

**AMENDED AND RESTATED AGREEMENT FOR
THE INTERIM DISPOSAL AND
TRANSPORTATION OF SOLID WASTE**

by and among the

COUNTY OF SONOMA,

KELLER CANYON LANDFILL COMPANY,

and

**REPUBLIC SERVICES OF SONOMA COUNTY,
INC.**

September 29, 2009

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EXHIBITS

Exhibit A Parties Designated Representatives

Amended and Restated Agreement for the Interim Disposal of Solid Waste
by and among
the County of Sonoma,

Keller Canyon Landfill Company

and

Republic Services of Sonoma County, Inc.

THIS AGREEMENT is made as of ~~this ___ day of _____~~, September 29, 2009 by and among the COUNTY OF SONOMA ("**County**"), KELLER CANYON LANDFILL COMPANY-, a California corporation ("**Keller**"), and REPUBLIC SERVICES OF SONOMA COUNTY, INC., a Delaware corporation ("**Contractor**"). County and Contractor shall be referred to collectively as "Parties."

RECITALS

WHEREAS, the County and Contractor have entered into that certain Purchase and Sale Agreement dated as of ~~_____~~, September 29, 2009 (as amended, the "**PSA**"), for the acquisition by Contractor of the Facilities (as defined in the PSA), all as further described therein;

WHEREAS, the County and Contractor have entered into that certain Agreement for Operation of the Central Landfill and County Transfer Stations of even date herewith, pursuant to which Contractor shall operate the Central Landfill and the Transfer Stations;

WHEREAS, the PSA provides for a Closing (as defined in the PSA) to occur only after certain conditions have been met, all as further described in the PSA;

WHEREAS, the County and Contractor have previously entered into that certain Agreement for the Disposal of Solid Waste dated as of August ~~___~~, 16, 2005 (the "**Prior Agreement**"), which Prior Agreement the Parties desire to amend and restate in its entirety, as provided further herein;

WHEREAS, the purpose of amending and restating the Prior Agreement is to provide for interim disposal of Waste (as defined in the PSA) generated within the County of Sonoma until such time as the Contractor has acquired the Facilities or, if Closing does not occur, for a defined period of time after the PSA has been terminated;

WHEREAS, Contractor represents that it is duly qualified and experienced in Waste disposal operations and related services and owns and operates permitted landfill facilities that can receive Waste from the County of Sonoma; and

WHEREAS, in the judgment of the County Board of Supervisors, it is necessary and desirable to enter into this Agreement to have Contractor accept Waste from County.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties hereto agree as follows:

ARTICLE 1.
DEFINITIONS; ASSIGNMENT AND AMENDMENT AND RESTATEMENT;
SUBCONTRACTING TO KELLER AND FORWARD

1.01 Definitions. →

Unless otherwise defined herein, defined terms in this Agreement and the Exhibits of this Agreement, which are identified by the capitalization of the first letter of each principal word thereof, shall have the meanings set forth in the PSA. In the event a capitalized term is defined within both the PSA and this Agreement, the definitions contained within this Agreement shall govern and prevail. Capitalized terms not otherwise defined in the PSA shall have the following meanings. As used herein, “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term.

Agreement. "Agreement" means this Amended and Restated Agreement for the Interim Disposal of Solid Waste between County and Contractor for disposal of Waste, including all exhibits and attachments, and any amendments hereto.

Alternative Daily Cover. "Alternative Daily Cover" means an alternative material, including materials recovery facility alternative daily cover, tarps, green waste or other suitable materials that are not soil and that is authorized by the applicable LEA and permitted by Governmental Authorities to be used as daily cover material to be placed over Waste disposed of at one of the Landfills.

Average Tons Per Day (ATPD). "Average Tons Per Day" or "ATPD" means the arithmetic daily average of the weight of the material over a twelve (12) month period or such lesser period if this Agreement does not run at least 12 months.

Bulky Waste. "Bulky Waste" means stoves, refrigerators, water tanks, washing machines, other white goods, furniture, and other similar waste materials which require special handling and disposal methods due to their size, composition, and/or weight.

Change in Law. “Change in Law” means (a) the adoption of any Law after the Execution Date, or (b) any change in any Law or in the interpretation or application thereof by any Governmental Authority after the Execution Date which, in the case of both clauses (a)-(b), is principally directed at and the effect of which is principally borne by either Contractor or owners of landfills or transfer stations in the State, including changes arising out of AB 32 relating to climate change, greenhouse gas management or reduction. **“Change in Law”** excludes (1) any change in or new Law proposed or, pending (in the current legislative session as of the Execution Date), passed or adopted but not yet effective as of the Execution Date or which was later enacted in similar form; (2) any changes to financial assurance mechanisms as a result of AB 2296 or similar legislation (except to the extent such change is applicable on a statewide or federal basis and is not unique to the Landfill based on site-specific conditions); (3) any change which results from, arises out of or is caused by (A) any failure to perform or breach of this Agreement or the Operations Agreement by Contractor or any member of the Contractor

Parties, (B) violation of other applicable Law or Permit by Contractor or any member of the Contractor Parties, (C) negligence, recklessness, willful misconduct, fault, culpable act or culpable omission by Contractor or any member of the Contractor Parties or (D) non-compliance by Contractor or any member of the Contractor Parties with any Governmental Authority permits, consents, approvals, directives, in each case, on the part of Contractor, its Affiliates or any member of the Contractor Parties; (4) changes in the “Government Fee” component of the Contractor Service Fees as set forth in [Exhibit G of the Operations Agreement](#), which changes are addressed elsewhere in this Agreement; (5) any change which has a cost impact of less than \$75,000 per year (as such amount is adjusted annually on the Adjustment Date, commencing on ~~the first anniversary of the Execution Date~~, [July 1, 2010](#), based on the [greater of \(i\) 3.2% pr annum or \(B\) the](#) increase, if any, in the CPI Factor for that year, up to a maximum amount equal to 5% per annum); (6) any change which relates to, arises from or is caused by a new facility or operation at a Facility, a change in use or operation of any Facility, or a change in the waste management unit or disposal area at the Landfill other than Phases 1 and 2 of the Landfill (as identified in the Solid Waste Permit for the Landfill, as in existence as of the Execution Date) (e.g., a change which seeks to modify the level of traffic, grading plan or daily or maximum tonnage allowed under a Permit); and (7) any change which relates to or addresses Closure and Post-Closure Obligations, Environmental Conditions, Remediation, Hazardous Materials, Leachate or Landfill Gas (except to the extent such change is applicable on a statewide or federal basis and is not unique to a Facility based on site-specific conditions); and (8) any inflationary increase in prices or rates for equipment, machinery, personnel or services (it being the intent of the Parties that the annual tip fee adjustment based on CPI is intended to address such items).

Contractor. “Contractor” means Republic Services of Sonoma County, Inc., a Delaware corporation.

Contractor Default. “Contractor Default” has the meaning provided in [Section 10.01](#).

Forward. “Forward” means Forward, Inc., a California corporation.

Forward Landfill. “Forward Landfill” means that certain landfill which is commonly known as Forward Landfill which is located at 9999 S. Austin Road, Manteca, California (California Solid Waste Facility #39-AA-0015). The Landfill is owned and operated by Forward.

Gate Fees. “Gate Fees” mean the amounts, established under [Article 5](#) of this Agreement, to be charged the County for disposal of Waste at the applicable Landfill by a Transfer Company or Contractor.

Generator. “Generator” means any person whose act or process initially produces Waste, Designated Waste, Hazardous Materials, medical waste or any other product which becomes part of the overall waste stream.

Government Fee Component. “Government Fee Component” means that portion of the Gate Fees which represents all federal, state and local fees, [taxes and surcharges](#) applied to disposal at the applicable Landfill.

Household Hazardous Waste. “Household Hazardous Waste” means hazardous materials generated at residential premises.

Keller. “Keller” means Keller Canyon Landfill Company, a California corporation.

Keller Landfill. “Keller Landfill” means that certain landfill which is commonly known as Keller Canyon Landfill which is located at 901 Bailey Road, Pittsburg, California 94565. The Keller Landfill is owned and operated by Keller.

Landfill. “Landfill” means, as applicable, Keller Landfill or Forward Landfill. “Landfills” means, collectively, Keller Landfill and Forward Landfill.

Party or Parties. “Party” or “Parties” refers to the County and Contractor, individually or together.

Recyclable Material. “Recyclable Material” means domestic, commercial or industrial by-products with some potential economic value.

Resource Recovery. “Resource Recovery” means recycling, material reuse and recovery, mulching, composting, land application or transformation.

Service Fee Component. “Service Fee Component” means that portion of the Gate Fees which represents Contractor's charge for disposal and includes all Contractor's profits and expenses (except the Government Fee Component).

Term. “Term” means the Term of this Agreement as described in Article 2.

Transfer Company. “Transfer Company” means a company or companies which operate transfer vehicles in accordance with agreements with County. After August 31, 2010, the Transfer Company shall be Contractor.

Transfer Vehicle. “Transfer Vehicle” means a tractor and trailer designed to haul Waste from a transfer station to a landfill.

Unpermitted Material. “Unpermitted Material” means materials that a Landfill may not receive under its permits.

Work Day. “Work Day” means any day Monday through Sunday that is not a holiday as set forth in [Section 4.07.2-4.06.4.](#)

1.02 Assignment and Amendment and Restatement.→

1.02.1 Assignment. Keller hereby assigns all of its right title and interest in and to the Prior Agreement to Contractor and Contractor hereby assumes all of Keller’s obligations and liabilities of any nature thereunder. Notwithstanding the foregoing assignment, Keller shall not be relieved, released or discharged from any of its obligations or liabilities under the Prior Agreement. The County consents to the foregoing assignment.

1.02.2 Amendment and Restatement. This Agreement amends and restates the Prior Agreement in its entirety and except for such provisions that expressly survive the termination or expiration of the Prior Agreement, the Prior Agreement shall be of no further force and effect.

1.03 Subcontracting to Keller and Forward.→

Contractor intends to subcontract some or all of the obligations under this Agreement to Keller and Forward, which entities own the Keller Landfill and the Forward Landfill, respectively. Notwithstanding any such subcontract, Contractor shall remain solely responsible and liable for the performance of all obligations under this Agreement and for the acts, omissions, negligence, recklessness, willful misconduct, violation of Laws and Permits and breaches and defaults of both Keller and Forward.

