regulatory agency. If the regulatory agency approves
1185 that method without conditions, the proportionate share of the costs necessary to implement
1186 that method of compliance will be the amount by which the Disposal Fee Element may be
1187 increased.

1188 6.04.6 No fees or charges to which CONTRACTOR agrees contractually or
1189 negotiates shall be passed through to customers unless agreed to in writing by CITY.

1190 6.05 Payment of Taxes. CONTRACTOR shall pay, when and as due, any and all
1191 governmental assessments, or taxes incurred as a result of CONTRACTOR'S provision of
1192 services under this Contract, including estimated taxes and shall provide CITY with proof of
1193 such payments promptly upon request.

1194 6.06 Disposal Facility Closure/Post Closure Funding. CITY and CONTRACTOR
1195 agree that CITY shall not be liable for any Disposal Facility closure/Post-Closure costs for waste
1196 Disposal prior to July 1, 2015.

1197 6.06.1 CONTRACTOR acknowledges and agrees that from July 1, 2015,
1198 going forward, the Disposal Tipping Fee adequately funds CITY'S liability for Disposal Facility
1199 closure/Post-Closure costs.

1200 6.07 Proposal Development Fee. No later than thirty (30) calendar days after the
1201 execution of this Contract by CITY and CONTRACTOR, CONTRACTOR shall submit a one-
1202 time proposal development fee to CITY in the amount of Two Hundred Fifty Thousand Dollars
1203 (\$250,000).

1204 6.08 Limitation on Disposal Tipping Fee Increases for Certain Purposes. CITY and
1205 CONTRACTOR understand and agree that during such time over the term of this Disposal
1206 Services Contract, as Waste Management of Alameda County, Inc. is the MM&O Collection
1207 Contractor, the Disposal Fee Element as calculated and adjusted in Article 6 shall be subject to
1208 the limitations set forth in the following Section 6.08.1 only when applied to CITY delivered
1209 materials or the Disposal Fee Element of the Disposal Tipping Fee portion of the following Roll-
1210 Off Box pull rates in Exhibit 1 of the MM&O Collection Services Contract: 1) Exhibit 1B-1
1211 Section B – MFD Roll-Off Box Collection Services; 2) Exhibit 1C-1 Section B – Commercial Roll-
1212 Off Box Collection Services; 3) Exhibit 1D Section A – Temporary Roll-Off Box Collection
1213 Services; and Exhibit 1G Section A – Temporary Special Event Collection Services (collectively,
1214 the “Limited Adjustment Rates”).

1215 6.08.1 The adjustment in the Disposal Fee Element for the Limited
1216 Adjustment Rates shall not be greater than six (6) percent in any individual year (except the final
1217 year of the original Contract term and the final year of any extension Contract terms when it may
1218 not be greater than eight (8) percent) or lower than negative 5 (-5) percent. In any year that the
1219 Disposal Fee Element adjustment calculation is more than six (6) percent, the amount above six
1220 (6) percent and up to eight (8) percent shall be carried-forward to successive Disposal Fee
1221 Element adjustments for Limited Adjustment Rates under this Contract until applied or the
1222 Contract terminates. Disposal Fee Element adjustments in any year in excess of eight (8)
1223 percent shall not be carried forward to any future year. With regard to the July 1, 2024,
1224 Disposal Fee Element adjustment, carried-forward Disposal Fee Element adjustment amounts
1225 that had not been recouped in previous Disposal Fee Element adjustments due to the six (6)
1226 percent cap shall be recouped to the extent they do not exceed eight (8) percent. With regard
1227 to the July 1, 2029, Disposal Fee Element adjustment, carried-forward Disposal Fee Element
1228 adjustment amounts that had not been recouped in 2025, 2026, 2027 or 2028 Disposal Fee
1229 Element adjustments due to the six (6) percent cap shall be recouped to the extent they do not
1230 exceed eight (8) percent. With regard to the July 1, 2034, Disposal Fee Element adjustment,
1231 carried-forward Disposal Fee Element adjustment amounts that had not been recouped in 2030,
1232 2031, 2032 or 2033 Disposal Fee Element adjustments due to the six (6) percent cap shall be
1233 recouped to the extent they do not exceed eight (8) percent.

1234 6.08.2 There is no limit on adjustment of the Government Fee Elements for
1235 the purposes of any rate or fee, including without limitation Limited Adjustment Rates.

