

**AGREEMENT FOR OPERATION OF THE CENTRAL LANDFILL AND COUNTY  
TRANSFER STATIONS**

**BETWEEN**

**COUNTY OF SONOMA**

**AND**

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

~~=====~~ September 29, 2009

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**THIS AGREEMENT FOR OPERATION OF THE CENTRAL LANDFILL AND COUNTY TRANSFER STATIONS** is made and entered into between the County of Sonoma, a political subdivision of the State of California (hereinafter "County") and **REPUBLIC SERVICES OF SONOMA COUNTY, INC.** a Delaware corporation (hereinafter "Contractor") as of ~~the \_\_\_\_\_ day of \_\_\_\_\_,~~ September 29, 2009 (the "Execution Date").

## RECITALS

**WHEREAS**, the Legislature of the State of California, by enactment of the Act (as such term is defined herein), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, the County of Sonoma and certain cities within the County desire to provide for the Waste Disposal (as defined herein) needs of communities within the County through the County's network of Transfer Stations (as defined in the PSA (as defined below)) and at the Landfill (as defined in the PSA); and

**WHEREAS**, the County of Sonoma and Contractor are parties to that certain Purchase and Sale Agreement dated as of ~~\_\_\_\_\_~~, September 29, 2009 (as amended, the "PSA"), under which Contractor shall acquire the Landfill and Transfer Stations; and

**WHEREAS**, during the Interim Period (as defined in the PSA), during which time the sale of the Landfill and Transfer Stations will be in escrow, the County and the Committed Cities will need Disposal operations undertaken at the Landfill; and

**WHEREAS**, during the Transition Period (as defined in the PSA), during which time the County and Contractor may still be in escrow or may have fallen out of escrow, the County and the Committed Cities will need some or all of (i) Disposal operations undertaken at the Landfill; and (ii) operations undertaken at the Transfer Stations (which would not commence any earlier than September 1, 2010); and

**WHEREAS**, the County desires to comply with the requirements of the CIWMB Settlement (as defined in the PSA); and

**WHEREAS**, the County proposes to enter into this Agreement with Contractor for Disposal operations of the Landfill and operation of the Transfer Stations, and:

**WHEREAS**, the Contractor represents it is qualified and willing to operate the Landfill and the Transfer Stations pursuant to this Agreement,

**NOW, THEREFORE**, intending to be legally bound, the Parties agree as follows:

## ARTICLE 1. DEFINITIONS

Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the PSA. For purposes of this Agreement, all other capitalized terms and other words or

phrases 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.

**Act.** “Act” means the California Integrated Waste Management Act of 1989, as amended, Public Resources Code Sections 40000, et seq.

**Active Face.** “Active Face” means the working surface of the Landfill upon which Wastes are deposited during landfill operations prior to the placement by Contractor of daily cover material.

**Agreement.** "Agreement" means this Agreement For Operation of the Central Landfill and County Transfer Stations between the County and the Contractor for operation of the Landfill and the Transfer Stations including all exhibits and attachments and any future 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 County and permitted by Governmental Authorities to be used as daily cover material to be placed over Waste Disposed of in the Landfill.

**Arbitration Act.** “Arbitration Act” has the meaning set forth in Section 18.1(b).

**ATPD.** “ATPD” means the arithmetic daily average of the weight of the material over a 12 month period or such lesser period if this Agreement does not run at least 12 months.

**Basic Services.** “Basic Services” means, collectively, the Basic Landfill Services and the Basic Transfer Station Services.

**Basic Landfill Services.** “Basic Landfill Services” means those items specified in the Detailed Scope of Services for Landfill Disposal Operations attached as Exhibit A, which is made a part hereof.

**Basic Transfer Station Services.** “Basic Transfer Station Services” means those items specified in the Detailed Scope of Service for Transfer Station Operations attached as Exhibit D, which is made a part hereof.

**Board.** "Board" means the Board of Supervisors for Sonoma County.

**CERCLA.** "CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. §9601 et seq. (West 1983 & Supp. 1989), as amended, and similar State laws, as amended, and the regulations promulgated thereunder.

**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 Keller 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, 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 (A) 3.2% per annum or (B) 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); (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..

**Contractor Parties.** “Contractor Parties” means the Contractor and its Affiliates or any of their respective officers, directors, employees, agents, representatives, contractors, consultants, successors and assigns..

**Contractor Service Fees** "Contractor Service Fees" means the per ton compensation provided to Contractor by the County for services performed and as described in Section 8.2.

**County.** “County” means the County of Sonoma.

**Customer.** "Customer" means any individual, commercial business, licensed or franchised waste hauler, or other Entity that pays a fee or is otherwise entitled to use the Landfill or the Transfer Stations.

**Disposal.** "Disposal", "Dispose" or "Disposed" means the final disposition by burial of Waste received at the Landfill.

**Facility Rates.** "Facility Rates" means those rates, fees, or charges, whether expressed as per-ton tipping fees or other charges, set by the County and charged to Customers of the Transfer Stations and/or Landfill. The County shall determine and set the amount of Facility Rates, and may modify such Facility Rates from time to time at its sole discretion.

**Excluded Areas.** "Excluded Areas" means the areas of the Landfill on which the Compost Facility, the re-use area and the HHW facility are located, as more particularly depicted on Exhibit E.

**Force Majeure.** "Force Majeure" means 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 Facilities, 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 Facility, 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 a Facility; (e) fire, explosion, flood, earthquake, landslide, fissure, volcanic activity, tsunami, ionizing radiation that causes direct physical damage to a Facility or to all of the transportation routes to and from a Facility; (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 a Facility.

**Government Fee Component** "Government Fee Component" means that portion of the Contractor's Service Fees which represent all federal, state and local fees, taxes and surcharges applied to disposal at the applicable landfill or Facility.

**Holiday.** "Holiday" means a day which is one of the following legal holidays recognized for purposes of this Agreement: January 1, Easter Sunday, July 4, Labor Day, Thanksgiving and December 25. No other legal holidays are considered a "Holiday" for purposes of this Agreement.

**Household Hazardous Waste.** "Household Hazardous Waste" shall have the meaning set forth in California Code of Regulations, Title 14, Division 7, Chapter 7, Article 1.1, §18502, or successor laws and regulations as may be amended from time to time.

**Landfill 1.** "Landfill 1" means "Landfill 1", as currently defined in the Solid Waste Permit for the Landfill, as such Solid Waste Permit exists as of the Effective Date.

**Landfill 2.** "Landfill 2" means Phase 1 and Phase 2 of "Landfill 2", as currently defined in the Solid Waste Permit for the Landfill, as such Solid Waste Permit exists as of the Effective Date.

**Landfill Disposal Areas.** "Landfill Disposal Areas" means (i) Landfill 2 and (ii) such portions of Landfill 1 that are approved by County, in its sole discretion.

**Medical and Infectious Waste** "Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments.

**Operational Material.** "Operational Material" means any material other than Waste that is used by Contractor that occupies space in the Landfill, including but not limited to, soil, Alternative Daily Cover or any other materials used for daily or intermediate cover and materials used to construct working pads or access roads.

**Operating Year.** "Operating Year" means each successive period of twelve (12) months during the Term. The initial Operating Year under this Agreement begins on the Effective Date.

**Specially Handled Waste.** "Specially Handled Waste" includes, but is not limited to, discarded materials which may require special handling by the Contractor in order to be properly Disposed in the Landfill. Specially Handled Waste are those materials which fall into the following general categories:

- Bulky items, including field plastic, box springs, mattresses, appliances, wood stumps over 2 foot in diameter, tree limbs or poles over 8 feet in length, and other similar bulky items intended for Disposal.
- Loads which require special burial, due to the content of the materials delivered.

**Special Services** "Special Services" are those services that are in addition to the Basic Services provided by Contractor under this Agreement. Special Services shall be available upon request of the County, based on the availability of Contractor's personnel and equipment to perform such services.