ARTICLE 2.

EFFECT OF AGREEMENT; TERM OF AGREEMENT

2.01 Effect of Agreement.— This Agreement shall fully amend, restate and supersede the terms and conditions of the Prior Agreement as of the Execution Date. The Prior Agreement shall remain in full force and effect until the Execution Date, notwithstanding that the Parties may have executed this Agreement prior to the occurrence of the Execution Date.

2.02 Term.

2.02.1 Initial Term. The Term of this Agreement shall begin on the Execution Date and terminate on the earlier of the Closing Date or the expiration of the Transition Period, unless terminated earlier in accordance with the provisions of this Agreement or extended as permitted in this Agreement.

2.02.2 Extension of Term. The County shall have the unilateral right upon written notice to Contractor to extend the Term of this Agreement for one (1) additional year upon the same terms and conditions set forth herein.—

2.03 County's Right to Terminate.

2.03.1 Termination for Contractor Default. County shall have the right to terminate this Agreement for any Contractor Default as defined in Section 10.01 below.

2.03.2 Termination for Non-Appropriations. Contractor hereby acknowledges that pursuant to Section 18 of Article 16 of the California Constitution, there are certain limits on County incurring liability under this Agreement. In no event shall County's obligation to deliver Waste hereunder extend beyond County's ability to collect tipping fees for the services. In addition, County shall have the right to cancel and terminate this Agreement at the end of any fiscal year of the County, if County is not authorized by state or federal Law or regulation to appropriate moneys sufficient to pay the compensation required under this Agreement, included for the disposal of Waste at the Landfills. County may effect such

termination by giving Contractor sixty (60) days prior written notice of termination unless the giving of such advance notice is impractical under the circumstances.

2.03.3 Relationship with Assumed Liabilities. In the event of Closing, nothing contained in this Agreement is intended to modify, limit, discharge or release any of the Assumed Liabilities or Excluded Liabilities.

ARTICLE 3. OBLIGATIONS OF COUNTY

3.01 Waste Delivery. Prior to September 1, 2010.

(a) Prior to September 1, 2010, no Waste commitment shall be applicable and the County shall have no liability or responsibility therefor; provided, however, that the County shall be obligated to direct 200 ATPD (Monday through Friday) to the Keller Landfill for disposal on a “put or pay” basis until the commencement of Landfill operations as provided in Section 2.1 of the Operations Agreement, in which case clause (b) below shall apply. ATPD shall be measured on an annual basis, commencing as of the Execution Date, and, for any partial year, shall be measured on the basis of such partial year (e.g., the amount of Tons divided by the number of days (Monday through Friday) in the partial year). County shall pay Contractor any put or pay amounts owed to Contractor respecting any shortfall in Tons delivered to the Keller Landfill as of the commencement of Landfill operations under the Operations Agreement pursuant to Section 8.5 of the Operations Agreement.

(b) From and after the commencement of Landfill operations as provided in Section 2.1 of the Operations Agreement and prior to September 1, 2010, County shall deliver or cause its Franchised Hauler to deliver at least 138,697 Tons of Waste per year to the Landfill for disposal on a “put or pay” basis. The foregoing tonnage amount shall be measured on an annual basis, commencing as of the commencement of Landfill operations as provided in Section 2.1 of the Operations Agreement, and, for any partial year, shall be measured on the basis of such partial year (e.g., the amount of Tons divided by the number of days (Monday through Friday) in the partial year. Provided the County delivers all Waste received at the Facilities after meeting its minimum “put or pay” commitment at the Redwood Landfill, but has not, as of August 31, 2010, satisfied its put or pay obligation under this subparagraph, the County shall not be required to pay to Contractor any shortfall in Tons delivered to the Landfill pursuant to Section 8.33.8 of the Operation Agreement.

(c) Furthermore, if the County suspends Waste disposal at the Landfill for a period in excess of 2 business days, the County’s “put or pay” obligation to the Keller Landfill as described in clause (a) shall recommence as of 2 business days after the date the Landfill ceases accepting Waste for disposal.

(d) With respect to residuals after processing from Redwood Empire’s or its Affiliates’ materials recovery facilities located within the County of Sonoma which are delivered to the Landfill or Keller Landfill pursuant to the Redwood Empire Franchise Agreement, the County shall not receive credit for the first 100 Tons per day (5 day week) of

such Waste towards the County's Waste commitment and put or pay obligations under this Agreement, but shall receive credit for amounts over 100 Tons per day.

(e) ~~(d)~~ This provision is also included in the Operations Agreement, but is not intended to be a separate or independent put or pay obligation or provide a double recovery.

3.01.2 From and After September 1, 2010. From and after September 1, 2010 through the expiration or termination of this Agreement and subject to Contractor's compliance with the terms of the PSA and Contractor's compliance with the terms of this Agreement, the County will cause all of the County-Controlled Waste to be delivered to the Facilities during the Term of this Agreement. The County's commitment of County-Controlled Waste as set forth in this Section 3.01 is not a guaranty of any amount of Waste flow nor does it represent a "put or pay" relationship and County makes no representations and warranties with respect to any amount of Waste flow. Contractor acknowledges that the actual Waste flow may be higher or lower than its projections, assumptions or historical averages. County expressly disclaims any warranties, either expressed or implied, or representations, as to the composition of Waste to be delivered to the Landfills or any other facility owned or operated by Contractor or any Affiliate of Contractor. In no event shall Gate Fees be adjusted or increased as a result of the amount of Waste flow. The concept of tiers and re-tiering set forth in the PSA, including Schedule 6.17, and in the City Disposal Agreements shall not apply under this Agreement.

3.01.3 Exclusions from County Commitment.

(a) As used in this Agreement, "County-Controlled Waste" excludes:

(i) Source Separated Recyclable Materials generated by residents, commercial customers, or industrial customers or residential, commercial or industrial premises and collected within recyclable containers of any nature designated by the County as part of a contract, authorization, permit, license or franchise agreement issued by the County and ~~which containers are intended to be placed at curbside by the residents for collection pursuant to a Recycling program authorized by the County;~~

~~(ii) — Construction and Demolition Wastes in Roll-Off Containers placed at active construction sites by M&M Services, Inc. and Global Materials Recovery Services, Inc., as part of a contract, authorization, permit, license or franchise agreement issued by the County, as more particularly set forth in their respective contracts, authorizations, permits, licenses or franchise agreements;~~

~~(iii)~~ Self-Haul Waste; and

~~(iv)~~ Committed City Waste.

(b) Notwithstanding the foregoing ~~and in addition to the exclusion set forth in clause (ii) of Section 3.01.3(a)~~, the County shall not be obligated to cause a Franchised Hauler to deliver Source Separated Recyclable Materials or Construction and Demolition Wastes collected in designated recyclable containers at a commercial business or an industrial premises,

including Garbage Bins and Roll-Off Containers, to the Facilities, but only for so long as the Franchised Hauler's contract, authorization, permit, license or franchise agreement is not renewed (excluding a renewal on the basis of a unilateral option of the Franchised Hauler), extended or materially modified and only if the following also apply: said contract, authorization, permit, license or franchise agreement (1) was granted or entered into by County with the Franchised Hauler prior to the Execution Date, and (2) does not allow the County to direct the Franchised Hauler to deliver such commercial or industrial Source Separated Recyclable Materials or Construction and Demolition Wastes collected in designated recyclable containers at a commercial business or industrial premises, including to the Facilities.

(c) Whenever a Franchised Hauler's contract, authorization, permit, license or franchise agreement is renewed (excluding a renewal on the basis of a unilateral option of the Franchised Hauler), extended or materially modified after the Execution Date, the County shall incorporate language in such contract, authorization, permit, license or franchise agreement, requiring the Franchise Hauler to deliver all County Controlled Waste, including commercial and industrial Source Separated Recyclable Materials, Mixed Waste, Recyclable Materials and Construction and Demolition Wastes as described in clause (b) of this Section ~~(but excluding the items set forth in clause (ii) of Section 3.01.3(a))~~ to the Facilities.

(d) Contractor expressly acknowledges and agrees that it has reviewed the Redwood Empire Franchise Agreement and agrees that such franchise agreement is consistent with and in compliance with the County's commitment of Waste under this Agreement so long as the County requires Redwood Empire to deliver Waste to Contractor and the Facilities, as applicable, to meet the County's obligations to Contractor under this Agreement. The County may, in its discretion, provide any proposed amendment to the Redwood Empire Franchise Agreement to Contractor for its review in order to confirm that it is consistent and in compliance with the County's Waste commitment under this Agreement. Should the County seek such review by the Contractor, the Parties shall meet and confer within 45 days to discuss the amendment. The County may, in its discretion, also seek Contractor's consent to any such amendment, which consent shall not be unreasonably withheld or delayed so long as Contractor does not reasonably believe that its commercial interests could be adversely affected by the amendment. The County shall not be obligated to seek the review, comment or approval by Contractor of any such amendment, but in no event shall any such amendment modify the terms of the County's Waste commitment under this Agreement without the written consent of Contractor.

(e) With respect to any future franchise agreements entered into, or to be entered into, by the County through and until the expiration of this Agreement, the County may, in its sole discretion, provide a copy thereof to Contractor for its review. Within 45 days of delivery thereof, Contractor shall notify the County in writing that (i) the agreement is consistent with and in compliance with the County's commitment of Waste under this Agreement or (ii) the agreement is not consistent with and in compliance with the County's commitment of Waste under this Agreement (in which case, Contractor shall provide detailed comments thereto and shall, upon request, meet and confer with the County to discuss). Failure of Contractor to provide such notification within such 45 day period shall irrevocably mean that Contractor agrees that such agreement is consistent with and in compliance with the County's commitment of Waste under this Agreement. Notwithstanding the foregoing, the County is under no

obligation to seek Contractor's review of any future franchise agreement and in no event shall Contractor have any rights to approve, disapprove or require any modification or other action by the County with respect to any future franchise agreement, all of which rights are solely reserved to the County.