1236 6.08.3 This Section 6.08 shall not apply to any rate or fee from and after the
1237 date that Waste Management of Alameda County, Inc. or any affiliate thereof ceases to be the
1238 MM&O Collection Contractor, other than those expressly set forth in the first paragraph of this
1239 Section 6.08.

1240 **ARTICLE 7. INDEMNITY AND INSURANCE,**

1241 7.01 CONTRACTOR'S Duty to Indemnify CITY. CONTRACTOR shall and does
1242 indemnify and hold harmless CITY, its agents (for purposes of this Article, including attorneys
1243 and consultants), officers, employees, volunteers, successors, assigns, and appointed and
1244 elected officials (collectively “Indemnitees”) from and against any and all losses, liabilities,
1245 claims, suits, allegations, actions, damages, interest, penalties, fines, forfeitures, demands
1246 and/or causes of action (collectively “claims”) arising from or in connection with
1247 CONTRACTOR'S performance hereunder, including but not limited to closure/Post-Closure
1248 costs associated with a Change in Law related to Tonnage received prior to the Change in Law,
1249 except to the extent such claims arise out of the negligence or willful misconduct of CITY, in

which case CONTRACTOR'S indemnification shall be reduced in proportion to CITY'S degree of comparative fault. CONTRACTOR shall indemnify and hold harmless the Indemnitees from and against all costs of investigation, litigation, negotiation or alternative dispute resolution; counsel fees; expenses incurred in obtaining expert testimony and the attendance of witnesses; and all other expenses and liabilities incurred in connection with the defense of any action or proceedings brought thereon, and from and against any orders, judgments, or decrees which may be entered therein. CITY shall provide CONTRACTOR with prompt notice of any claims, and CONTRACTOR shall assume the defense of any claim, with counsel reasonably acceptable to the Indemnitees, and CONTRACTOR shall have authority to settle any claim, with CITY'S consent which may not be unreasonably withheld and provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the claim. Where a conflict of interest exists between the Indemnitees and CONTRACTOR with respect to a claim, CONTRACTOR shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at CONTRACTOR'S expense. Without limiting the generality of the foregoing, CONTRACTOR'S indemnification shall include: personal injury, death or damage to property (including contamination); product liability, violation of federal, State, or local law; or any other claim whatsoever connected with the activities of CONTRACTOR, its subcontractors, agents, and/or employees under this Contract or on account of the performance of character of the work performed hereunder, including unforeseen difficulties, accidents, occurrence, or omissions, including but not limited to, any failure to exclude Hazardous Waste from Collection or Processing; any claim that CONTRACTOR, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to any materials marketed pursuant to this Contract; or any claim that any of them has violated any license, copyright, or other limitation on CONTRACTOR'S use of computer software in connection with CONTRACTOR'S performance of services under this Contract. Notwithstanding the foregoing, CONTRACTOR shall not be required to indemnify the Indemnitees for: (i) claims resulting entirely from the acts or omissions of independent (not affiliated with Contractor) third party owners or operators of facilities approved by CITY under this Contract, where such third party acts or omissions are beyond CONTRACTOR'S control; (ii) third party claims based solely on CONTRACTOR'S delivery of the de minimis amounts of materials excluded from the definition of Hazardous Waste under this Contract to a facility approved by CITY under this Contract, and (iii) any claim that CITY set or approved Disposal Tipping Fees in violation of applicable law. Approval of insurance coverage or acceptance of work or services by CITY under this Contract does not relieve CONTRACTOR or its agents, subcontractors, directors, officers, employees, or representatives of liability under this Article.

7.02 Contractor Indemnity Regarding City Approvals. To the maximum extent permitted by law, CONTRACTOR shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the CITY, the Oakland City Council, and their respective agents, officers, employees and volunteers (hereafter collectively called "City Parties") from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the CITY to set aside, void or annul this Agreement or any City Approvals approved concurrently herewith or any Subsequent Approval or the implementation of the same based upon an allegation that the City shall have failed to comply with the California Environmental Quality Act. The CITY may elect, in its sole discretion, to participate in the defense of said Action, and CONTRACTOR shall reimburse the CITY for its reasonable legal costs and attorneys' fees.