**Special Services Hourly Rates** "Special Services Hourly Rates" means the compensation to be paid to Contractor by County for the provision of Special Services, and shall be based on (1) Contractor's actual and reasonable costs consisting of: (a) the actual labor and personnel costs incurred by Contractor in performing such services and (b) compensation for the usage of Contractor's equipment while actually engaged in performing such services, as provided by the most current California Department of Transportation ("CalTrans") equipment cost schedule published periodically by CalTrans, and (2) a ten percent (10%) administrative, overhead and profit factor in addition to the foregoing Contractor costs. The Special Service Hourly Rates shall include a four (4) hour minimum for equipment and a two (2) hour minimum for labor brought on-site solely to perform Special Services. Equipment and labor already on-site or subsequently used for other purposes will not be subject to these minimums. Contractor's labor rates as of the Effective Date are set forth on Exhibit C attached hereto.

**Term.** "Term" means the duration of this Agreement, as specified in Section 2.1.

**Unpermitted Material.** "Unpermitted Material" means materials that the Landfill may not receive under its permits.

## ARTICLE 2. TERM OF AGREEMENT

### 2.1 Term

The Term of this Agreement shall commence on the Execution Date and shall end as of the earlier of the Closing Date or the expiration of the Transition Period, unless extended by the Parties as provided in the following section. If this Agreement is extended by the Parties, the Term of this Agreement shall include any such extension periods. Notwithstanding the foregoing, Contractor's work under this Agreement relating to the Landfill shall not commence until on or before 90 days after the issuance by the County of a notice to proceed to commence such work and Contractor's work under this Agreement with respect to the Transfer Stations shall not commence until September 1, 2010.

### 2.2 Extension of Term

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.

### 2.3 Inspection at End of Term.

Lessee and the County, on or before 30 days after the commencement of the Term, shall undertake a mutual walk-through of the Landfill; and on or before 30 days after commencement by Contractor of operations of the Transfer Station, shall undertake a mutual walk-through of the Transfer Stations, and shall mutually document in writing the general condition and components of all such Premises.

If Closing does not occur, the Parties shall undertake a mutual inspection of the Facilities within 30 days prior to the expiration of the Term and shall mutually agree upon any items requiring attention or repair. Any dispute shall be settled pursuant to Article 18.

### 2.4 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 under this Agreement, including amounts required 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.

## ARTICLE 3. OBLIGATIONS OF COUNTY

### 3.1 Required Signage

The County will provide signage identifying the Landfill and the Transfer Stations, the hours the Transfer Stations and Landfill are respectively open for the receipt of Waste, rules applicable to the Landfill and the Transfer Stations and signs at the Landfill and Transfer Station scale houses listing the appropriate Facility Rates, prohibited materials and other information as deemed necessary by the County.

### 3.2 Litter Control

Except for litter arising from Contractor's vehicles, the County shall be responsible for litter pick-up within the County's road rights-of-way.

### 3.3 Dust Control

County shall retain responsibility for dust control directly arising from the County's construction activities relating to the County's ongoing responsibilities for environmental control systems during the Term.

### 3.4 County Construction Projects

The County will provide advance notification to Contractor of any construction projects to be implemented (other than those necessitated by emergency), and will work with Contractor to assure operations are reasonably coordinated with construction schedules and activities. The County will take reasonable measures to ensure that Contractor's operations are not unduly impacted by third party contractors or consultants and Contractor shall take reasonable measures to not impact or interfere with the work of County personnel and third party contractors or consultants undertaking such work.

### 3.5 Daily and Intermediate Cover

In providing the pricing for services contemplated under this Agreement, Contractor has assumed that sufficient daily and intermediate cover soil is available on-site, without the need for material screening or processing, to adequately supplement any use of approved Alternative Daily Cover material. To the extent use of alternative daily cover is not possible and clean cover soil is used by Contractor, the County shall be responsible for ensuring that adequate stockpiles or sources of daily cover soil are available within the primary Landfill property (not within the West Canyon Expansion area) for covering Waste at the Landfill.

### 3.6 County to Remain Operator and Hold Permits

The County shall (i) remain designated as the operator under the Permits, (ii) be required to conduct all environmental monitoring of the Landfill and Landfill control systems required

thereunder and (iii) submit all required monthly, quarterly and annual reports to Governmental Authorities.

### 3.7 Waste Exclusion Procedures at Scalehouses

Prior to September 1, 2010, the County shall be responsible for continuing existing Waste exclusion programs and practices at the scalehouses.

### 3.8 Waste Commitment; Keller Put or Pay

#### A. Prior to September 1, 2010

(i) 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, in which case clause (ii) 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 this Agreement pursuant to Section 8.5.

(ii) From and after the commencement of Landfill operations as provided in Section 2.1 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, 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. The County shall be obligated to deliver all County-Controlled Waste after meeting its minimum “put or pay” commitment at the Redwood Landfill. If as of August 31, 2010, the County has not satisfied its put or pay obligation under this clause (ii), the County shall pay to Contractor any shortfall in Tons delivered to the Landfill pursuant to Section 8.5.

(iii) 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 (i) shall recommence as of 2 business days after the date the Landfill ceases accepting Waste for disposal.

(iv) [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.

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

**B. 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 deliver or cause its Franchised Haulers to deliver all of the County-Controlled Waste to the Facilities during the Term of this Agreement. The County's commitment of County-Controlled Waste as set forth in this Section 3.8 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 Facilities or any other facility owned or operated by Contractor or any Affiliate of Contractor. In no event shall Contractor Service 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.

**C. Exclusions from County Commitment.**

1. 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~~iii) Committed City Waste.

2. Notwithstanding the foregoing ~~and in addition to the exclusion set forth in clause (ii) of Section 3.8(C)(1)~~, 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 (a) was granted or entered into by County with the Franchised Hauler prior to the Execution Date, and (b) 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.

3. 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 (e2) of this Section (~~but excluding the items set forth in clause (ii) of Section 3.8(C)(1)~~) to the Facilities.

4. 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.

5. 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.

#### ARTICLE 4. OBLIGATIONS OF THE CONTRACTOR WITH RESPECT TO GENERAL OPERATIONS AND MAINTENANCE

##### 4.1 General

Each of the provisions of this Article 4 shall apply to the Contractor's operations at the Landfill and at the Transfer Stations during all time periods that the Contractor is operating thereon pursuant to this Agreement.

Contractor shall provide all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the Basic Services and, if requested by the County and agreed to by the Contractor, the Special Services required under this Agreement. All activities of Contractor hereunder shall comply with Law, the Permits (including all mitigation required under all Permits and all environmental approvals relating to the Facilities) and any other applicable regulations and ordinances, as now existing or as they may be later adopted, modified or amended.

Contractor shall be responsible for the operation, maintenance and upkeep of the Facilities as set forth herein. Unless otherwise expressly prescribed, the general standard for maintenance and upkeep shall be to maintain the Facilities in substantially the same condition as in existence as of the Execution Date, with ordinary wear and tear excepted.

##### 4.2 Hazardous Waste Exclusion Program

This Section 4.2 shall apply from and after September 1, 2010 through and until the expiration of the Term of this Agreement.

Contractor shall follow the County's Hazardous Waste Exclusion Plan which meets the requirements of the CIWMB, the RWQCB, and all other applicable Law and Permits. The Hazardous Waste Exclusion Plan shall provide for Contractor's ability and responsibility to reject loads which are discovered to contain Hazardous Substances or Household Hazardous Waste. Contractor shall implement the approved Hazardous Waste Exclusion Plan in a diligent, reasonable and non-discriminatory manner.