3.02 Composition of Waste.— The Parties acknowledge that, prior to September 1, 2010, Waste will be delivered to the Contractor by the Transfer Company or, with respect to certain residuals and Construction and Demolition Wastes, by Redwood Empire or its Affiliates. From and after September 1, 2010, Contractor will operate the Transfer Stations and, except for certain residuals transported directly to Keller Landfill by Redwood Empire or its Affiliates, Contractor shall be responsible for transportation of Waste from the Transfer Stations to the Landfills. Regardless of who is responsible for transporting Waste to the Contractor, County expressly disclaims any warranties, either expressed or implied, or representations, as to the composition of Waste to be delivered to Contractor. County shall encourage residents to participate in the Sonoma 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 County cannot assure Contractor that such programs will prevent any amount of Household Hazardous Waste from being delivered to Contractor.

ARTICLE 4. OBLIGATIONS OF CONTRACTOR

4.01 Receipt of Waste.

4.01.1 At Keller Landfill Until September 1, 2010. From and after the Execution Date until September 1, 2010, Contractor shall receive, accept and safely and lawfully dispose of or otherwise process at the Keller Landfill, Waste originating within Sonoma County and delivered to the Keller Landfill (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor, as applicable), provided, however, that Contractor shall have the right to limit tonnage accepted at the Keller Landfill to (i) 400 tons of Waste per day and send the excess tonnage to Forward Landfill plus (ii) 100 Tons of residuals per day delivered by Redwood Empire or its Affiliates.

4.01.2 At Keller Landfill From and After September 1, 2010. From and after September 1, 2010 until the expiration of the Transition Period, Contractor shall receive, accept and safely and lawfully dispose of or otherwise process at the Keller Landfill, Waste originating within Sonoma County and delivered to the Keller Landfill (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor, as applicable).

4.01.3 At Forward Landfill. From and after the Execution Date until the expiration of the Transition Period, Contractor shall receive, accept and safely and lawfully dispose of or otherwise process at the Forward Landfill, Waste originating within Sonoma County and delivered to the Forward Landfill (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor, as applicable).

4.01.4 **Disposal at Keller Landfill and Forward Landfill.** For Waste not disposed of at the Landfill pursuant to the Operations Agreement, Contractor may choose whether disposal occurs at the Keller Landfill or Forward Landfill, or both; provided, however, that, until such time as disposal resumes at the Landfill and the County directs its Franchised Hauler to deliver residuals to the Landfill, Contractor is required to accept and dispose of, at the Keller Landfill, up to 100 Tons of residuals per day delivered by Redwood Empire or its Affiliates to the Keller Landfill. Absent an emergency, Contractor shall have the right to change the disposal location, upon 3 Work Days' written notice to the County (in which case, the Gate Fees set forth in Exhibit G of the Operations Agreement shall apply).

4.01.5 **Lined Subtitle D Cells.** Contractor shall place all Waste disposed of within the Landfills pursuant to this Agreement in a fully lined waste cell that complies with Federal RCRA Subtitle D standards.

4.02 **Permits for Use of Landfills.**— Throughout the Term, Contractor shall maintain the Landfills in full regulatory compliance with the terms of any and all existing permits and other approvals from government authorities required for receipt of Waste at the Landfills. Contractor shall provide County with a list of all such permits and approvals designating the issuing agency, the date of issuance and the expiration of the permits and, upon County's request, provide copies of any such permits and approvals. Contractor shall keep the County fully informed, in a timely manner, of its progress in securing permits, or renewals of permits, which occur during the Term as the same pertains to the disposal operations at the Landfills in accordance with this Agreement and costs related thereto. Throughout the Term, Contractor shall notify and consult with the County regarding any proposed amendment to or alteration to any existing permits, as well as notifying County, in a timely manner, of its intent in seeking new permits.

4.03 **Reservation of Disposal Capacity.**— Until August 31, 2010, Contractor shall guarantee its ability to accept and dispose of Waste originating within Sonoma County and delivered to Keller Landfill (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor, as applicable) up to amounts set forth in Section 4.01.1 above. To the extent that the Waste originating within Sonoma County and delivered to Keller Landfill (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor, as applicable) exceeds the amounts set forth in Section 4.01.1 and Contractor intends for such Waste to be delivered to the Forward Landfill, Contractor shall guarantee its ability to accept and dispose of such Waste at the Forward Landfill. Contractor shall be solely responsible for estimating the quantity of capacity that shall be required to handle such Waste over the Term of the Agreement.

4.03.2 From and after September 1, 2010 through and until the expiration of the Transition Period, Contractor shall guarantee its ability to accept and dispose of Waste originating within Sonoma County and delivered to Keller Landfill and/or Forward Landfill (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor, as applicable) ; provided, however, that, until such time as disposal resumes at the Landfill and the County directs its Franchised Hauler to deliver residuals to the Landfill, Contractor shall guarantee its ability to accept and dispose of, at the Keller Landfill, up to 100 Tons of residuals per day delivered by Redwood Empire or its Affiliates to the Keller Landfill.

Contractor shall be solely responsible for estimating the quantity of capacity that shall be required to handle such Waste over the Term of the Agreement.

4.04 Alternative Disposal Facility.

4.04.1 Inability to Accept Waste Due to Contractor. If Contractor becomes unable to accept Waste as required under this Agreement because it did not use reasonable business efforts in resisting changes, alterations and amendments to permits, or due to reasons within its control and which could have been avoided by the exercise of due care, then Contractor shall (a) accept and dispose of such Waste at another landfill owned by it (or an Affiliate of Contractor) at the then current and applicable Gate Fee in effect under this Agreement, and shall pay any additional transportation costs incurred by County and Contractor delivering the Waste to the other landfill, or (b) shall arrange for all Waste to be disposed of at another landfill not owned by it or an Affiliate of Contractor, in which case Contractor shall pay any difference between: (i) the Gate Fee charged at such landfill plus any additional transportation costs incurred in delivering the Waste to the other landfill; and (ii) the then current and applicable Gate Fee in effect under this Agreement.

4.04.2 Inability to Accept Waste Due to Other Factors. If Contractor, despite using reasonable business efforts to resist changes, alterations and amendments to permits, becomes unable to accept and dispose of Waste at the Landfills as described in Section 4.01, or if Contractor becomes unable to accept and dispose of Waste at the Landfills as described in Section 4.01 as the result of causes which are beyond its control (i.e., force majeure events described in Article 9), then Contractor shall, to the extent it is legally able to do so, offer to accept and dispose of Waste at another landfill owned by it (or by an Affiliate of Contractor) at the then current and applicable Gate Fee in effect under this Agreement.

4.05 [NOT USED]

4.06 Days and Hours of Operation. ~~4.06.1~~**Prior to September 1, 2010.** This Section 4.06.1 shall apply through August 31, 2010. Contractor shall operate the Landfills, as applicable, for the receipt and disposal of Waste in accordance with the days and hours of operation as set forth in all permits. The current permitted hours of operation, for Keller Landfill, are 7:00 a.m. to 4:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturdays and, for Forward Landfill, are 6:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 12:00 p.m. on Saturdays . At a minimum, Contractor shall accept and dispose of Waste generated within Sonoma County and delivered to the Landfills (either by or on behalf of the County, a Transfer Company, Contractor or an Affiliate of Contractor) during the hours of 7:00 a.m. to 4:00 p.m. Monday through Friday and 7:00 a.m. to 12:00 p.m. on Saturdays. Contractor may not reduce the hours or total number of hours for acceptance and disposal required by this Agreement without the written concurrence of the County, except such changes which are mandated by a change in a Keller Landfill permit or Forward Landfill permit, as applicable.

4.06.2 From and After September 1, 2010. From and after September 1, 2010, Contractor shall operate the Landfills as necessary to fully comply with its obligations under this Agreement, including the receipt and disposal of Waste.

4.06.3 Emergency Services. In the event of a tornado, major storm, earthquake, fire, flood, natural disaster, or other such event, County may require Contractor to extend the hours of operation in order to accept Waste under this Agreement. However, Contractor shall not be required to extend the hours of operation to the extent that such extension would cause Contractor to violate its permit.

4.06.4 Holidays. Contractor shall not be required to accept Waste on Easter Sunday, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New Years Day.

4.07 Traffic Control and Processing.

4.07.1 Traffic. Contractor shall be responsible for the construction and maintenance of all roads required at the Landfills, as applicable, for purposes of transporting Waste to the actual point of unloading by the Transfer Company. Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas. Contractor shall provide and maintain signs for the convenience of vehicles using the Keller Landfill or the Forward Landfill, as applicable, and to facilitate safe and efficient traffic flow at the Keller Landfill or the Forward Landfill.

4.07.2 Turnaround Time. Through August 31, 2010, Contractor guarantees that each Transfer Vehicle delivering Waste under this Agreement is able to tip, unload at the tip floor or other designated location, and leave the Keller Landfill or the Forward Landfill, as applicable, within a monthly average of thirty (30) minutes of leaving the entry scale, absent vehicle breakdown, driver negligence or excessive delays (beyond 10 minutes) in the unloading of a Transfer Vehicle.

4.08 Scale Operation.

4.08.1 Weighing Standards and Procedures. The scale house(s) at the entrances of the Keller Landfill and the Forward Landfill, as applicable, shall serve as the location for weighing vehicles and charging Gate Fees as provided herein. Contractor scale house personnel shall be responsible for inspecting the Waste delivered to the Landfills. The Transfer Vehicles shall be charged disposal fees based on the tonnage of Waste accepted by the Landfills and the applicable Gate Fees as set forth in this Agreement. Contractor shall weigh and record inbound weights of all Transfer Vehicles when the vehicles arrive at a Landfill, as applicable. In addition, Contractor shall weigh and record outbound weights of such vehicles for which Contractor does not maintain tare weight information. Contractor shall provide each driver a receipt showing the date, time, and quantity of Waste delivered to the applicable Landfill and the Gate Fee charged for such material. The scale house computer system shall compile information into various reports in which a typical transaction includes documentation of the Gate Fee charged, weight of vehicle, vehicle identification number, date and time, customer account, material type, route number, vehicle type, and origin of Waste (i.e., Sonoma County).