1298 7.02.1 Within ten (10) calendar days of the filing of any Action as specified in the
1299 preceding paragraph, CONTRACTOR shall execute a Joint Defense Letter Agreement with the
1300 CITY, acceptable to the Office of the City Attorney, which memorializes the above obligations.
1301 These obligations and the Joint Defense Letter of Agreement shall survive termination,
1302 extinguishment, or invalidation of the City Approval or any Subsequent Approval requested by
1303 CONTRACTOR. Failure to timely execute the Letter Agreement does not relieve the
1304 CONTRACTOR of any of the obligations contained in this Section or other requirements or
1305 Conditions of Approval that may be imposed by the CITY.

1306 7.03 Contractor Cooperation. In the event there is a legal challenge by a third party to
1307 the City's award of the Disposal Services Contract, CONTRACTOR agrees to cooperate with
1308 the CITY in the defense of such a challenge to the extent CITY's and CONTRACTOR's
1309 respective legal positions are not in conflict. As a condition of the acceptance of the award of
1310 the Disposal Services Contract, CONTRACTOR agrees to waive any claims it may have against
1311 the CITY pertaining to any issues arising from and/or related to the Zero Waste Services
1312 procurement process regarding the Disposal Services Contract award.

1313 7.04 Hazardous Material Indemnification. CONTRACTOR shall indemnify, defend
1314 with counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and
1315 expense, CITY, its City Council, officers, officials, employees, volunteers and agents, and the
1316 Collection Contractor(s) (collectively, "Indemnitees") from and against any and all claims,
1317 damages, injuries, costs (including and without limit any and all response, remediation and
1318 removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or
1319 administrative proceedings, interest, fines, charges, penalties, and expenses (including
1320 reasonable attorneys' and expert witness fees, expenditures for investigation and remediation)
1321 and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered by or asserted
1322 against any of the Indemnitees by reason of, or arising from, the presence, Disposal, escape,
1323 migration, leakage spillage, discharge, emission, release, handling or transportation of
1324 Hazardous Materials in, on, at, or under the Disposal Facility (collectively, "environmental
1325 events"), any personal injury, death, or property damage, arising out of or related to any of the
1326 environmental events; any lawsuit brought or threatened, settlement reached, or government
1327 hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Materials or any
1328 of the environmental events.

1329 7.04.1 Such indemnification shall apply to all events arising from or attributable
1330 to the acts or omissions of CONTRACTOR, its officers, directors, employees, whether or not
1331 negligent or otherwise culpable, in connection with or related to CONTRACTOR'S performance
1332 of this Contract, including without limit damages arising from or attributable to any operations,
1333 repair, clean-up or detoxification, or preparation and implementation of any removal, remedial,
1334 response, closure, Post-Closure or other plan (regardless of whether undertaken due to
1335 governmental action) concerning any Hazardous Materials at the Disposal Facility. For the
1336 avoidance of doubt, the foregoing indemnity is intended to operate as an agreement pursuant to
1337 section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act,
1338 CERCLA, 42 U.S.C. section 9607(e) and California Health and Safety Code section 25364, to
1339 defend, protect, hold harmless, and indemnify CITY from liability thereunder.

1340 7.04.2 This provision is in addition to all other provisions in this Contract and is
1341 intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall
1342 extend to the indemnification obligation hereunder.

1343 7.05 Environmental Indemnification. CONTRACTOR shall indemnify, defend with
1344 counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,

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

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

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

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

7.06.2 Motor Vehicle Liability Insurance. CONTRACTOR, at its own expense, shall maintain motor vehicle liability insurance for the period covered by this Contract in the amount of Five Million Dollars (\$5,000,000) per occurrence combined single limit coverage for personal and bodily injury and property damage. The scope of such coverage shall be at least as broad as Insurance Services Office form number CA 0001 Covering Automobile Liability, Code (any auto). CITY and CONTRACTOR shall review coverage within sixty (60) days of the

1393 end of calendar year 2020. CITY may require reasonable changes in the amount of the
1394 insurance coverage set forth herein based on documented changes in industry standards during
1395 the five (5) year period ended June 30, 2020. Such insurance shall be with insurers and under
1396 forms of policies reasonably satisfactory in all respects to CITY and shall provide that written
1397 notice must be given to CITY thirty (30) days prior to policy cancellation. CONTRACTOR shall
1398 notify CITY within thirty (30) days of its knowledge or any material change in coverage that
1399 impacts this Contract.