Contractor shall utilize suitable temporary storage that is in place at the Landfill and at the Transfer Stations for Hazardous Substances and Household Hazardous Wastes which are discovered through the Hazardous Waste Exclusion Plan (or otherwise) in conjunction with

Contractor's operation of the Landfill and the Transfer Stations. Contractor shall be responsible for the transportation of such Hazardous Substances and Household Hazardous Waste from the Transfer Stations and the Landfill, as applicable, to a facility that handles Household Hazardous Waste. Contractor shall transport such materials on a daily basis to temporary storage lockers and have such materials removed at intervals required by the Permits or applicable Law or more frequently as necessary. Ownership or title to such Hazardous Substances or Household Hazardous Waste shall remain with the generator thereof and shall not be deemed to have passed to Contractor or the County. Contractor shall be responsible for any subsequent Disposal costs associated with Hazardous Substances or Household Hazardous Waste identified at the Landfill or the Transfer Stations.

#### 4.3 Required Signage

Except for the signage to be provided by the County pursuant to Section 3.1 herein, Contractor shall be responsible for providing all on-site signage necessary to safely and efficiently direct traffic from the scale houses to the material unloading areas of the Landfill.

#### 4.4 Waste Acceptance

Contractor shall develop and maintain adequately sized unloading areas at the Facilities for Waste, including Specially Handled Waste and soil, asphalt and concrete materials, so as to provide a safe and efficient environment for vehicles to unload their vehicles. Unloading areas shall be of sufficient design to provide for safe distances between unloading vehicles, accommodate the turning radius of a tractor-trailer vehicle, enable the queuing of vehicles during peak usage periods and insure that vehicles do not have to come into contact with Wastes, including sludge, leachate or other potentially harmful materials in order to unload their vehicles. The sufficiency of all unloading areas, including their width, slope, materials, and location shall be at the sole discretion of the County.

##### A. Materials Salvaging Prohibited

Contractor shall take all steps reasonably necessary and consistent with Prudent Solid Waste Practices to prevent its employees, Customers, and any other users of the Landfill and the Transfer Stations from engaging in any materials salvaging activities.

##### B. Soil, Asphalt and Concrete

Contractor shall accept and stockpile materials that can feasibly be reused onsite, including clean fill dirt, asphalt, rock and concrete. Said materials shall be available for the Contractor's use for Landfill maintenance activities as needed during the Term of this Agreement. In no event shall Contractor be entitled to use such materials for any facility other than the Landfill and only pursuant to this Agreement.

##### C. Tires

Whole tires encountered during Disposal operations shall be removed by Contractor and stockpiled in a designated area adjacent to the Active Face or at the Transfer Stations.

Contractor shall transport all collected tires to a County designated location at the end of each day. Contractor, at its expense, shall arrange for proper disposal consistent with applicable Law and the Permits.

#### 4.5 Litter Control

Contractor shall be responsible for both on-site and off-site litter control as follows:

##### A. On-Site Litter Control

This Section 4.5(A) shall apply only as to the Landfill Disposal Areas until August 31, 2010 and, thereafter, through the expiration of the Term, shall apply to the entirety of Transfer Stations, the Landfill and Landfill Land except for the Excluded Areas.

Contractor shall use reasonable conventional efforts to maintain and keep the Landfill and the Transfer Stations free of litter including adding additional temporary employees to collect litter. Said efforts shall be consistent with Prudent Solid Waste Practices and the requirements of applicable Law, the Permits and Governmental Authorities, including but not limited to the CIWMB, the RWQCB, and the LEA. Litter consists of any Waste outside of the Active Face or any other unloading or stockpiling areas. Contractor shall be solely responsible for maintaining the Landfill and the Transfer Stations in a clean and sanitary condition and shall be responsible for any public nuisance created as a result of its operations. Contractor shall construct and maintain litter fences during windy conditions to contain blowing Waste. Contractor shall provide adequate personnel to collect and properly dispose of litter from the Landfill, as needed, and to keep the litter fences clear of Waste.

##### B. Off-Site Litter Control

This Section 4.5(B) shall apply only as to the Landfill Disposal Areas until August 31, 2010 and, thereafter, through the expiration of the Term, shall apply to the entirety of Transfer Stations, the Landfill and Landfill Land except for the Excluded Areas.

Except for the County's obligations under Section 3.2, Contractor shall be responsible for the prompt removal of litter blown off-site to surrounding properties. Prior to entering off-site properties to pick-up litter, Contractor shall contact the landowner(s) for permission to enter. If any landowner refuses entry by Contractor, Contractor shall document such refusal and shall not enter the refusing landowner's property unless and until the landowner subsequently gives permission to either County or Contractor to enter the subject property.

#### 4.6 Vector Control

This Section 4.6 shall apply only as to the Landfill Disposal Areas until August 31, 2010 and, thereafter, through the expiration of the Term, shall apply to the Transfer Stations and the entirety of the Landfill and Landfill Land, except for the Excluded Areas.

Contractor shall use Prudent Solid Waste Practices to control birds, rodents, insects and other disease carrying or breeding organisms, subject to Law and the Permits. Contractor shall

provide any chemical sprays, traps and similar measures approved by local or State agencies to control these pests, whenever necessary.

#### 4.7 Dust Control

This Section 4.7 shall apply only as to the Landfill Disposal Areas until August 31, 2010 and, thereafter, through the expiration of the Term, shall apply to the entirety of the Landfill and Landfill Land, except for the Excluded Areas.

Contractor shall meet all requirements of applicable Law, the Permits and any applicable Governmental Authority, including but not limited to the Bay Area Air Quality Management District with respect to dust control and mitigation. Contractor shall maintain all dust control systems existing at the Transfer Stations and the Landfill. Contractor shall provide sufficient equipment and manpower to apply water for the alleviation and prevention of dust that may occur during Contractor's daily operations at the Landfill and at the Transfer Stations. Contractor shall post, adhere to and make all reasonable attempts to have Customers adhere to traffic speeds on all on-site unpaved roads of fifteen (15) miles per hour or less.

Contractor shall water active on-site roadways as needed to suppress dust. Watering may be suspended during periods of wet weather, provided that visual inspection indicates that dust generation has ceased. The County reserves the right to determine adequacy of Contractor's dust control measures. Notwithstanding the foregoing, the County's obligations shall not limit or modify Contractor's obligations or responsibility hereunder and Contractor shall have a continuing responsibility to undertake the dust control measures specified in this Section 4.7.

#### 4.8 Fire Safety

##### A. Fire Control

Should any fires occur, it shall be the responsibility of Contractor to notify the fire department immediately, to use all available methods to control and extinguish such fires, and to notify the County of the event within 2 hours of Contractor's first knowledge of the event.

##### B. Smoking

Smoking shall only be permitted in areas specifically designated and approved by the County, in its sole discretion, for that purpose.

At no time shall smoking be allowed on any active or closed modules of the Landfill including the Active Face whether or not the person smoking, whether an employee of Contractor or any other Customer, is inside or outside of a protected structure or vehicle. Contractor shall be responsible for enforcing these restrictions.

C. **Burning**

No burning shall be permitted and Contractor shall use all reasonable means and act in a manner consistent with Prudent Solid Waste Practices to prevent burning of any kind at the Landfill.

4.9 **Equipment**

Contractor shall supply all equipment necessary to handle, push, cover or transfer Waste, maintain on-site roads, provide dust control, perform both on and off-site litter clean-up services, excavate and transport soils and/or other Operational Materials, and otherwise perform the requirements of this Agreement. Equipment shall be of sufficient size and quantity to safely and efficiently operate the Landfill and the Transfer Stations and shall comply with Law, the Permits and any and all State and Federal vehicle emissions standards and applicable safety regulations. The County reserves the right to reasonably determine the adequacy of any equipment utilized by Contractor.

Contractor is responsible for providing and maintaining equipment which will operate with a minimum of down time. Should any individual piece of equipment necessary for the daily Disposal of Wastes become non-operational for a period of more than eight (8) hours, or if it is unavailable to perform necessary work at the end of the working day, Contractor shall immediately provide substitute equipment, unless the Contractor, in its reasonable discretion and consistent with Prudent Solid Waste Practices, determines that the piece of equipment is not necessary to properly complete the day's work.