4.08.2 Maintenance and Operation. Contractor shall maintain, in accordance with applicable Law, at least two State certified motor vehicle scales at each of the Landfills. Contractor shall operate such scales during Landfill receiving hours, established in

Section ~~4.07~~4.06, provided that Contractor shall provide County with access to weighing information at all times and copies thereof on the next Work Day on which the scale house is open.

4.08.3 Vehicle Tare Weights. As of the date of this Agreement, Contractor has weighed and determined the unloaded (“tare”) weight of each Transfer Vehicle currently being used by the Transfer Company to deliver Waste to the Landfills. Contractor shall, at least every year, re-weigh and revise tare weights for all Transfer Vehicles used to deliver Waste to the Landfills. When new vehicles are placed into service and immediately after any significant repairs to Transfer Vehicles are made, Contractor shall promptly weigh such vehicles and determine the tare weight of each vehicle. Within ten (10) Work Days of weighing, Contractor shall provide County and the Transfer Company with a report listing vehicle tare weight information. Contractor, County and Transfer Company shall have the right to request re-weighing of vehicles up to two (2) times per year, unless there is reasonable suspicion of evidence that tare weights are not accurate, in which case, tare weights may be updated more frequently to ensure accuracy.

4.08.4 Substitute Scales. To the extent practicable, if either scale is inoperable, being tested or otherwise unavailable, all vehicles shall be weighed on the remaining operating scale. To the extent that both the 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.

4.08.5 Estimates. Pending substitution of portable scales or during power outages, Contractor shall estimate the tonnage of Waste delivered to the Keller Landfill or to the Forward Landfill, as applicable, by utilizing the arithmetic average of that vehicle's recorded tons of Waste delivered on its preceding three (3) deliveries, on the same day of the week, to the Keller Landfill or to the Forward Landfill, as applicable, with the exception that the tonnage estimated in roll-off containers shall be made by multiplying the estimated number of cubic yards of Waste delivered per roll-off container by 0.20 tons per cubic yard for Waste. All information required by Sections ~~4.09.14.08.1~~ and ~~4.09.74.08.7~~ shall continue to be recorded for each delivery of Waste to the Keller Landfill and to the Forward Landfill during any period the scales are out of service.

4.08.6 Testing. Contractor shall test and calibrate all scales in accordance with Law, but at least every twelve (12) months. Contractor shall provide County with copies of test results. Contractor shall further test and calibrate any or all scales upon written request by County, within three (3) Work Days of such request. If such test results indicate that the scale or scales complied with Law, County 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 Gate Fees calculated, charged and paid, as the case may be, from the date of such request.

4.08.7 **Records.** Contractor shall maintain scale records that provide information such as, but not limited to, date of receipt, inbound and outbound time, inbound and outbound weights of Transfer Vehicles, vehicle identification number, jurisdiction of origin of materials received (i.e., Sonoma County), type of material, Gate Fee (both per ton and total cost), hauler identification and/or classification, type, weight, destination of outbound material and for each Transfer Vehicle load, a copy of the one page form that contains the unique tracking number on the multi-part form submitted to Contractor from the driver of the Transfer Vehicle.

4.09 **Rejection of Unpermitted Material.**

4.09.1 **Inspection.** Contractor shall use standard industry practices to endeavor to detect and discover Unpermitted Material and shall not knowingly accept Unpermitted Material at either of the Landfills. 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.

4.09.2 **Unpermitted Materials Handling and Costs.** Contractor shall arrange for or provide transportation and delivery to an appropriately permitted facility of all Unpermitted Materials that are encountered and which cannot be accepted at either of the Keller Landfill or the Forward Landfill. Contractor shall be solely responsible for handling and arranging transport and disposition of any Unpermitted Material that is contained in or with Waste accepted by Contractor, and for all related costs. Notwithstanding Contractor's obligations under this [Section 4.9.2, 4.09.2](#), Contractor shall have the remedies set forth in [Section 4.9.3, 4.09.3](#) below to deal with Unpermitted Materials.

4.09.3 **Remedies for Rejected Materials.** If Contractor rejects material delivered to the Keller Landfill or the Forward Landfill by the Transfer Company because it contains Unpermitted Material including Hazardous Materials, Contractor shall direct the Transfer Company to remove and dispose of it in a safe and lawful manner, at the sole expense of the Transfer Company. In the event that Unpermitted Material is delivered to the Keller Landfill or the Forward Landfill, Contractor shall be entitled to pursue whatever remedies, if any, it may have against the Generator(s) of such waste if the Generator(s) can be identified. In addition, Contractor may require the Transfer Company to dispose of such Unpermitted Material and/or remediate the same, as well as any contamination resulting therefrom at their expense if the Unpermitted Materials are identified prior to or while such material is being deposited by the Transfer Company at the Keller Landfill or the Forward Landfill, as applicable. In no case shall County be considered to have brought such Unpermitted Material to either the Keller Landfill or the Forward Landfill. In the event the Transfer Company delivers Unpermitted Materials on a frequent or continuous basis and the Transfer Company refuses to provide for the proper handling and disposition of such Unpermitted Material, Contractor shall provide written notice to County of such refusal by the Transfer Company. Nothing herein shall excuse Contractor from the responsibility of handling such Unpermitted Materials in a lawful manner and to arrange for the proper disposition of such materials.

4.09.4 **Notification.** In the event Contractor rejects materials delivered by the Transfer Company, Contractor shall immediately notify County verbally and then follow such verbal notification with written notice within fourteen (14) Work Days. The written notice

shall identify: the date and time of occurrence; material type (along with a photo of the materials); material weight or volume; characterization of material; and Contractor's reason for rejection of the delivered material.

4.10 Ownership of Materials. -Once Waste is accepted at the Keller Landfill or the Forward Landfill from the Transfer Company, ownership and possession of such material shall transfer directly from the Transfer Company to Contractor. Contractor is hereby granted the right to retain, recycle, process, dispose of and otherwise use such materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor and such right shall include Contractor's right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or reuse the Waste.

4.11 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 each of the Landfills and to perform Contractor's obligations hereunder.

4.12 Closure of Landfill.— Contractor shall safely manage the Landfills in full regulatory compliance not only during normal operating periods for such Landfills but also during the closure and post-closure periods. Contractor acknowledges that it is solely responsible for: (i) the appropriate closure and post-closure activities of each of the Landfills; 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 each of the Landfills (or any cell within either such landfill) or post-closure activities relating to the Landfills. Without limitation, in no event shall County or the Transfer Company be responsible for paying any deficiencies in such required reserves. In addition, neither County nor the Transfer Company shall have any responsibility to make any payments in the event that actual closure and post-closure costs relating to the Waste exceed the amounts upon which the Gate Fees hereunder were based on and the amount reserved by Contractor for such purposes.

4.13 Reports.

4.13.1 Monthly Reports. Beginning on the Execution Date, and monthly during the Term of this Agreement, Contractor shall provide a monthly report by the twentieth (20th) day of the month following the reporting month (e.g., the first report will be due no later than the twentieth (20th) day of the month following the Execution Date). The report shall include the total tonnage of Waste generated in the County that was diverted, transferred, and disposed at each of the Landfills. In addition, the monthly report shall include the following separately for each of the Landfills: (a) tonnage information by material type for material accepted; (b) number and nature of rejected loads during the month; (c) number and nature of occurrences in which Contractor identified Hazardous Materials inadvertently accepted; (d) number and nature of any notice of violations; and (e) copies of the scale records for each Transfer Vehicle transaction during the month as described in Section 4.08.7.

4.13.2 Annual Report of Landfill Activity. Contractor shall submit an annual report of activity at the Landfills to County. This report shall contain all items required by this Section which, as a minimum, include the following: (a) an analysis of the changes to the

airspace of each of the Landfills since the previous report; (b) an analysis of the remaining capacity of each of the Landfills; and (c) a projection of the remaining life of each of the Landfills. Each analysis shall be based on data generated by an aerial topographic survey of each of the Landfills. As a minimum, the airspace and remaining capacity of each of the Landfills shall be expressed in the following or similar terms: gross remaining airspace (cubic yards of remaining airspace that includes final cover, refuse, daily cover and liner); effective remaining airspace (cubic yards of remaining airspace available for refuse only). In addition, the annual report of activity at each of the Landfills submitted to County shall contain the date of the aerial survey flight; the methodology employed in the analyses; and the calculations performed to determine the airspace and remaining capacity. The annual report shall be submitted to County no later than September 1st of each year during the Term, unless County agrees to a later submittal date.

4.14 Operation and Safety Plans.

4.14.1 Emergency Operations Plan. Contractor has previously provided to County, and County has approved, a written comprehensive emergency operations plan designed to mitigate and correct hazards that may arise due to accidents or disruption of operation of each of the Landfills or disposal of Waste under this Agreement, including, but not limited to: damage to property, release of hazardous or dangerous materials and the release of any Waste. The emergency operations plan shall be updated by Contractor and submitted for County approval on an annual basis. ~~[REPUBLIC—WE NEED FOR FORWARD]~~

4.14.2 Safety Plan. Contractor has previously provided to County, and County has approved, a written comprehensive safety plan which includes Contractor's employee injury and illness protection plan (SB 198). The safety plan shall be updated by Contractor and submitted for County approval on an annual basis. ~~[REPUBLIC—WE NEED FOR FORWARD]~~

ARTICLE 5.
COMPENSATION TO CONTRACTOR

5.01 General.— Contractor shall perform all of its obligations, responsibilities and duties under this Agreement and under the Operations Agreement, including, but not limited to, operating and maintaining the Facilities, paying the costs associated with obtaining and complying with all permits and approvals, operating each of the Landfills, conducting construction, closure, post-closure maintenance and remediation activities, environmental monitoring, as well as operating any diversion programs or Resource Recovery programs in consideration of the right to charge and collect from County, Gate Fees/Contractor Service Fees (as defined in the Operations Agreement) as set forth in the Operations Agreement. ~~This~~The Operations Agreement includes the compensation payable to Contractor pursuant to this Agreement and the Operations Agreement and “Contractor Service Fees”, as used in the Operations Agreement, are intended to be the same as Gate Fees hereunder, such amounts to be payable only as either Gate Fees or Contractor Service Fees (and not both). In no event shall Contractor be entitled to a double payment of Contractor Service Fees and Gate Fees, including any adjustments or increases thereof.