1400 7.06.3 Worker Compensation Insurance. CONTRACTOR, at its own expense,
1401 shall carry and maintain full Worker Compensation Insurance, as required by the California
1402 Labor Code and Employer's Liability insurance with limits not less than Five Million Dollars
1403 (\$5,000,000) for each employee per accident or disease. The scope of such coverage shall be
1404 at least as broad as the Worker's Compensation insurance required by the State of California
1405 and Employer's Liability insurance. Such insurance shall be with insurers and under forms of
1406 policies reasonably satisfactory in all respects to CITY, unless CONTRACTOR is self-insured
1407 and complies with the requirements of Section 7.04.5. Such policies shall provide that written
1408 notice must be given to CITY thirty (30) days prior to cancellation. CONTRACTOR shall notify
1409 CITY within thirty (30) days of its knowledge or any material change in coverage that impacts
1410 this Contract. The Workers Compensation policy shall be endorsed with a waiver of
1411 subrogation in favor of CITY for all work performed by CONTRACTOR, its employees, agents
1412 and subcontractors.

1413 7.06.4 Environmental Impairment and Pollution Liability. CONTRACTOR, at its
1414 own expense, shall carry and maintain environmental impairment and pollution liability
1415 insurance for the term, including any extensions thereto, in the amount of Ten Million Dollars
1416 (\$10,000,000) per loss and in annual aggregate, covering liability arising from the release of
1417 waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if
1418 commercially available, without involvement of CITY, automatically broaden in its form of
1419 coverage to include legislative changes in the definition of waste materials and/or irritants,
1420 contaminants or pollutants. The policy shall stipulate this insurance is primary insurance and no
1421 other insurance carried by CITY will be called upon to contribute to a loss suffered by
1422 CONTRACTOR hereunder and waive subrogation against CITY and other additional insureds.

1423 7.06.5 Other Insurance Provisions. The liability policies are to contain, or be
1424 endorsed to contain, the following provisions:

1425 7.06.5.1 CITY may require reasonable changes in the amount of
1426 the insurance coverage set forth herein based on documented changes in industry standards
1427 during the five (5) year period ended June 30, 2020.

1428 7.06.5.2 CITY, its Councilmembers, directors, officers, agents,
1429 employees and volunteers are to be covered as respects: liability arising out of activities
1430 performed by or on behalf of CONTRACTOR, products and completed operations of
1431 CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or vehicles owned,
1432 leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations
1433 on the scope of protection afforded to CITY, its Councilmembers, directors, officers, agents,
1434 employee's agents (including attorneys and consultants) or volunteers.

1435 7.06.5.3 For any claims related to this Contract, CONTRACTOR'S
1436 insurance coverage shall be primary insurance as respects CITY, its Councilmembers,
1437 directors, officers, agents, employees and volunteers. Any insurance or self-insurance
1438 maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of
1439 CONTRACTOR'S insurance and shall not contribute with it.

1440 7.06.5.4 CONTRACTOR'S insurance shall apply separately to each
1441 insured against whom claim is made or suit is brought, except with respect to the limits of the
1442 insurer's liability. CONTRACTOR shall monitor its insurance contracts and coverage at all times
1443 to provide the minimum coverage specified by this Article.

1444 7.06.5.5 Each insurance policy required by this Article shall be
1445 occurrence based (except as provided in Section 7.04.5.11), shall be endorsed to state
1446 coverage, shall not be canceled except after thirty (30) days' prior written notice has been given
1447 to CITY. CONTRACTOR shall provide at least thirty (30) days' written notice to CITY, by
1448 certified mail, return receipt requested, of any insurance policy required hereunder being
1449 materially changed.

1450 7.06.5.6 CITY, its Councilmembers, directors, officers, agents,
1451 employees and volunteers shall be named as additional insured on all policies. In the event of
1452 cancellation, thirty (30) days prior written notice thereof shall be given to CITY. CONTRACTOR
1453 shall provide at least thirty (30) days' written notice to CITY, by certified mail, return receipt
1454 requested, of any insurance policy required hereunder being materially changed.

1455 7.06.5.7 CONTRACTOR shall furnish CITY with original certificates
1456 affecting coverage required by this clause. The certificates are to be signed by a Person
1457 authorized by that insurer to bind coverage on its behalf. All endorsements are to be received
1458 and approved by CITY before work commences. The insurance information required by this
1459 provision shall be provided to CITY by May 15, 2015.

1460 7.06.5.8 Insurance is to be placed with insurers with a current A.M.
1461 Best's rating of no less than A:VII or a rating which is acceptable to CITY.