Contractor shall promptly remove all equipment and other property not used in, or necessary for proper operations. Contractor shall furnish or have available at all times sufficient backup equipment or provide substitute equipment to prevent material delay in the Disposal of Wastes as a result of breakdowns or peak loading conditions. The suitability of such backup equipment shall be subject to the prior approval of the County.

Contractor shall not be entitled to use any County equipment and rolling stock stored or left at the Facilities without County's prior consent. Contractor shall be entitled to utilize the County's maintenance facility at the Landfill.

4.10 **Labor**

A. **Sufficient Number of Employees**

Contractor shall employ and have on duty, during all hours that the Landfill and the Transfer Stations are required to be open, a sufficient number of trained and competent employees to perform efficient operations. Contractor's employees shall cooperate with the County's scalehouse attendants and control dumping at all locations that Wastes are unloaded, including, but not limited to, the Active Face and the inert material unloading and stockpiling area referred to in Section 5.115.10(F), control and clean up litter, inspect Waste loads for prohibited materials in accordance with the County's Hazardous Waste Exclusion Plan, and perform other duties as may be required to operate the Landfill and the Transfer Stations,

including operation of Contractor's equipment to ensure that all of Contractor's operations are performed in accordance with this Agreement, Law, the Permits and Prudent Solid Waste Practices.

Contractor shall have additional labor forces available within 24 hours of severe wind events to provide on-site and off-site litter control as defined in Section 4.5.

**B. On-Site Contractor Representative; Employee General Qualifications/Training**

At least one of Contractor's employees shall be designated as a representative of the Contractor to interact with the County and Customers, shall be at the Landfill and, from and after August 31, 2010, the Transfer Stations, in each case during all weekday hours of operation and shall be reachable by phone at all times. One such representative is required for each Facility. Contractor shall notify the County in writing of each such representative at least 30 days prior to the commencement of services under this Agreement and such representative shall be subject to the approval of the County, in its reasonable discretion. In connection with such notification, Contractor shall provide such proposed representative's qualifications, experience and resume. Once approved, the employees specified in this Section 4.10(B) shall not be changed without the prior written consent of the County, which shall not be unreasonably withheld. The County shall have no right of consent in the event a designated representative employee voluntarily leaves the employment of Contractor or is injured or dies, but the County shall have the ability to consent to the new employee. All of Contractor's employee(s) shall be able to speak, read and write English, shall be trained in First Aid and CPR, and shall have a 40-hour Hazardous Waste Operations and Emergency Response (HAZWOPER) certificate in hazardous material safety and maintain an 8-hour annual HAZWOPER refresher course, or other similar training approved by the County. A copy of the course certificate(s) shall be submitted to the County within two weeks of on-site employment and immediately thereafter following any and all such refresher courses.

**C. On-site Supervision**

It is expressly understood and agreed that the County has entered into this Agreement in reliance upon the Contractor's personal and continuous supervision and responsibility for such enterprise at each Facility, and at no time shall the County be required to rely upon supervision or performance by any other party, including but not confined to any surety of the Contractor or permitted successor or assign of the Contractor, whether by operation of law or otherwise.

The Contractor shall designate an employee to be responsible for supervising the operations at the Landfill and, from and after September 1, 2010, the Transfer Stations. One such supervisor is required for each Facility. Contractor shall notify the County in writing of each such supervisor at least 30 days prior to the commencement of services under this Agreement and such supervisor shall be subject to the approval of the County, in its reasonable discretion. In connection with such notification, Contractor shall provide such proposed supervisor's qualifications, experience and resume. The supervisor at the Landfill shall have current Solid Waste Association of North America Manager of Landfill Operations (MOLO) certification or equivalent throughout the Term of this Agreement. The on-site Contractor

representative and the on-site supervisor for a Facility can be the same individual. The employee specified in this Section 4.10(C) shall not be changed without the prior written consent of the County, which shall not be unreasonably withheld. The County shall have no right of consent in the event a supervisory employee voluntarily leaves the employment of Contractor or is injured or dies, but the County shall have the ability to consent to the new employee.

**D. Replacement of Non-Complying Employees**

In the event that any Contractor employee neglects to properly serve any Customer or County personnel in a courteous and efficient manner, or fails to conduct operations in compliance with this Agreement, or permits or causes any other violation of this Agreement, Contractor shall, upon receiving notice from the County, replace such person within a reasonable time (not to exceed 15 days) with a competent and trained employee.

**E. Employee Clothing**

Contractor employees shall wear high visibility safety shirts and/or vests at all times so that they are easily identified by and visible to the County and Customers. Contractor's employees shall be provided by Contractor with appropriate personal safety equipment, including, but not limited to, hard hats, rain gear, steel-toed boots, back supports, hearing protection, and other appropriate equipment. Contractor is responsible at all times to enforce use of all such safety equipment by its employees.

**F. Safety Program and Monthly Safety Meetings**

Contractor shall develop and maintain a complete safety program. Contractor shall provide documentation to the County upon request that the safety program is being adhered to by Contractor and Contractor's employees. Contractor shall conduct operations, safety, and Hazardous Substances recognition training meetings at least monthly. The Contractor representative for each Facility shall participate in the County's site-safety meetings.

**G. Hazardous/Unacceptable Material Training**

Contractor shall not knowingly or negligently allow Disposal of material other than Waste at the Landfill. It is recognized that some non-approved materials, including Hazardous Substances, Household Hazardous Waste or Medical and Infectious Waste may occasionally be unloaded by a Customer. Contractor shall train all on-site employees to recognize such unacceptable materials and shall submit copies of Hazardous Material Health and Safety certification or equivalent training documentation for each employee to the County within two (2) weeks of an employee's on-site employment. If non-approved materials are recyclable, Contractor shall, at its expense, transport and divert such materials to proper recycling sites. If non-approved materials contain Hazardous Waste, the provisions of Section 4.2 shall apply. With respect to the Landfill and, as to the Transfer Stations, from and after September 1, 2010, for all other non-approved materials, Contractor shall, at its expense, transport and dispose of such materials in accordance with applicable Law and any Permits.

**4.11 Contractor Cooperation with County Construction Projects**

In conjunction with the County's obligations pursuant to Section 3.4 above, Contractor shall cooperate with the County and County's contractors and engineering and operations consultants during any construction projects at the Landfill and the Transfer Stations and/or ongoing operations which may be undertaken during the Term of this Agreement, including but not limited to expansion of the Landfill gas control system and other environmental controls.

#### 4.12 Additional Work Directed by the County

County may from time to time during the Term request that Contractor perform additional services related to the operation of the Landfill or the Transfer Stations not specifically identified in this Agreement.

Upon County's request, Contractor shall promptly provide a written estimate of Contractor's cost for performing the requested services, with a detailed breakdown of the components of Contractor's projected costs and pricing proposal costs and documentation which reasonably supports Contractor's projected costs.

Upon receipt of Contractor's proposal, the County may, in its sole discretion, deliver a written acceptance to Contractor of its proposal to perform the additional services and the Contractor shall perform such additional services in accordance with Contractor's proposal. The County shall compensate Contractor for these services on a time and materials basis (at rates which shall in no event exceed the Special Services Hourly Rates) or such other agreed upon method in accordance with Contractor's proposal for each individual project.

#### 4.13 Operation of Other Business

Except for the operations specifically permitted under this Agreement, Contractor shall not engage in any private business, including the display or sale of any salvaged materials, vehicles or other property of Contractor or its employees, or the storage of unrelated or unnecessary equipment, on the property of the Landfill or the Transfer Stations.

#### 4.14 Scalehouse and Gatehouse Obligations

From and after September 1, 2010, Contractor shall undertake and perform the obligations relating to the gatehouse, scalehouse and collection of Facility Rates and other fees as more particularly set forth in Exhibit I.