5.02 Intentionally Omitted.— **Adjustments to Components of the Gate Fees.**

Except as provided in Section 5.04, the Gate Fees shall not be adjusted. In the event of an adjustment to Gate Fees in accordance with Section 5.04.3, Contractor shall provide County or its agent access to the Landfills and its financial and operations records that are directly bearing on the determination of the amount of the adjustment.

5.04 Gate Fee Adjustments.

5.04.1 Consumer Price Index Adjustments. The Service Fee Component of the Gate Fees shall be adjusted annually ~~on each Adjustment Date, by the percentage change in the U.S. City Average All Urban Consumers Index, CPI-U (All Urban Consumers; 1982-84=100) for the month of January, compiled and published by the United States Department of Labor, Bureau of Labor Statistics~~as set forth in Section 8.4(A) of the Operations Agreement.

5.04.2 Regulatory Costs Included in the Gate Fees. The Gate Fees established under Section 5.02 already include all costs associated with complying with all existing Laws and governmental regulations (including, but not limited to, Environmental Laws) applicable to each of the Landfills as of the date of this Agreement as those Laws are currently interpreted. The purpose of this Section is to: (a) specify those Laws and regulations for which the cost of compliance has already been included (as currently interpreted) and other costs which may not result in an increase in the Gate Fees, and (b) identify those Laws and governmental regulations which may be enacted in the future, or changes in the interpretation of current Laws and regulations, the costs of which may be the basis for an increase in the Gate Fees. The Service Fee Component of the Gate Fee already includes and will not be increased as a result of any of the following:

(a) The costs to comply with all Laws and governmental regulations, excluding Change in Law, including, but not limited to the following:

- i. “Calderon Legislation” (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code Sections 45300-04, 45700, California Health and Safety Code Sections 40511, 41805.5 and 42311.5, and California Water Code Section 13273);
- ii. “Proposition 65” (California Health and Safety Code Section 25249.5 et seq., and Health and Safety Code Section 25192);
- iii. “Federal Clean Air Act (42 U.S.C. Section 7401-7642) and the California Clean Air Act (Health and Safety Code Sections 1251 et seq.);
- iv. Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.);
- v. California Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 40000, et seq.);
- vi. Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.);
- vii. California Hazardous Waste Control Act (California Health and Safety Code, Division 20, Chapter 6.5, Section 25100 et seq.);
- viii. Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050);
- ix. California Hazardous Materials Release Response Plan and Inventory Act (California Health and Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.);
- x. California Underground Storage Tank Act (California Health and Safety Code, Division 20, Chapter 6.7, Section 25280, et seq.);
- xi. California Occupational Safety and Health act (California Labor Code, Division 5, Parts 1-10, Section 6300 et seq.);
- xii. Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), and the regulations adopted thereunder, including but not limited to the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258);
- xiii. Bay Area Air Quality Management District Regulation 8, Rule 34;
- xiv. Title 14 California Code of Regulations;

- xv. Title 22 California Code of Regulations;
- xvi. Title 27 California Code of Regulations;
- xvii. “Subchapter 15” (Title 23 California Code of Regulations, Sections 2510-2610); and
- xviii. Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, and Greenhouse Gases from In-Use Heavy Duty Diesel-Fueled Vehicles, Cal. Code Regs, title 13, section 2025.

- (b) Costs incurred due to Contractor's negligence, or intentional misconduct.
- (c) Costs incurred due to permit changes that were not noticed in writing by Contractor to County.
- (d) Any fines or penalties imposed on Contractor.
- (e) Costs of remediation at the Landfills, resulting from cost-recovery actions pursuant to 42 U.S.C. Section 9600 et seq. (CERCLA), 42 U.S.C. Section 6900 et seq. (RCRA) or other Environmental Laws.
- (f) Costs attributable to changing the classification of either the Keller Landfill or the Forward Landfill.
- (g) Expenses related to the disposal of Hazardous Materials, Designated Waste and Unpermitted Materials.

The Government Fee Component of the Gate Fee ~~may~~shall be increased as a result of any ~~Change in Law that directly increases any~~action by a Governmental Authority to increase any existing, or initiate a new, federal, state or local fee, tax or surcharge applied to disposal operations at either the Keller Landfill or the Forward Landfill, but such increase shall only be in an amount that reimburses Contractor for the actual bona fide out-of-pocket incremental increase in costs (without profit, overhead or mark-up) and Contractor shall allocate such increase equally across all tons of Waste delivered to the applicable Landfill by any party.

5.04.3 Process for Requesting an Increase in Gate Fees Resulting from Change in Law. If Contractor believes that complying with Change in Law will increase or decrease the costs of operating either the Keller Landfill or the Forward Landfill, then it must follow the procedures in this subsection before the Government Fee Component or the Service Component of the Gate Fees will be adjusted.

- (a) Contractor shall give County prompt written notice, in no case less than ninety (90) calendar days before the effective date of the Change in Law, specifically identifying it and describing what changes in operations at the Keller Landfill or the Forward Landfill, as applicable, are required, when compliance is required, and whether Contractor is

eligible for any exemptions or variances. Contractor shall also provide evidence documenting that the regulation meets the definition of a Change in Law.

(b) Contractor shall thereafter submit to the County its proposed method for complying with the Change in Law, the estimated net actual out-of-pocket cost of compliance, and the associated adjustment necessary in the Government Fee Component or the Service Component of the Gate Fees. Contractor shall provide County with access to its operations and records. County may comment on this proposal and Contractor shall consider such comments before submitting the proposal to any Governmental Authority. Contractor shall have a duty to mitigate the cost of compliance and shall use reasonable efforts to determine, propose and implement the least costly method of compliance.

(c) Contractor shall submit the proposed method of compliance (as may be amended by Section 5.04.3(b) above) to the appropriate Governmental Authority. If the appropriate Governmental Authority approves that method without conditions, the cost necessary to implement that method of compliance pro rated to the tonnage of Waste generated within Sonoma County and delivered to the Landfills (either by or on behalf of the County, a Transfer Company, Contractor and/or an Affiliate of Contractor, as applicable) as compared to all tonnage delivered to the applicable Landfill, and net of any offsetting cost reductions as determined in accordance with this Section. The amount by which the Government Fee Component or the Service Component of the Gate Fees may be adjusted shall be subject to County review and written approval.

(d) If Contractor's proposed method is not approved by the appropriate Governmental Authority, Contractor will implement the least costly method of compliance which is approved by the Governmental Authority. The costs necessary to implement that method of compliance will be used to calculate the amount pro rated to the tonnage of Waste generated within Sonoma County and delivered to the Landfills (either by or on behalf of the County, a Transfer Company, Contractor and/or an Affiliate of Contractor, as applicable), as compared to all tonnage delivered to the applicable Landfill, and net of any offsetting cost reductions, as determined in accordance with this Section. The amount by which the Government Fee Component or the Service Component of the Gate Fees may be adjusted shall be subject to County review and written approval.

5.05 Invoicing. -Contractor is responsible for submitting monthly invoices to County requesting payment for Gate Fees due on Waste generated within Sonoma County and delivered to the Landfills (either by or on behalf of the County, a Transfer Company, Contractor and/or an Affiliate of Contractor, as applicable). On or before the fifteenth (15th) day of each month, and beginning with the month immediately following the month in which Waste is first delivered under this Agreement, Contractor shall invoice County for Waste generated within Sonoma County and delivered to the Landfills (either by or on behalf of the County, a Transfer Company, Contractor and/or an Affiliate of Contractor) for the total monthly compensation it is due for Waste delivered during the previous month. Total compensation due to Contractor from County shall be the product of the numbers of Tons of Waste delivered as measured by scales at Landfills times the then-current and applicable Gate Fee set forth in this Agreement. County shall pay Contractor within thirty (30) days of receipt of an invoice. Contractor agrees that payment by County to Contractor shall not constitute nor be deemed a release of the

responsibility or liability of Contractor, its employees, subcontractors, agents and consultants for the services performed hereunder nor shall such payment be deemed to be an assumption of responsibility or liability by County for any defect or error in such services.

ARTICLE 6. SECURITY

6.01 Security.— At all times during the Term of this Agreement, Contractor shall keep and maintain the Deposit Letter of Credit as described in the PSA. County's rights to draw upon and retain the proceeds from such Deposit Letter of Credit are as set forth in the PSA.

ARTICLE 7. INSURANCE

7.01 Insurance Policies. -Contractor shall secure and maintain throughout the Term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with Contractor's performance of work or services under this Agreement. Contractor's performance of work or services shall include performance by Contractor's employees, agents, representatives and subcontractors.

7.01.1 Minimum Scope of Insurance. Insurance coverage shall be at least this broad and in a form reasonably acceptable to the County:

(a) Insurance Services Office Form No. GL 0002 (Ed. 1/96) covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including X, C, U where applicable.

(b) Insurance Services Office Form No. CA 0001 (Ed. 12/93) covering Automobile Liability, code 1 "any auto," or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos."

7.01.2 Workers' Compensation. Workers' Compensation Insurance as required by the California Labor Code and Employers Liability Insurance.

7.01.3 Environmental Impairment Liability Insurance. In a form acceptable to the County, in its reasonable discretion.

7.02 Minimum Limits of Insurance.— Contractor shall maintain insurance limits no less than the following, with respect to each of the Landfills:

7.02.1 Comprehensive General Liability. \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be \$10,000,000. Such insurance shall include but not be limited to: premises and operations liability, contractual liability and personal injury liability.

7.02.2 Automobile Liability. \$5,000,000 combined single limit per accident for bodily injury and property damage. Said insurance shall include coverage for owned, hired and non-owned vehicles.

7.02.3 Workers' Compensation and Employers Liability. Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

7.02.4 Environmental Impairment Liability. \$10,000,000 per occurrence and aggregate limit shall be \$30,000,000.

7.03 [NOT USED]

7.04 Endorsements.— The policies are to contain, or be endorsed to contain, the following provisions:

7.04.1 General Liability, Automobile Liability Coverage and Environmental Impairment Liability Coverage.

(a) County, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, employees, agents and contractors. The automobile liability shall be endorsed to contain MCS 90 coverage.