1462 7.06.5.9 CONTRACTOR and insurer agree to waive all rights of
1463 subrogation against CITY for losses arising from work performed by CONTRACTOR for CITY.
1464 CONTRACTOR shall deliver certificates of insurance and/or a waiver of subrogation
1465 endorsement.

1466 7.06.5.10 The Comprehensive General Liability Insurance and
1467 Automobile Liability insurance shall be written on an occurrence basis and kept in force during
1468 the entire term of this Contract; Environmental Impairment and Pollution Liability Insurance is
1469 written on a claims-made basis and shall be maintained through continuous renewals so as to
1470 provide the same levels of coverage after the expiration of this Contract as might be necessary
1471 to protect CITY from any and all liability during all applicable statutes of limitation which might
1472 apply to claims of third parties arising out of the activities of CONTRACTOR during the term of
1473 this Contract. The deductibles or self-insured retention with respect to any Environmental
1474 Impairment and Pollution Liability Insurance, including any renewals as set forth herein, shall
1475 not exceed Five Million Dollars (\$5,000,000). Hazardous Waste and Environmental Impairment
1476 Liability will include coverage for all operations of CONTRACTOR under this Contract. If
1477 coverage is on a claims made basis, the retroactive date must be shown, and must be before
1478 the date of the Contract or the beginning of the Contract work. Insurance must be maintained
1479 and evidence of insurance must be provided for at least five (5) years after completion of the
1480 Contract of work. If coverage is cancelled or non-renewed, and not replaced with another
1481 claims-made policy form with a retroactive date prior the contract effective date, CONTRACTOR
1482 must purchase "extended reporting" coverage for a minimum of five (5) years after completion of
1483 work.

1484 7.06.5.11 CONTRACTOR shall comply with all requirements of the
1485 insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any

obligation under this Contract. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against CONTRACTOR or any subcontractor on account of any occurrence related to this Contract, CONTRACTOR shall promptly report the facts in writing to the insurance carrier and to CITY.

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

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

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

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

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

ARTICLE 8. PERFORMANCE SECURITY

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

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

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

ARTICLE 9. CORPORATE GUARANTY

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

ARTICLE 10. FORCE MAJEURE

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

ARTICLE 11. DEFAULT OF CONTRACT

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

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

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

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

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

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

1571 11.01.5 In the event that the monies due CITY under Section 11.01.3
1572 above or an unsatisfied final judgment under Section 11.01.4 above is the subject of a judicial
1573 proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds
1574 shall be in the form acceptable to the CITY Attorney; or

1575 11.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or
1576 observe the terms, conditions or covenants in this Contract or any of the rules and regulations
1577 promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the
1578 instructions of the Contract Manager relative thereto and said default is not cured within thirty
1579 (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of
1580 such default, the same cannot be remedied within thirty (30) calendar days following receipt by
1581 CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the
1582 remedy of such default within said thirty (30) calendar days following such written notice or
1583 having so commenced shall fail thereafter to continue with diligence the curing thereof with
1584 CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured
1585 within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default,
1586 and such default will be cured within a reasonable period of time; or

1587 11.01.7 CONTRACTOR fails to perform its obligations under this Contract,
1588 and: (i) if the failure or refusal of CONTRACTOR to perform Disposal Services required by this
1589 Contract has created an imminent threat to public health and is not cured within (2) Work Days
1590 after receiving written notice from CITY specifying the breach; or (ii) in the case of any other
1591 breach of the Contract, the breach continues for more than thirty (30) calendar days after
1592 receiving written notice from CITY for the correction thereof, provided that where such breach
1593 cannot be cured within such thirty (30) calendar day period, CONTRACTOR shall not be in
1594 default of this Contract if CONTRACTOR shall have commenced such action required to cure
1595 the particular breach within ten (10) calendar days after such notice, and it continues such
1596 performance diligently until completed. However, if CONTRACTOR has complied with its
1597 obligations to arrange and pay for Disposal of Mixed Materials, Garbage and Residue at an
1598 alternative disposal facility as set forth in Section 5.13, it shall not be in default of this Contract.

1599 11.02 Effective Date of Termination. In the event of the aforesaid events specified
1600 above, and except as otherwise provided in said subsections, termination shall be effective
1601 upon the date specified in CITY'S written notice to CONTRACTOR and upon said date this
1602 Contract shall be deemed immediately terminated and upon such termination all liability of CITY
1603 under this Contract to CONTRACTOR shall cease, and CITY shall have the right to call the
1604 performance security instrument and shall be free to negotiate with other contractors for the
1605 operation of the herein specified services.