#### 4.15 Transportation of Waste

##### A. General Obligation.

From and after September 1, 2010 until the expiration of the Term of this Agreement, Contractor shall, in accordance with the terms of this Agreement, receive, accept and safely and lawfully transport all Waste delivered to the Transfer Stations to, as applicable, the Landfill, Keller Landfill, Forward Landfill, or, as required under this Agreement or the PSA, such other landfill as may accept the Waste. Contractor shall assign sufficient transfer vehicles and equipment to haul Waste from all of the Facilities.

##### B. Haul Routes.

The routes to be taken by the Contractor's vehicles to the Keller Landfill and the Forward Landfill are set forth in Exhibit H, and may be changed by County upon ten (10) days' written notice to Contractor; provided, however, if such new routes are unreasonable, Contractor may dispute the same pursuant to Article 18. Should Contractor desire to change the routes, Contractor shall provide County with written notice of the proposed change and the reasons for the request. County shall approve or deny Contractor's request within thirty (30) days.

##### C. Litter Control.

Contractor shall enclose, cover and/or seal all of Contractor's vehicles used to deliver and transport Waste to contain all Waste and prevent spilling or scattering of Waste during transportation thereof. If any material is spilled from Contractor's vehicles, whether on private or public property, Contractor shall clean it up within twenty-four (24) hours after the earlier of receipt of notice from County or Contractor's first having actual knowledge of the spill. If Contractor does not clean it up within the required time, County may clean it up, and offset County's costs from the Contractor Service Fees

#### 4.16 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 5. OBLIGATIONS OF THE CONTRACTOR WITH RESPECT TO LANDFILL DISPOSAL OPERATIONS

#### 5.1 General

Contractor shall provide the required services in a thorough and professional manner so that the Landfill is provided with efficient, reliable, courteous and high-quality operations at all times. The Basic Landfill Services to be provided under this Article 5 shall commence on or before 90 days after the issuance of a notice to proceed by County issued at any time from and after the Effective Date.

Contractor shall comply with the provisions, conditions and requirements of all existing Permits and future Permit applications, operating plans and other documents for the Landfill hereafter approved by the County or other Governmental Authority.

It is acknowledged by the Parties that this Agreement does not obligate the Contractor to fund or conduct design or construction activities directly related to the closure of the Landfill. A detailed scope of services required by Contractor in the performance of its Landfill Disposal operation obligations under this Agreement is provided in Exhibit A herein.

## 5.2 Days and Hours of Operation

Contractor shall operate the Landfill for receipt and Disposal of Waste during the following days and hours:

| Day                   | Contractor's Operational Hours |
|-----------------------|--------------------------------|
| Monday through Friday | 6:30 a.m. to 3:30 p.m.         |
| Saturday              | 6:30 a.m. to 2:00 p.m.         |
| Sunday                | Closed                         |

Contractor shall perform all work necessary to prepare the Landfill to receive Waste prior to the above operating hours.

## 5.3 Priority

The primary purpose of the Landfill is to Dispose of Waste delivered to the Landfill, which delivery may come from the operator of the Transfer Stations, the County, Committed Cities, self-haulers, franchised and licensed haulers and other parties. During the Term of this Agreement, all material received at the Landfill shall initially be delivered to the Transfer Stations and then to the Landfill. Through August 31, 2010, no material will be received directly at the Landfill and Contractor will not be responsible for management of any Waste receiving (i.e., initial customer interaction) or associated scale operations. From and after September 1, 2010, Contractor may receive material directly at the Landfill from transfer trailers and commercial packers (but no self-haulers or other vehicles).

## 5.4 Turnaround Time of Waste Collection Vehicles

Contractor shall operate the Landfill so that all vehicles delivering material from the Transfer Stations are able to unload and depart from the Landfill in no more than twenty five (25) minutes after arriving at the Landfill, measured as a monthly average and excluding time spent by drivers loitering or on break while at the Landfill and excluding rain days.

The Parties acknowledge that consistent, efficient operation of the Landfill is of utmost importance, that delays in operations which increase the costs of the County and that the County has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement.

#### 5.5 Avoidance of Undisturbed Land

Contractor shall not encroach on any previously undisturbed land, areas determined by the County to be biologically sensitive, areas of the Landfill designated by the County as restricted from use by Contractor or other areas prohibited by applicable Law or the Permits while performing the services required by this Agreement without the prior written approval of the County, in its sole discretion. Contractor shall only Dispose of Waste in the Landfill Disposal Areas to the extent permitted by applicable Law or the Permits.

#### 5.6 Waste Disposal Fill Plan

Prior to commencement of Landfill Disposal operations, Contractor shall submit Waste Disposal fill plan to the County for review and approval. The Waste Disposal plan shall be consistent with applicable Law and the Permits and shall only provide for Disposal of Waste in the Landfill Disposal Areas. Both parties agree to meet at least quarterly (or otherwise upon the request of County) to discuss the confinement of the Active Face, Disposal sequencing and direction of Disposal operations. The location and direction of Waste Disposal operations are subject to the approval of the County, which will not be unreasonably withheld.

#### 5.7 Surveying and Staking

Contractor shall perform all surveying and staking necessary for Waste placement and Disposal, miscellaneous drainage work and related Landfill support activities. Excavation base grades and final fill elevations will be provided by the County consistent with Prudent Solid Waste Practices.

#### 5.8 Waste Placement

Contractor shall keep the Active Face of the Landfill as confined as is practical and its overall size shall be subject to County approval, in its reasonable discretion. Contractor agrees that the efficient use of the available capacity (air space) of the Landfill is of extreme importance to the County and agrees to perform all operations in such a way as to maximize the amount of Waste Disposed within the available air space. Furthermore, Contractor shall maintain an active fill slope ratio between 3:1 and 4:1 (horizontal : vertical) and in conformance with the final grading plan provided by the County, applicable Law and the Permits.

#### 5.9 Landfill Cover and Related Operations

A. **Daily Cover**

Prior to the end of Disposal operations each day, Contractor shall cover all exposed Waste with a minimum of six (6) inches of an Alternative Daily Cover or clean soil cover material, in each case, approved by the County, in its reasonable discretion. Prior to placement of any cover material, including Alternative Daily Cover, Contractor shall prepare the exposed Waste surface to minimize any depressions in the exposed surface so as to maximize cover usage efficiency. Alternative daily cover shall be used by Contractor to the extent possible, with clean soil cover only being utilized in cases where the use of alternative daily cover is not reasonably practical.

Prior to the start of daily Disposal operations, Contractor shall remove, for reuse, the maximum practical amount of the previous day's cover soil, if soil is used, from areas upon which Waste is to be Disposed of that day. Contractor shall not be obligated to remove Alternative Daily Cover previously placed by Contractor. Contractor may, at its sole expense but consistent with applicable Law, the Permits and Prudent Solid Waste Practices, use other types of Alternative Daily Cover including films and tarps subject to the prior written approval of the County, in its sole discretion.

B. **Intermediate Cover**

Contractor shall place and compact intermediate cover consisting of twelve (12) inches of compacted soil on areas of the Landfill where no additional Waste will be Disposed of within 180 calendar days. Contractor shall place an additional twelve (12) inches of compacted soil – for a total of twenty four (24) inches of compacted soil – over areas where no additional Waste will be Disposed of within two (2) years. Where Contractor has placed intermediate cover on side slopes of the Landfill, Contractor shall compact, track walk and vegetate the intermediate cover to prevent rills and erosion channels.

The Final Grading Plan, indicating final grade of the intermediate cover for the Landfill, is included as Exhibit B. Contractor shall be responsible for ensuring that intermediate cover grades conform to the Final Grading Plan. ]

C. **Soil Excavation and Stockpiling**

Contractor shall excavate soil for daily and intermediate cover from the soil stockpiles located at various locations on the Landfill Land but it is not contemplated that Contractor would have to undertake mining or hard rock excavation from native sources. If the County directs Contractor to excavate soils from the location of any future Waste module, Contractor shall limit their excavation in these areas to a level which is no deeper than and no more than one (1) foot above the subgrade elevation for the module. Grading plans showing subgrade elevations at fifty (50) foot intervals will be provided by the County. Final leveling, and subgrade compaction is considered part of the liner installation work and is not subject to this Agreement. Repair of over excavation by Contractor, including the costs associated with such repair, shall be the sole responsibility of Contractor.