(b) Contractor's insurance coverage shall be primary insurance as respects County, its officers, employees, agents and contractors. Any insurance, or self-insurance maintained by County, its officers, employees, agents or contractors shall be in excess of Contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, employees, agents, contractors or the Transfer Company.

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

(e) Coverage shall state that the insurer waives the right of subrogation against the County, its officers, employees, agents and contractors.

7.04.2 All Coverage. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) calendar days prior written notice has been given to County.

7.05 Acceptability of Insurers.— Insurance is to be placed with insurers acceptable to County's Risk Manager.

7.06 Verification of Coverage.— Prior to the Execution Date, Contractor shall furnish County with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall furnish County with a new certificate of insurance and endorsements within ten (10) Work Days of each renewal of coverage or change of insurers. Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by County's Risk Manager:

Risk Manager
County of Sonoma
575 Administration Drive, Room 116A
Santa Rosa, California 95403

7.07 Subcontractors.— Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsement for each subcontractor.

7.08 Modification of Insurance Requirements.— The insurance requirements provided in this Agreement may be modified or waived by County's Risk Manager, in writing, upon the request of Contractor if the County's Risk Manager determines such modification or waiver is in the best interest of County considering all relevant factors, including exposure to County.

7.09 Rights of Subrogation.— All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against County with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. Contractor shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse against County for payment or assessments in any form on any policy of insurance unless damages or losses have been caused solely or partially by the negligence or misconduct of County. The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which County is named as an additional insured shall not apply to County.

ARTICLE 8. INDEMNIFICATION

8.01 Indemnification.— Contractor shall indemnify and hold harmless the County Group, the Transfer Company and all cities within Sonoma County that deliver Waste under this Agreement, from and against Losses, arising from relative to or caused by the performance of the services by Contractor. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. Contractor agrees, at Contractor's expense, after written notice, from County, to defend any action against County that falls within the scope of this indemnity. Additionally, if Contractor, after receipt of written notice from County, fails to make any payment due under this Agreement to County,

Contractor shall pay any reasonable attorneys' fees or costs incurred by County in securing any such payment from Contractor. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by Contractor from County that such amount is due, be made by Contractor prior to the County being required to pay same, or in the alternative, County, at County's option, may make payment of an amount so due and Contractor shall promptly reimburse County for same, together with interest thereon at the rate of ten (10%) per annum simple interest from the date of receipt by Contractor of written notice from County that such payment is due. This provision is, in addition to all other provisions in this Agreement and is intended to survive the end of the term of this Agreement. Contractor's guaranty agreement shall extend to the indemnification obligation hereunder.

8.02 Hazardous Substances Indemnification. –Contractor shall indemnify, defend with counsel reasonably acceptable to County, and hold harmless, at Contractor's sole cost and expense, the County Group and all cities within Sonoma County that deliver Waste under this Agreement from and against Losses incurred, or suffered by or asserted against any of the County Group and/or cities within Sonoma County that deliver Waste under this Agreement by reason of, or arising from, the presence, disposal, escape, migration, leakage, spillage, discharge, emission, release, handling of Hazardous Substances in, on, at, or under either Landfill (collectively, "environmental events"), any personal injury, death, or property damage, arising out of or related to any of the environmental events; any lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Substances at either Landfill or any of the environmental events. Such indemnification shall apply to all events arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, whether or not negligent or otherwise culpable, in connection with or related to Contractor's performance of this Agreement, including without limitation damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substances at either Landfill. For the avoidance of doubt, the foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 U.S.C. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify County from liability thereunder. This provision is in addition to all other provisions in this Agreement and is intended to survive the end of the term of this Agreement. Nothing in this section shall limit Contractor's remedies to reject Unpermitted Waste or to pursue cost recovery against the County's franchised Waste collection company(ies), Transfer Company or any generator (excluding County and the cities within Sonoma County that deliver Waste under this Agreement), for Hazardous Substances delivered to either Landfill.

8.03 Environmental Indemnification. –Contractor shall indemnify, defend with counsel acceptable to County, and hold harmless, at Contractor's sole cost and expense, County Group and all cities within Sonoma County that deliver Waste under this Agreement from and against Losses paid, imposed upon, incurred, suffered by or asserted against any of the County Group and/or any of the cities within Sonoma County that deliver Waste under this Agreement 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 Environmental Laws and regulations. This

provision is in addition to all other provisions in this Agreement and is intended to survive the end of the term of this Agreement.

8.04 Consideration.— It is specifically understood and agreed that the consideration inuring to Contractor for the execution of this Agreement consists of the promises, payments, covenants, rights and responsibilities contained in this Agreement.

8.05 Obligation.— The execution of this Agreement by Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 7 above.

8.06 Subcontractors.— Contractor shall require all subcontractors to enter into an agreement containing the provisions set forth in the preceding subsection in which agreement the subcontractor fully indemnifies County in accordance with this Agreement.

8.07 Exception.— Notwithstanding Sections 8.01, 8.02 and 8.03, Contractor's obligation to indemnify, hold harmless and defend the County Group shall not extend to any Losses arising or resulting from acts or omissions constituting willful misconduct on the part of the County Group. Contractor's obligation to indemnify, hold harmless and defend the Transfer Company under this Agreement shall not extend to any loss, liability, penalty, claim, damage, action or suit arising or resulting from the Transfer Company's negligent acts, omissions or willful misconduct.

8.08 Indemnification Additional to PSA.— The indemnification obligations of Contractor under this Agreement, including Article 8, are in addition to the indemnification obligations of Contractor under the Contract Documents and nothing contained herein shall limit, modify, release, discharge or alter Contractor's obligations under the Contract Documents.

8.09 Indemnification Applicable to Committed Cities

The indemnification obligations of Contractor under this Agreement, including Article 8, shall expressly apply and include indemnification of each Committed City, its councilmembers, officers, directors, employees, consultants, successors and assigns.

ARTICLE 9. FORCE MAJEURE

9.01 Force Majeure.— Contractor shall not be in default of its obligations under this Agreement in the event of force majeure, which is defined as the occurrence of any of the following events that materially and adversely affects Contractor's ability to perform obligations under this Agreement or Contractor's costs in operating the Landfills, provided that such events (or the effects of such events) could not have been avoided by the exercise of due diligence or reasonable efforts by Contractor and subject to notice requirements and the duty to mitigate: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Landfills, in each case occurring within the State of California; (b) any act of terrorism or sabotage, in each case occurring within the State of California; (c) biological contamination, nuclear explosion or nuclear contamination,

in each case occurring within the State of California; (d) riot and civil commotion on or in the immediate vicinity of the Landfills; (e) fire, explosion, flood, earthquake, landslide, fissure, volcanic activity, tsunami, ionizing radiation that causes direct physical damage to the Landfills or to all of the transportation routes to and from the Landfills; (f) a national strike or local strike not directed at Contractor (excluding any strike within the control of Contractor or any other member of the Contractor Parties); and (g) a criminal act that causes direct physical damage to the Landfills. To claim excuse under this Section, Contractor must: (i) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (ii) notify County in writing within five (5) Work Days after the occurrence of the event specifying the nature of the event, the expected length of time that Contractor expects to be prevented from performing, and the steps which Contractor intends to take to restore its ability to perform.

9.02 County's Right to Terminate for Force Majeure.— Provided that Contractor complies with Section 9.01, the interruption or discontinuance of the ability of Contractor to accept and dispose of Waste caused by one or more of the events described in Section 9.01 shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in Section 9.01 for a period of thirty (30) calendar days or more, and has failed to receive, process, handle and dispose of Waste delivered by County, then upon expiration of the thirty (30) calendar days, County shall have the right, in its sole discretion, to terminate this Agreement by giving five (5) Work Days' notice.

ARTICLE 10. **BREACHES AND DEFAULT**

10.01 Contractor Defaults.— The happening of any one of the following events shall constitute a Contractor Default:

10.01.1 Bankruptcy, Insolvency, Liquidation.

(a) 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

(b) By order of 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 the 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

(c) 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.

10.01.2 Failure to Meet Payment or Reporting Requirement.

Contractor has defaulted, by failing or refusing to: (a) pay in a timely manner any monies due County hereunder; or (b) provide County with required information, reports and/or records; and said default is not cured within ten (10) Work Days of receipt of written notice by County to do so.

10.01.3 Misrepresentation. A misrepresentation in any representation or disclosure made to County by Contractor in connection with or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

10.01.4 Failure to Maintain Letter of Credit. Contractor fails to maintain the Deposit Letter of Credit as required under the PSA.

10.01.5 Cessation of Services. Contractor cease to provide disposal services as required under this Agreement for a period of two (2) consecutive Work Days or more, for any reason within its control, including labor disputes or regulatory agency actions or order or court-ordered injunction to cease operation.

10.01.6 Regulatory Violation. Contractor, or its Affiliates, violate any Permits, orders, or filings of any Governmental Authority having jurisdiction over any of them related directly or indirectly to this Agreement in such a manner as to materially interfere with the present or future ability of Keller and Contractor to perform its obligations under this Agreement, provided Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until such time as a final decision has been made by the Governmental Authority; provided, further, that Contractor's right to contest shall only apply so long as Contractor is able to continue to perform under this Agreement during the pendency of such context, Contractor has a reasonable chance of success in its contest and such contest does not and will not result in any liability or adverse effect on the County.

10.01.7 Other Defaults. Contractor has defaulted, by failing or refusing to perform or observe any other terms, conditions or covenants in this Agreement which is not specifically identified above, or has wrongfully failed or refused to comply with the instructions of County relative thereto and said default is not cured within thirty (30) calendar days of receipt of written notice by County to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by Contractor of written demand from County to do so, Contractor fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with Contractor having the burden of

proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default), and such default will be cured within a reasonable period of time.

10.02 Remedy of Breach, Monetary Damages.— Upon delivery of notice of a Contractor Default to Contractor, and subject to Contractor's rights to cure certain defaults provided herein, County may exercise any one or more of the following remedies:

10.02.1 Compensatory Damages. Upon a Contractor Default, County shall have the right to recover any applicable damages to County or County's Transfer Company, including but not limited to the following:

(a) **Incremental Haul Costs:** The incrementally greater direct and indirect costs for hauling and transporting Waste to an alternative disposal facility, as compared to the County and/or its Transfer Company's then-current haul costs to the Keller Landfill or Forward Landfill, as applicable.