1606 11.03 Right to Perform. If this Contract is suspended and/or terminated due to
1607 CONTRACTOR default, CITY shall have the right to perform and complete, by contract or
1608 otherwise, the work herein or such part thereof as it may deem necessary and incur all
1609 expenses necessary for completion of the work, including, but not limited to, Disposal of Mixed
1610 Materials, Garbage and Residue at an alternative disposal facility, but not including any right to
1611 operate the Disposal Facility. If such expenses (including, but not limited to, the actual fees
1612 charged for Disposal) exceed the amounts which would have been paid to CONTRACTOR
1613 under this Contract, if it had been fully performed by CONTRACTOR, then CONTRACTOR shall
1614 pay for the remaining term of this Contract, the amount of such excess costs to CITY within
1615 thirty (30) calendar days of CONTRACTOR'S receipt of a claim for reimbursement, and
1616 evidence of costs incurred, from CITY.

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

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

ARTICLE 12. LEGAL REPRESENTATION

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

ARTICLE 13. FINANCIAL INTEREST

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

ARTICLE 14. INDEPENDENT CONTRACTOR

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

ARTICLE 15. LAWS TO GOVERN

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

ARTICLE 16. CONSENT TO JURISDICTION

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

ARTICLE 17. ASSIGNMENT

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

1703 17.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR
1704 requests CITY'S consideration of and consent to an assignment, CONTRACTOR shall meet the
1705 following preliminary requirements:

1706 17.02.1 CONTRACTOR shall pay CITY its reasonable expenses for
1707 attorney's fees, consultant's fees and investigation costs necessary to investigate the suitability
1708 of any proposed assignee, and to review and finalize any documentation required as a condition
1709 for approving any such assignment;

1710 17.02.2 CONTRACTOR shall furnish CITY with audited financial
1711 statements of the proposed assignee's operations for the immediately preceding three (3)
1712 operating years;

1713 17.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1)
1714 the proposed assignee has at least ten (10) years of Mixed Materials, Garbage and Residue
1715 Disposal experience on a scale equal to or exceeding the scale of operations conducted by
1716 CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not
1717 suffered any significant citations or other censure from any federal, State or local agency having
1718 jurisdiction over its Mixed Materials, Garbage and Residue Disposal operations due to any
1719 significant failure to comply with State, federal or local environmental laws and the assignee has
1720 provided CITY with a complete list of such citations and censures; (3) the proposed assignee
1721 has at all times conducted its operations in an environmentally safe and conscientious fashion;
1722 (4) the proposed assignee conducts its Mixed Materials, Garbage and Residue Disposal
1723 practices in accordance with sound management practices in full compliance with all federal,
1724 State and local laws regulating the Disposal of Mixed Materials, Garbage and Residue including
1725 hazardous substances; and, (5) of any other information required by CITY to ensure the
1726 proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

1727 17.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to
1728 consider any proposed assignment if CONTRACTOR is in default at any time during the period
1729 of consideration.

1730 17.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
1731 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
1732 assignment, the corporate guaranty provided in Section 1.23 and Exhibit 3 and the performance
1733 security provided in Article 8 shall remain in effect unless CITY in its sole discretion consents to
1734 adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR
1735 shall not be released from liability under this Contract.

1736 17.05 Subcontractor. The use of a subcontractor to perform services under this
1737 Contract shall not constitute delegation of CONTRACTOR's duties provided that
1738 CONTRACTOR has received prior written authorization from CITY to subcontract such services
1739 and the Contract Manager has approved a subcontractor who will perform such services.
1740 CONTRACTOR shall be responsible for directing the work of CONTRACTOR's subcontractors
1741 and any compensation due or payable to CONTRACTOR's subcontractor shall be the sole
1742 responsibility of CONTRACTOR. CITY shall have the right to require the removal of any
1743 approved subcontractor for reasonable cause. No subcontractors have been approved by
1744 CITY.