## 5.10 Landfill Maintenance

### A. Liner

Contractor shall take all reasonable measures consistent with Prudent Solid Waste Practices to ensure the Landfill liner is not damaged or destroyed as a result of Contractor's operation of the Landfill. If any portion of the liner system, including underdrains, exposed liners or other temporary covers along slopes, is damaged during the course of operations, Contractor shall immediately cease operations in and immediately adjacent to the damaged area. Contractor shall promptly notify the County of such damage to the Landfill liner. In the event that any damage occurs to the Landfill liner as a result of Contractor's negligence or not following Prudent Solid Waste Practices, Contractor shall be liable to the County for all material and labor costs incurred associated with the investigation and repair of any and all such damage to the liner system.

### B. Cover

Contractor shall take all reasonable measures consistent with Prudent Solid Waste Practices to ensure that foreign objects do not protrude from the Landfill cover. Contractor shall be responsible for augmenting Landfill surface areas on unclosed portions of the Landfill where Landfill Gas emissions have been detected by Contractor, the County or County's consultants or as otherwise directed by County.

### C. Surfaces and Slopes

This Section 5.10(C) shall only apply with respect to the Landfill Disposal Areas.

Contractor shall be responsible for minimizing surface erosion at the Landfill, including but not limited to the Landfill, soil borrow, and stockpile areas.

Contractor shall promptly repair any and all cracks, depressions and erosions of the surface and side slopes, both interim and final, without regard to whether such surfaces or slopes were constructed by past operators of the Landfill or Contractor. Contractor shall implement mitigation efforts, including but not limited to the repair of cracks, depressions and erosions of the Landfill surface and slopes, in response to any surface Landfill Gas emissions and Leachate seeps detected by Contractor, the County or County's consultants on the Landfill cover or elsewhere on the Landfill property. Contractor shall not be responsible for major construction or reconstruction of failed or defective Landfill slopes to the degree that any such failure was not the direct or indirect result of Contractor's operations.

### D. Control of Leachate Seeps

This Section 5.10(D) shall only apply with respect to the Landfill Disposal Areas.

Contractor shall implement mitigation measures as necessary to prevent Leachate seeps and to prevent Leachate from contacting surface or ground water. Furthermore, Contractor shall make all reasonable efforts and shall act in a manner consistent with Prudent Solid Waste Practices to prevent Landfill Customers and their vehicles from coming into contact with

Leachate. Contractor shall regularly inspect exposed surfaces of the Landfill and shall immediately contain and repair any Leachate seeps encountered by Contractor, or otherwise brought to Contractor's attention by the County or any applicable Governmental Authority, including the LEA and the RWQCB. County shall determine the adequacy of these repairs, in its reasonable discretion.

E. **Borrow Areas**

Contractor shall be responsible for maintenance of soil borrow areas designated by the County, and for excavating soil from the borrow areas according to an excavation plan developed by Contractor and approved by the County, in its sole discretion. Contractor shall be responsible for providing proper drainage along borrow area access roads and at the borrow areas. Contractor shall be responsible for pumping any storm water which accumulates in the borrow areas to storm water drainage ditches.

F. **Inert and Soil Stockpiles**

Contractor shall keep inert material and soil stockpiles consolidated, accessible to the County, and free of trash, litter and inappropriate Waste material. Contractor shall keep the designated stockpile area(s) graded to ensure positive drainage away from materials and prevent ponding.

G. **On-Site Roads**

Contractor shall maintain all internal unpaved Landfill access roads that serve soil excavation areas, the maintenance facility, active areas of Landfill, materials stockpiling areas and other areas necessary for the performance of Basic Services under this Agreement. The access road to the Active Face shall be a sufficient thickness of road material above Waste to prevent damage to vehicle tires or equipment, have sufficient width to permit turning and passage of two-way traffic, and not exceed maximum grades and/or minimum curve radii as approved by the County.

H. **Winterization Plan**

Contractor shall develop on or before September 1<sup>st</sup> of each Operating Year a winterization plan for the Landfill. Contractor's winterization plan shall be subject to the County's approval, which will not be unreasonably withheld. Contractor shall implement such approved plan prior to October 15<sup>th</sup> of each Operating Year.

At a minimum, Contractor's winterization plan shall include provisions for Contractor to construct and maintain: 1) all-weather roads to the Active Face and all other stockpile or material unloading areas; 2) all weather tipping areas; 3) vegetation of interim and final cover slopes; and 4) any other winterization efforts needed to ensure safe and proper operation of the Landfill during the wet season.

Contractor shall be solely responsible for any and all costs associated with developing and implementing the winterization plan to the extent that such costs can be directly attributable to portions of the landfill affected by Contractor. Major repair and maintenance of permanent

access roads and repair of site features that were in place prior to commencement of Contractor's operations shall not be the responsibility of the Contractor, but Contractor shall not take any actions that damage such roads or site features. Further, Contractor and County agree to meet and confer on the availability and need of base material for all weather access roads and tipping areas. Contractor's Services Fees assumed that suitable amounts of this material would be available at the Landfill during the course of an operating year and that large scale purchases of base materials would not be required of Contractor. In the event that sufficient amounts of this material are unavailable, the Parties shall meet and confer on an adjustment to Contractor's Service Fees to compensate Contractor for the actual and reasonable out-of-pocket costs of acquisition of this material. In the event the Parties are unable to agree, the amount of such adjustment shall be determined pursuant to the dispute resolution procedures described in Article 18.18.

#### I. Repair of Damaged Property

Contractor shall have fifteen (15) calendar days to repair or replace any County property at or related to the Landfill which is damaged by Contractor's negligent operations under this Agreement. In the event Contractor does not perform its repair or replacement obligations within such fifteen (15) day period, County shall have the right (but not the obligation), without further notice to Contractor, to perform such work at Contractor's sole cost and expense.

#### 5.11 Landfill Drainage

Contractor shall, consistent with Prudent Solid Waste Practices, at all times make the necessary provisions and take the necessary actions, subject to the County's approval, to: 1) maintain positive drainage of all surface water, storm water and contact water; 2) minimize erosion of all active areas of the Landfill and 3) minimize to the extent possible the infiltration of liquids into the Waste that have the potential to result in the production of Leachate.

With respect to the Landfill Disposal Areas, Contractor shall maintain a minimum slope of two (2) percent on all surface areas, with the exception that Contractor shall maintain a minimum slope of three (3) percent on all closed slopes per the Landfill closure plan. At a minimum, Contractor shall annually inspect the surface of the Landfill and fill in depressions as necessary to prevent ponding and promote positive drainage of surface water.

With respect to the Landfill Disposal Areas, Contractor, consistent with Prudent Solid Waste Practices, is responsible for diverting surface water from active Disposal areas and exposed or damaged liner areas at all times.

The County reserves the right to reasonably determine the adequacy of these measures, consistent with Prudent Solid Waste Practices. The County will promptly notify the Contractor of any condition which it believes is not in conformance with this Section. Notwithstanding the foregoing, the County's notification obligations shall not limit or modify Contractor's obligations or responsibility hereunder.

## 5.12 County Right to Suspend or Cease Landfill Disposal Operations

The County shall have the sole and unilateral right to terminate Landfill operations under this Agreement. Should the County elect to terminate the Landfill operations under this Agreement, the County shall deliver written notice thereof to Contractor, which notice shall specify the effective date of the termination (which date must not be sooner than 15 days after delivery of the notice). Contractor shall have no claims or rights against the County in connection with such termination and the County shall have no liability to Contractor therefor. A termination by County of the Landfill operations shall not terminate this Agreement or result in the termination of the operations of the Transfer Stations or otherwise modify or limit Contractor's obligations in connection therewith.