(b) **Incremental Disposal Costs:** The incrementally greater direct and indirect costs for disposal of Waste at an alternative disposal facility, as compared to the then-current Gate Fee at the Keller Landfill or Forward Landfill, as applicable, under this Agreement.

(c) **Consequential Fines:** Any consequential fines and penalties assessed on County, including by the California Integrated Waste Management Board, directly resulting from the failure of Contractor to meet all its obligations hereunder.

(d) **Other Damages.** Any other actual damages to the extent relating to, arising from or caused by the Contractor Default, but excluding lost profits, indirect, consequential and special damages (other than those expressly set forth in this Agreement).

10.02.2 Termination. Upon a Contractor Default, and subject to Contractor's rights to cure certain defaults provided herein, County shall have the right to terminate this Agreement immediately upon written notice to Contractor.

10.02.3 Right to Security. Upon a Contractor Default, and subject to Contractor's rights to cure certain defaults provided herein, County shall have the right, in addition to all other rights and remedies available to County hereunder or otherwise provided by Law, to draw upon the Deposit Letter of Credit but only to the extent of the County's damages as provided for herein. A draw upon the Deposit Letter of Credit shall not limit the rights or remedies of the County or the amount of damages recoverable against Contractor, except to the extent such damages are satisfied by the draw upon the Deposit Letter of Credit.

10.02.4 Remedies Cumulative; Equitable Remedies. In addition to the monetary damages specified in Section 10.02.1, Contractor acknowledges that County's remedy of damages of a breach hereof by Contractor may be inadequate for reasons including: the urgency of timely, continuous and high quality waste management service hereunder, including disposal of Waste that constitute a threat to public health; and County's reliance on Contractor's

technical waste management expertise. Consequently, County shall also be entitled to all available equitable remedies, including specific performance and injunctive relief.

10.02.5 Rights/Remedies Under Contract Documents. Keller and Contractor expressly acknowledge and agree that the rights and remedies of the County under this Agreement are in addition to those set forth in the Contract Documents and that the obligations and liabilities of Contractor under the Contract Documents, including indemnification obligations, shall not be limited, modified, altered or released by the terms of this Agreement or the exercise of any rights and remedies by County hereunder; provided, however, that nothing herein shall be interpreted to provide the County with a double recovery for any damages.

10.03 Waiver.— County reserves the right to waive any and all breaches or defaults of this Agreement, and any such waiver shall not be deemed a waiver of all previous or subsequent breaches or defaults. In the event County chooses to waive a particular breach or default of this Agreement, it may condition same on payment by Contractor of actual damages occasioned by such breach or default of Agreement and shall make every effort to resolve the same quickly and amicably.

10.04 Criminal Activity.— Should Contractor or any of its officers or directors be "found guilty" of felonious conduct relating to the Contractor's obligations hereunder or other felonious conduct at any of the Contractor's operations involving, but not limited to: (i) price fixing, (ii) illegal transport or disposal of Hazardous Materials, (iii) bribery of public officials, or (iv) fraud or tampering, Contractor shall be in default and County reserves the right to unilaterally terminate this Agreement in accordance with Section 10.02.2. Such action shall be taken after Contractor has been given notice and an opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of its officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of its officers, directors or employees including, but not limited to, the pleas of "guilty," "nolo contendere," "no contest," or "guilty to a lesser felony" entered as part of any plea bargain. If County does not terminate this Agreement, Contractor shall dismiss or remove such officers, directors or employees and take all action necessary and appropriate to remedy any breach of Contractor's obligations.

ARTICLE 11.
INTENTIONALLY DELETED

ARTICLE 12.
COMPLIANCE WITH LAW

12.01 Compliance With Law.— In providing the services required under this Agreement, Contractor shall at all times comply with all Laws. In the event of any conflict between this Agreement and Laws, the requirements of the Laws shall govern, and Contractor shall not be in breach of this Agreement if Contractor complies with the Laws in contravention of this Agreement, provided that nothing in this section is intended to diminish Contractor's right to satisfy its obligation to dispose of Waste by arranging for it to be accepted and disposed of at another landfill under the circumstances described in, and in compliance with the requirements of, Section 4.04. Contractor shall notify County, within ten (10) Work Days, of any regulatory violation, order or similar notice that could impact Contractor's ability to accept Waste at either Landfill or potentially affect County's liability.

12.02 Due Diligence.— The Parties acknowledge that County may be subject to fines for failure to cause Waste to be transported from County disposal facilities in accordance with Law and applicable Permits and that waste management is a public health and safety concern. The Parties agree that Contractor shall comply with Prudent Solid Waste Practices in the performance of any of the terms and conditions of this Agreement and that time is of the essence hereunder.

12.03 Patents, Trademarks, Licenses.— Contractor and its affiliates shall hold or possess a right to use all patents, rights to patents, trademarks, copyrights and licenses, as the case may be of any equipment or software necessary for the performance by Contractor of its performance obligations hereunder and the transactions contemplated by this Agreement.

12.04 Complaints.— Contractor shall promptly and politely respond to complaints, including complaints from County, the Transfer Company and the public at large, related to Contractor's performance or nonperformance of its obligations hereunder, and shall use its best efforts to resolve such complaints within thirty (30) days' receipt thereof.

ARTICLE 13.
ASSIGNMENT

13.01 Assignment by Contractor.— No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by Contractor without the express written consent of County, in its sole discretion. Any assignment of this Agreement made by Contractor without the express written consent of County shall be null and void and shall be grounds for County to declare a default of this Agreement and immediately exercise all rights and remedies hereunder, including the right to terminate this Agreement by giving written notice to Contractor and the right to draw upon the Deposit Letter of Credit. Upon the date of such notice of termination, this Agreement shall be deemed immediately terminated, and upon such termination all liability of County under this Agreement to Contractor shall cease. The use of a subcontractor to perform services under this Agreement shall not constitute delegation of Contractor's duties provided that Contractor has received prior written authorization from County, in its sole discretion to subcontract such services and County has approved a subcontractor who will perform such services. Contractor shall be responsible for directing the work of Contractor's approved subcontractors and any compensation due or payable to

Contractor's subcontractor shall be the sole responsibility of Contractor. County shall have the right to require the removal of any approved subcontractor for reasonable cause. For purposes of this Agreement, an assignment shall include: (i) the sale or other transfer of more than an aggregate of forty percent (40%) of the voting share of Contractor; or (ii) the sale, mortgage, hypothecation, or pledge of more than an aggregate of forty percent (40%) of the value of the unencumbered assets of Contractor; (iii) the dissolution, merger, consolidation, or other reorganization of Contractor; or (iv) a change in "control" (as such term is defined as part of the definition of "Affiliate" in the PSA). The transfer or assignment of this Agreement, along with the assets of Contractor, to another wholly owned subsidiary of Republic Services, Inc., or its successor shall not be deemed an assignment.

13.02 Assignment by County.— County may assign its rights and responsibilities under this Agreement to any other entity as long as any such proposed assignee under this Section shall: (a) have the legal authority and financial capacity sufficient to assume and perform all of County's obligations hereunder; and (b) shall agree in writing to do so.

ARTICLE 14. NOTICES; PARTY REPRESENTATIVES

14.01 Notice.— Any communication, notice or demand of any kind whatsoever which either Party may be required or may desire to give to or serve upon the other shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the County: Sonoma County Transportation & Public Works
2300 County Center Drive, Suite B100
Santa Rosa, CA 95403
Attn.: Integrated Waste Manager

[Phone: \(707\) 565-2231](tel:(707)565-2231)

[Fax: \(707\) 565-2620](tel:(707)565-2620)

If to the Contractor: Republic Services of Sonoma County, Inc.
441 N. Buchanan Circle
Pacheco, CA 94553
Attn: Mike Caprio, ~~District Manager~~[Area President](#)
[Phone: 925-671-5809](tel:925-671-5809)
[Fax: 925-685-4145](tel:925-685-4145)

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section. Notices shall be deemed delivered only upon receipt.

14.02 Party Representatives.

14.02.1 County Representative. Authority to act on behalf of the County is hereby delegated to the person(s) designated in Exhibit B.

14.02.2 Contractor Representative. Contractor acknowledges that is important to County to have a Contractor representative at each Landfill who is authorized and empowered by Contractor to serve as liaison between Contractor and County. Authority to act on behalf of Contractor is hereby delegated to the person(s) designated in Exhibit B. Such person's statements, representations, actions and commitments shall fully bind Contractor. All oral directions or instructions and notices given by County to such named representative shall bind Contractor as if delivered to Contractor personally.

14.02.3 Emergency Telephone Numbers. The Parties have designated in Exhibit B, persons who shall be available on a 24-hour basis, including their telephone numbers.

14.02.4 Changes to Named Representatives. The Parties may change the names of their designated representative or emergency contact person by providing the other party with prior written notice.

**ARTICLE 15.
RECORDS**

15.01 Contractor's Records.

15.01.1 Payment Records. Contractor shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to either County or the Transfer Company for a minimum period of three (3) years, or for any longer period required by Law, from the date of termination of this Agreement. Contractor shall retain any and all documents specified in this ~~Section 15.01.1~~ Section 15.01 that relate to the Prior Agreement for a period of three (3) years after the Execution Date.

15.01.2 Performance Records. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by Law, from the date of termination of this Agreement. Contractor shall retain any and all documents specified in this Section 15.01.2 that relate to the Prior Agreement for a period of three (3) years after the Execution Date.

15.01.3 Inspections. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by County. Copies of such documents shall be provided to County for inspection at County 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 Agreement.

15.01.4 Protection of Records. Where County 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, County may, by written request, require that custody of the records be given to County and that the records and documents be maintained in Santa Rosa, California. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

15.02 Right to Inspect Operations. County shall have the right, but not the obligation, to observe and inspect all of Contractor's operations under this Agreement. In connection therewith, County shall have the right to enter each Landfill unannounced during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries.