ARTICLE 18. COMPLIANCE WITH LAWS

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

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

ARTICLE 19. WAIVER

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

ARTICLE 20. POINT OF CONTACT

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

ARTICLE 21. NOTICES

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

As to CITY:

City Administrator
Office of the City Administrator
CITY OF OAKLAND
One Frank Ogawa Plaza, Third Floor
Oakland, CA 94612
Telephone: (510) 238-3301
E-mail: cityadministrator@oaklandnet.com

With copies to:

Director of Public Works
Public Works Agency
CITY OF OAKLAND
250 Frank Ogawa Plaza, Suite 4314

1784 Oakland, CA 94612
1785 Telephone (510) 238-4470
1786 E-mail: blevin@oaklandnet.com
1787 City Attorney

1788 Office of the City Attorney
1789 CITY OF OAKLAND
1790 One Frank Ogawa Plaza, Sixth Floor
1791 Oakland, CA 94612
1792 Telephone: (510) 238-3601
1793 E-mail: info@oaklandcityattorney.org

1794 Director of Finance and Management
1795 Finance and Management Agency
1796 CITY OF OAKLAND
1797 150 Frank Ogawa Plaza, Suite 5215
1798 Oakland, CA 94612
1799 Telephone: (510) 238-2220
1800 E-mail: sjohnson@oaklandnet.com

1801 As to CONTRACTOR:

1802 Area Vice President
1803 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
1804 172 98th Avenue
1805 Oakland, CA 94603
1806 Email: bskolnic@wm.com

1807 With copies to:

1808 Contract Compliance
1809 WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.
1810 172 98th Avenue
1811 Oakland, CA 94603
1812 Email: RParnes@wm.com

1813 Assistant General Counsel
1814 WASTE MANAGEMENT
1815 222 S. Mill Avenue, Suite 333
1816 Tempe, AZ 85281

1817 General Counsel
1818 WASTE MANAGEMENT
1819 1001 Fannin Street, Suite 4000
1820 Houston, TX 77002

1821 21.02 Notices shall be effective when received at the address as specified above.
1822 Changes in the respective address to which such notice is to be directed may be made by
1823 written notice with a courtesy copy provided by email. The original of items that are transmitted
1824 by email must also be mailed as required herein.

ARTICLE 22. NONDISCRIMINATION

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

ARTICLE 23. CONTRACTOR'S RECORDS

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

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

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

ARTICLE 24. QUALITY OF PERFORMANCE OF CONTRACTOR

24.01 Liquidated Damages. The parties further acknowledge that consistent and reliable Disposal Services are of utmost importance to CITY and that CITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding the Contract to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, CITY, Collection Contractor(s) and CITY'S residents and businesses will suffer damages, and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, without prejudice to CITY'S right to treat such non-performance as an event of default under Article 11 the parties agree that the liquidated damages amounts defined in this Article represent reasonable estimates of the amounts of such damages considering all of the circumstances existing on the Effective Date of this Contract, including the relationship of the sums to the range of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that

1869 each party has had ample opportunity to consult with legal counsel and obtain an explanation of
1870 the liquidated damage provisions at the time that the Contract was made.

1871 CITY Initial Here  CONTRACTOR Initial Here _____

1872 24.01.1 CONTRACTOR agrees to pay (as liquidated damages and not as
1873 penalty) the following amounts:

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

1874 24.02 CITY may determine the occurrence of events giving rise to liquidated damages
1875 through the observation of its own employees or representative or investigation of complaints by
1876 Collection Contractor(s).

1877 24.03 Liquidated damages shall apply to service disruptions caused by a
1878 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

Disposal Services Contract

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1870 the liquidated damage provisions at the time that the Contract was made.

1871 CITY Initial Here _____ CONTRACTOR Initial Here _____

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1876 Collection Contractor(s).

1877 24.03 Liquidated damages shall apply to service disruptions caused by a
1878 CONTRACTOR-initiated lockout or similar CONTRACTOR-initiated work stoppage.

1879 24.04 Procedure for Review of Liquidated Damages. Before assessing liquidated
1880 damages pursuant to Items b and c of this Article 24, the CITY and CONTRACTOR shall meet
1881 and confer regarding these specific areas of substandard performance. If, despite such
1882 meeting, incidents of the type(s) addressed at the meeting continue to occur, the CITY may
1883 proceed to assess liquidated damages as provided above.

1884 24.04.1 The assessment shall become final unless, within thirty (30)
1885 calendar days of the date of the notice of assessment, CONTRACTOR provides a written
1886 request for a meeting with the Contract Manager to present evidence that the assessment
1887 should not be made.

1888 24.04.2 The Contract Manager shall schedule a meeting between
1889 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as
1890 reasonably possible after timely receipt of CONTRACTOR'S request.

1891 24.04.3 The CITY Administrator or the CITY Administrator's designee shall
1892 review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated
1893 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
1894 be provided to CONTRACTOR.