In addition to the County's right to terminate the Landfill operations under this Agreement, the County, at any time and from time to time, in its sole discretion, may suspend the Landfill operations under this Agreement by written notice to Contractor. If the County wishes to resume Landfill operations under this Agreement after any suspension, the County shall deliver written notice thereof to Contractor and shall set forth a date for resumption of such Landfill operations. If a suspension lasts for a period longer than 7 days, Contractor shall have 7 days in which to resume operations and the County shall pay to Contractor an amount equal to \$25,000 as full compensation to Contractor for any costs associated with such resumption of Landfill operations.

## 5.13 Maximum Waste Disposal Under Agreement.

Unless otherwise consented to by the County, in its sole discretion, and permitted by applicable Law and the Permits, Contractor may dispose of Waste at the Landfill in an amount that is no more than 150,000 Tons of Waste per year.

## ARTICLE 6. CONTRACTOR OBLIGATIONS WITH RESPECT TO TRANSFER STATION OPERATIONS

### 6.1 General.

Contractor shall provide all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the Basic Transfer Station Services and, if requested by the County, the Special Services required under this Agreement. Contractor shall provide the required services in a thorough and professional manner so that the Transfer Stations are provided with efficient, reliable, courteous and high-quality operations at all times. The Basic Transfer Station Services to be provided under this Article 6 shall commence on September 1, 2010 and shall continue until the expiration of the Transition Period.

All activities of Contractor hereunder shall comply with Law, and any other applicable regulations and ordinances, as now existing or as they may be later adopted, modified or amended. In addition, Contractor shall comply with the provisions, conditions and requirements of all existing Permits and future Permit applications, operating plans and other documents for the Transfer Stations hereafter approved by the County or other Governmental Authority.

A detailed scope of services required by Contractor in the performance of its Transfer Station operation obligations under this Agreement is provided in Exhibit D herein.

6.2 Days and Hours of Operation.

Contractor shall operate each of the Transfer Stations during the days and hours set forth on Exhibit D.

6.3 Repair of Damaged Property

Contractor shall have fifteen (15) calendar days to repair or replace any County property at or related to the Transfer Stations which is damaged by Contractor's operations under this Agreement. In the event Contractor does not perform its repair or replacement obligations within such fifteen (15) day period, County shall have the right (but not the obligation), without further notice to Contractor, to perform such work at Contractor's sole cost and expense.

**ARTICLE 7. ADDITIONAL CONTRACTOR OBLIGATIONS**

7.1 Contractor's Facilities

A. Contractor's Right to Existing Facilities

Contractor shall have a non-exclusive license to enter onto the existing County-owned facilities at the Landfill and the Transfer Stations as specified by the County for administrative and daily operations and maintenance of equipment.

B. Contractor Provided Buildings and Facilities

Contractor shall have the right and privilege to install portable structures suitable for maintenance of equipment, storage of supplies, employee facilities and office functions. Contractor shall be responsible for maintenance of such facilities for the full Term of the Agreement. The area(s) for placement of such structures shall be subject to County's approval which will not be unreasonably withheld. Contractor has the right and privilege to lease portable structures for Contractor's use in lieu of constructing facilities.

All costs and charges for constructing and/or installing or leasing buildings and facilities on the Landfill and all costs and charges of any utility service furnished to any such building or facility shall be the sole and separate obligation of Contractor. Contractor shall at its own expense have the responsibility of obtaining all necessary building and use permits and approvals, including any and all necessary environmental review, for any building or facility provided by Contractor.

The title to any such building or facility shall at all times remain in the name of Contractor; provided that, in the event this Agreement is terminated or completed or if the operations at the property on which the building or facility is located is terminated, all without completion of the Closing under the terms of the PSA, Contractor shall offer for sale to the

County at Contractor's depreciated book value (as shown on Contractor's most fixed asset listing) any such buildings or facilities the County may wish to acquire. In the event the County does not wish to acquire Contractor's buildings or facilities, Contractor shall remove the buildings and facilities from the premises, clear any part and/or foundation of the same, leave the premises in substantially the same condition as first encountered by Contractor, and shall clear away and remove any furnishings or other personal property, all at Contractor's sole cost and expense. If Contractor fails to comply with the requirements of this section within fifteen (15) days after such termination or relocation of the operations at the property on which the building or facility is located, Contractor shall be deemed to have abandoned the same. The County shall then have the option of taking possession of the remaining buildings, facilities, or personal property; selling the same or any part thereof; retaining the proceeds of its expenses in the matter; or of demolishing the building or facility and any such foundation, furnishings or personal property and disposing thereof. In any case, the County shall be entitled to recover from Contractor the County's reasonable expenses incurred in demolishing the building or facilities, foundation, furnishings or personal property and/or disposing of the same.

Contractor is expressly advised that nothing contained herein shall be construed as authorizing, nor interpreted as a representation that the County will authorize, the construction, installation or use of any building or facility contrary to applicable Law or any Permit, including the applicable provisions of the zoning ordinance, building code, fire code or other applicable ordinances of the County of Sonoma, nor as a representation that the County of Sonoma shall grant any exception or variance from any such ordinance for such purposes.

C. **Areas of No Access**

Contractor shall not, without the consent of the County, in its sole discretion, have the right to access, enter use the Excluded Areas.

D. **Cooperation with Other Contractors, Licensees, Lessees and Vendors.**

Contractor acknowledges and agrees that various vendors, other contractors, licensees and lessees have certain rights of access and use of the Facilities, including without limitation, those vendors, contractors, lessees and licensees described on Exhibit F attached hereto (which include, without limitation, the Compost Facility, the HHW facility and the re-use area at the Landfill). Contractor acknowledges that it has been provided copies of the leases, agreements and licenses affecting the Facilities and understand and have reviewed the contents thereof. Contractor shall not violate the terms of any lease, license or access right of such parties and shall cooperate with all of such vendors, contractors, licensees and lessees and not interfere with their respective rights, use and enjoyment with respect to the Facilities.

E. **Transport of Compost to Compost Facility.**

Contractor shall transport and deliver Source Separated loads of green waste and wood waste that are delivered to the Landfill or any Transfer Station to the Compost Facility during the period that such Compost Facility is located at the Landfill.

F. **Electrical Connections; Utilities**

Contractor may, at its own expense, provide electrical connections and lines, in addition to any such electrical connections existing at the Landfill and the Transfer Stations as of the Effective Date. Installation and maintenance of such additional electrical connections and lines shall be the sole responsibility of Contractor. Contractor shall be solely responsible for the provision of utilities, including electricity, gas, sewer and water, to the Facilities and payment of any utility bills relating to the Facilities during the Term of this Agreement. Contractor acknowledges that water at the Healdsburg Transfer Station is shared with the nearby road yard and usage is subject to County approval, in its reasonable discretion.

G. **Telephone**

Contractor shall maintain a telephone at the Landfill and each Transfer Station at all times. All charges for telephone service installed and/or used by Contractor shall be the sole responsibility of Contractor. In the event a phone line is unavailable, Contractor shall provide a two-way radio or cellular phone at the Landfill and each Transfer Station.

H. **Sanitary Facilities and Drinking Water for Employees**

Contractor shall provide sanitary facilities for its employees at the Landfill and each Transfer Station. A well maintained chemical toilet and hand wash facility are the minimum requirements. In addition, Contractor shall provide on-site potable drinking water for all employees.

I. **Other Provisions**

Contractor shall provide all other necessary facilities including, but not limited to: eye wash stations, personal protective equipment, and other items that may be required to comply with California Division of Occupational Safety and Health and Department of Transportation standards, Law or other regulations as applicable.