ARTICLE 16. PERFORMANCE

16.01 Dispute Resolution Procedures.

16.01.1 This Section is referred to herein as the "Dispute Resolution Provision." This Dispute Resolution Provision is a material inducement for the parties entering into this Agreement. Except as set forth below, this Dispute Resolution Provision concerns the resolution of disputes, controversies or claims set forth in this Agreement (a "**Dispute Claim**").

16.01.2 At the request of any Party, any Dispute Claim shall be resolved by binding arbitration in accordance with California Code of Civil Procedure Section 1280 et. seq. (the "**Act**"). A Party's request shall be pursuant to written notice.

16.01.3 Arbitration proceedings will be determined in accordance with the Act, the then-current JAMS Streamlined Arbitration Rules, and the terms of this Dispute Resolution Provision. In the event of any inconsistency, the terms of this Dispute Resolution Provision shall control. If JAMS is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, the County may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

16.01.4 Except as noted in Section 16.01.3, the arbitration shall be administered by JAMS and conducted in Sonoma County, California. All Dispute Claims shall be determined by one arbitrator. The arbitrator shall have at least 5 years' direct experience with solid waste facilities and 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 5 years or acted as an arbitrator for such Party within the past 5 years). If the Parties are unable to select an arbitrator within 20 days after delivery by a Party of the written notice requesting arbitration, JAMS shall select a qualified arbitrator from its panel.

16.01.5 The arbitration hearings shall commence within 60 days of the demand for arbitration and close within 45 days of commencement and the decision of the arbitrator(s) shall be issued within 45 days of the close of the hearing. The Parties shall have the right to such discovery as permitted by Cal. Code of Civil Procedure §1283.05. The arbitrator(s)

shall provide a concise written statement of reasons for the decision. The arbitration decision may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced. During the pendency of any Dispute Claim under this Article 16, all applicable time periods directly related to the Dispute Claims shall be tolled until resolution of the Dispute Claim hereunder; provided, however, that no tolling shall apply to any matters other than those directly related to the Dispute Claim and such tolling shall not entitle a Party to breach, default or fail to perform its obligations under this Agreement.

16.01.6 With respect to Dispute Claims relating to valuation items under this Agreement, within 20 days after initiation of the arbitration, if not previously done so under the terms of this Agreement, the County and Contractor shall each submit to each other and the arbitrator their respective relevant value for the item subject to the Disputed Claim, with such supporting information as is reasonably necessary to support such suggested value. If the two valuations so submitted differ by less than or equal to five percent (5%) of the higher of the two, the average of the two shall become the agreed upon amount for purposes of this Agreement and the arbitration shall not be continued. If the two valuations differ by more than five percent (5%) of the higher of the two, then the arbitrator shall make a determination of the relevant value and submit such determination to both the County and Contractor. 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 Dispute Claim result in a valuation higher than that which was set forth by Contractor (e.g., a impact of a “material” disclosure or a higher tip fee adjustment).

16.01.7 By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury as permitted by Law in respect of any Dispute Claim. **WHETHER OR NOT THE CLAIM IS DECIDED BY ARBITRATION, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

16.01.8 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 16.

16.02 Continue Performance.— Except for a Contractor Default, in the event of any dispute arising under this Agreement, County and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to negotiating in good faith.

ARTICLE 17.

REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor hereby makes the following representations and warranties:

17.01 Corporate Status.— Contractor is a corporation duly organized, validly existing and in good standing under the Laws of the State of California. Contractor is qualified to

transact businesses in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

17.02 Corporate Authorization.— Contractor has the authority to enter into and perform its obligations under this Agreement. The officers of Contractor have taken all actions required by Law, its articles of incorporation, bylaws, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor has the authority to do so.

17.03 Agreement Will Not Cause Breach.— To the best of Contractor’s knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by Contractor: (i) conflict with, violates, or results in a breach of any applicable Law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any Agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder.

17.04 No Litigation.— To the best of Contractor’s knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at Law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor’s performance under this Agreement, which has not been waived by County in writing.

17.05 No Adverse Judicial Decisions.— To the best of Contractor’s knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement or subject this Agreement to legal challenge.

17.06 Ability to Perform.— Contractor possess the business, professional, and technical capabilities to accept and dispose of Waste at the Landfill; Contractor possesses the Permits to perform this Agreement; and Contractor possesses the equipment, facility, and employee resources required to perform this Agreement.

17.07 Contractor Investigation.— Contractor has made an independent investigation to its satisfaction of matters, conditions and circumstances relating to its execution and delivery of this Agreement and its obligations hereunder.

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

ARTICLE 18.

MISCELLANEOUS PROVISIONS

18.01 Representations of County

County represents and warrants to Contractor as follows:

1. **Organization and Existence.** County is a political subdivision of the State.
2. **Execution, Delivery and Enforceability.** County has full power to enter into, and to carry out its obligations under, this Agreement. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action required on the part of County. Subject to the satisfaction of the condition precedent set forth in Section 9.3 of the PSA and assuming Contractor's due authorization, execution and delivery of this Agreement, this Agreement constitutes the valid and legally binding obligations of County, enforceable against County in accordance with its and their terms, except as such enforceability may be limited by Laws of general application affecting the rights of contracting parties (including those applying to enforcement against public entities), bankruptcy, insolvency or other similar Laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.
3. **No Violation.** Subject to (i) the satisfaction of the conditions precedent set forth in Section 9.3 of the PSA, and (ii) the Parties satisfying their respective obligations to obtain or process (as applicable) the Required Consents, neither the execution and delivery of this Agreement, nor the compliance by County with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby by County shall violate or conflict with, or result in a breach of, any material Law applicable to County, including CEQA. County agrees that in connection with the approval of this Agreement by the County's Board of Supervisors, County will undertake and complete the CEQA analysis pertaining to the approval of this Agreement and shall certify and, as required, publish and make notifications regarding the same.
4. **No Consents.** Subject to (i) the satisfaction of the conditions precedent set forth in Section 9.3 of the PSA, and (ii) the Parties satisfying their respective obligations to obtain or process (as applicable) the Required Consents, no consent or approval of, filing with or notice to any Entity is required to be obtained or made by County in connection with County's execution, delivery and performance of this Agreement, or the consummation of the transactions

contemplated hereby, which, if not obtained or made, would prevent County from performing its obligations hereunder or thereunder.

ARTICLE 19.
MISCELLANEOUS PROVISIONS

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

19.02 Governing Law.— The validity, interpretation and effect of this Agreement are governed by and shall be construed in accordance with the Laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of Law doctrines except to the extent that certain matters are preempted by federal Law or are governed by the Law of the jurisdiction of organization of the respective Parties.

19.03 Jurisdiction.— Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

19.04 Venue.— COUNTY AND CONTRACTOR AGREE THAT ANY ACTION OR PROCEEDING TO RESOLVE A DISPUTE BETWEEN COUNTY AND CONTRACTOR CONCERNING THE INTERPRETATION, APPLICATION OR ENFORCEMENT OF THE TERMS OF THIS AGREEMENT MAY ONLY BE BROUGHT IN SUPERIOR COURT FOR THE COUNTY OF SONOMA OR U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. EACH OF COUNTY AND CONTRACTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. IF NOT A RESIDENT OF THE STATE, CONTRACTOR MUST APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE STATE.

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

19.06 Parties in Interest.— Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any persons other than the Parties and their representatives, successors and permitted assigns.

19.07 Duty of Contractor Not to Discriminate.— Contractor shall not discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, sex, physical handicap, or medical condition, in violation of any applicable federal or state Law.

19.08 Acknowledgment.— 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 Agreement and, accordingly, the rule that an Agreement shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both Parties.

19.09 Exhibits.— Each of the Exhibits, identified below, is attached hereto and incorporated herein and made a part hereof by this reference:

Exhibit A –Parties Designated Representatives

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

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

19.12 Severability.— If any term or provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid, or unenforceable provision had not been contained herein.

19.13 Attorneys' Fees.— The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

19.14 References to Laws.— All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

19.15 Intentionally Omitted.

19.16 Actions of County in its Governmental Capacity.— Nothing contained herein shall be interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

19.17 Personal Liability.— This Agreement is not intended to create or result in any personal liability for any County public official, employee or agent, nor shall the Agreement be construed to create that liability.

19.18 Advice.— Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other Party to execute this Agreement. The Parties agree no provision may be subject to any rules of construction based upon either Party being considered the party "drafting" this Agreement.

19.19 Committed Cities as Third Party Beneficiaries.

Each Committed City is an express third party beneficiary under this Agreement and shall be entitled to rely upon Contractor's performance hereunder and enforce the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Execution Date.

CONTRACTOR: REPUBLIC SERVICES OF SONOMA COUNTY, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COUNTY: COUNTY OF SONOMA,
a political subdivision of the State of California

By: _____
Chairman, Board of Supervisors

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM FOR COUNTY:

By: _____
Sheryl L. Bratton
Chief Deputy County Counsel

Keller hereby assigns all of its right, title and interest in and to the Prior Agreement to Contractor. Keller acknowledges and agrees that the foregoing assignment shall not release, relieve or discharge Keller from any of its obligations, liabilities or responsibilities under the Prior Agreement.

KELLER: KELLER CANYON LANDFILL COMPANY,
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Contractor hereby assumes all of Keller's obligations and liabilities of any nature arising out of or relating to the Prior Agreement.

CONTRACTOR: REPUBLIC SERVICES OF SONOMA COUNTY, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

Parties Designated Representatives

For County of Sonoma: Trish Pisenti, Operations Manager
500 Meham Road
Petaluma, California 94952-9641
(707) 565-7940

For ~~Purchase~~ Contractor Republic Services of Sonoma County, Inc.

441 N. Buchanan Circle
Pacheco, CA 94553
Attn: Mike Caprio, Area President
Phone: 925-671-5809

Document comparison done by Workshare DeltaView on Tuesday, September 22, 2009
1:54:30 PM

Input:	
Document 1	file://C:/Documents and Settings/bc/Desktop/Old Keller.DOC
Document 2	interwovenSite://DMSLA01/SF_IMAN/234200/20
Rendering set	standard

Legend:	
<u>Insertion</u>	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	1
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Format changed	0
Total changes	368