1895 24.04.4 In the event CONTRACTOR does not submit a written request for
1896 a meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract
1897 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
1898 later than fifteen (15) calendar days following final determination. If CITY does not receive
1899 CONTRACTOR's payment within fifteen (15) calendar days, CITY may proceed against any
1900 security or remedies provided for under this Contract.

1901 24.04.5 CITY'S assessment or Collection of liquidated damages shall not
1902 prevent CITY from exercising any other right or remedy, including the right to terminate this
1903 Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth
1904 in this Contract.

1905 **ARTICLE 25. LABOR PEACE**

1906 25.01 General. CITY has determined that the level of vulnerability of the proposed
1907 Contract to labor disputes is sufficient to warrant that labor peace is essential to the proprietary
1908 interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
1909 CONTRACTOR'S Employee and Labor Relations Plan set forth in Exhibit 5 to this Contract.

1910 **ARTICLE 26. SEVERABILITY**

1911 26.01 If any provision of this Contract or the application of it to any Person or situation
1912 shall to any extent be held invalid or unenforceable, the remainder of this Contract and the
1913 application of such provisions to persons or situations other than those as to which it shall have
1914 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,
1915 and shall be enforced to the fullest extent permitted by law.

1916 **ARTICLE 27. RIGHT TO REQUIRE PERFORMANCE**

1917 27.01 The failure of either party at any time to require performance by the other of any
1918 provision hereof shall in no way affect the right thereafter to enforce same. Nor shall waiver by
1919 a party of any breach of any provision hereof be taken or held to be a waiver of any succeeding
1920 breach of such provision or as a waiver of any provision itself.

ARTICLE 28. DISPUTE RESOLUTION

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

28.01.1 The parties shall resolve their disputes informally to the maximum extent possible and shall attempt to resolve such disputes in a cooperative and mutually satisfactory manner. Either party shall give the other written notice of such dispute, and also provide written notice to the Contract Manager. The Contract Manager shall then schedule a meeting between CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as reasonably possible. In the event such dispute cannot be resolved by the parties themselves within thirty (30) days of their first meeting, either party may propose the appointment of a mediator. The parties shall agree on a mediator within 30 days of either party's request for mediation.

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

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

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

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

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

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

28.01.3.1 Binding arbitration proceedings shall be in accordance with California Code of Civil Procedure section 1280 et seq., the then-current JAMS Streamlined Arbitration Rules, and the terms of section 28.01.3 and its subsections. In the event of any inconsistency, the terms of section 28.01.3 and its subsections shall control. The arbitration

shall be administered by JAMS and conducted in the County of Alameda. If the parties are unable to select an arbitrator within twenty (20) days after delivering written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the parties may mutually designate another arbitration organization with similar procedures to serve as the provider of arbitration. If the parties cannot agree on the arbitration organization, the Presiding Judge of the Alameda County Superior Court shall designate such an organization upon the petition of either party.

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

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

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

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

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

ARTICLE 29. ALL PRIOR CONTRACTS SUPERSEDED

29.01 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Contract that are not contained in this document or in the Collection Service Contracts which are being executed simultaneously with this document.

Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or agreements, whether oral or written. For the avoidance of doubt, nothing in this Contract shall be deemed to amend any agreement between the Parties for services prior to the term of this Contract or to release CONTRACTOR or CITY from any obligation thereunder.

ARTICLE 30. HEADINGS

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

ARTICLE 31. EXHIBITS

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

ARTICLE 32. EFFECTIVE DATE

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

ARTICLE 33. COUNTERPARTS

33.01 This Contract may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together, shall constitute one and the same instrument.

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

CITY OF OAKLAND

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

By: _____


JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

By: _____

BARRY SKOLNICK
PRESIDENT

Date

2-20-2015

Date

City of Oakland Business License Number

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2033 CITY OF OAKLAND

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

2034 By: _____
2035 JOHN A. FLORES
2036 INTERIM CITY ADMINISTRATOR

By: _____
BARRY SKOLNICK
PRESIDENT

2037 _____
2038 Date

2/20/2015

Date

2039
2040

1335469

City of Oakland Business License Number

2041 **The foregoing Contract has been reviewed and approval is recommended:**

2042 Ordinance No. 13259 C.M.S.

2043 APPROVED BY CITY COUNCIL

2044 APPROVED AS TO FORM:

2045

2046 
CELSE ORTIZ

2047 CITY ATTORNEY

2048

2049 2-20-15
Date