7.2 **Change in Operations or Administration**

Contractor shall notify the County in writing of any material changes in, or to the operation to provide Basic Services (e.g. equipment type or number, management and employees), prior to the time such material change is implemented, which change shall be subject to County's prior written approval, which shall not be unreasonably withheld. Any changes to the operations shall meet the service requirements, performance standards and other terms of this Agreement.

**ARTICLE 8. CONTRACTOR COMPENSATION**

8.1 **General**

The payments provided for in this Article 8 are the full, entire and complete compensation due to Contractor from the County for furnishing all labor, equipment, materials

and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement and under the Keller Agreement, including but not limited to the operation of the Landfill and the Transfer Stations and the disposal of Waste at the Landfill or at the Keller Landfill or the Forward Landfill. This Agreement includes the compensation payable to Contractor pursuant to [this Agreement and](#) the Keller Agreement and “Gate Fees”, as used in the Keller Agreement, are intended to be the same as Contractor Service 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](#). Unless otherwise provided specifically to the contrary elsewhere in this Agreement, such payments shall include all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate for Contractor to perform its required services in accordance with this Agreement, as well as adequate compensation for all risks that are being taken by Contractor by reason of its execution and delivery of this Agreement. Possessory interest taxes, if any, levied pursuant to Revenue and Taxation Code Section 107 on Contractor are included in the payments provided for in this [Article 8](#) and no separate reimbursement of such taxes, if any, will be made by the County.

## 8.2 Contractor Service Fees

Contractor shall be paid the amounts described in this [Section 8.2](#) for performing all work required by this Agreement and for all work performed by Contractor or its Affiliate under the Keller Agreement.

A. Prior to September 1, 2010 and during the period in which Contractor is providing Landfill Disposal operations at the Landfill under this Agreement, Contractor shall be paid the Contractor Service Fee of ~~\$34.37~~[36.87](#) per Ton for each incoming Ton of Waste disposed of at the Landfill, [Keller Landfill or Forward Landfill](#) (without double counting thereof). Waste shall be weighed at the gate of the Landfill by the County [or if delivered to Keller Landfill or Forward Landfill, at the gates thereof](#).

B. ~~From~~[Except as set forth in Section 8.2\(D\) and Section 8.2\(E\), from](#) and after September 1, 2010 and continuing until the expiration of the Term of this Agreement, Contractor shall be paid (i) \$79.00 per Ton for each incoming Ton of Waste delivered to a Transfer Station or the Landfill (without double counting thereof) and disposed of at the Keller Landfill), with Waste weighed at the gate of the Keller Landfill; (ii) ~~\$~~[79](#) per Ton for each incoming Ton of Waste delivered to a Transfer Station or the Landfill (without double counting thereof) and disposed of at the Landfill, with Waste weighed at the gate of the Landfill; and (iii) \$79.00 per Ton for each incoming Ton of Waste delivered to a Transfer Station or the Landfill (without double counting thereof) and disposed of at the Forward Landfill, with Waste weighted at the gate of the Forward Landfill. Contractor acknowledges that, as between the Keller Landfill and the Forward Landfill, the destination for such Waste shall be as set forth in the Keller Agreement. The amounts set forth in this [Section 8.2\(B\)](#) shall include all compensation payable for the operation of the Transfer Stations and includes all compensation payable to Contractor and its Affiliates (including,

without limitation, Keller Canyon Landfill Company, Inc. and Forward , Inc. for the transportation and disposal of such Waste and for all services under the Keller Agreement. In addition, Contractor shall be paid a per Ton fee for the transportation of organic materials (green waste and wood waste) from the ~~transfer stations~~Transfer Stations (other than the Central Transfer Station) to the Compost Facility, as noted in Exhibit G.

C. The Contractor Service Fees set forth above are further described (and broken into the service component and the government fee component) in Exhibit G.

D. From and after November 1, 2009 through the expiration of this Agreement, with respect to all Waste that consists of the residuals after processing from Redwood Empire's or its Affiliates' materials recovery facilities located within the County of Sonoma, which County has directed to the Landfill or Keller Landfill pursuant to the Redwood Empire Franchise Agreement, the Contractor Service Fee shall be \$36.87 per Ton for deliveries to the Keller Landfill and \$54.50 per Ton for deliveries to the Landfill, in each case, up to 100 Tons per day (5 day week). Amounts of residuals above 100 Tons per day shall be chargeable at the same rates as other County-Controlled Waste under this Agreement. Such residuals shall be transported directly by Redwood Empire and its Affiliates. The foregoing rates of \$36.87 and \$54.50 per Ton are as of the Execution Date (and are inclusive of all components, including government and host fees, taxes and surcharges). Such rates shall be subject to annual adjustment as set forth in Section 8.4, including adjustments to reflect increased or new federal, state or local fees, taxes and surcharges or Changes in Law, in each case, in an amount proportional to the adjustments to the Contractor Service Fees set forth in Exhibit G. In consideration for this rate for such residual materials, the County shall cause Redwood Empire to deliver all residuals from any materials recovery facilities owned or operated by Redwood Empire or its Affiliates at any location within the County of Sonoma to the Landfill or Keller Landfill (prior to the resumption of disposal operations at the Landfill or during any cessation thereof) up to a maximum of 100 Tons per day (5 day week).

E. From and after September 1, 2010 through the expiration of this Agreement, with respect to all Waste that consists of Construction and Demolition Wastes hauled by Redwood Empire and its Affiliates, which County has directed to the Central Transfer Station pursuant to the Redwood Empire Franchise Agreement, the Contractor Service Fee shall be \$50.00 per Ton. Such Construction and Demolition Wastes shall be transported directly by Redwood Empire and its Affiliates. The foregoing rate of \$50.00 per Ton is as of the Execution Date (and is inclusive of all government and host fees, taxes and surcharges). Such rate shall be subject to annual adjustment as set forth in Section 8.4, including adjustments to reflect increased or new federal, state or local fees, taxes and surcharges or Changes in Law, in each case, in an amount proportional to the adjustments to the Contractor Service Fees set forth in Exhibit G. The Redwood Empire Franchise Agreement shall direct Redwood Empire and its Affiliates to deliver all such Construction and Demolition Wastes to Central Transfer Station. In consideration for this rate for such Construction and Demolition Wastes, County shall cause Redwood Empire to deliver all Construction and Demolition Waste collected by Redwood Empire and its Affiliates in the County of Sonoma and within all of its cities, except for the Town of Windsor, to the Central Transfer Station.

~~D.~~ E. Contractor acknowledges and agrees that the County has sole authority and right to set the Facility Rates under this Agreement and that such Facility Rates will exceed the Contractor Service Fee. During periods under this Agreement that Contractor is collecting the Facility Rates from Customers, Contractor is doing so as an agent for the County and shall have no rights and ownership interest therein.

### 8.3 Adjustments to the Contractor Service Fees.

Except as provided in Section 8.4, the Contractor Service Fees shall not be adjusted. In the event of an adjustment to Contractor Service Fees in accordance with Section 8.4, Contractor shall provide County or its agent access to the Landfill, the Transfer Stations and its financial and operations records that are directly bearing on the determination of the amount of the adjustment.

### 8.4 Contractor Service Fee Adjustments

#### A. Consumer Price Index Adjustments

The Service Fee Component of the Contractor Service Fee 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 commencing on July 1, 2010, by an amount equal to the greater of (i) 3.2% per annum or (ii) the increase, if any, in the CPI Factor for that year, up to a maximum amount equal to 5% per annum); provided, however, that the annual adjustment in the Service Fee Component of the Contractor Service Fee for Waste disposed of at the Landfill and the Forward Landfill shall be equal in dollar amounts to the annual adjustment in the Service Fee Component of the Contractor Service Fee for Waste disposed of at the Keller Landfill.~~ Contractor shall provide County with 30 days' advance written notice of its intent to adjust the Contractor Service Fee for this purpose. If the indices used to compute the annual inflationary adjustment are discontinued or revised by the United States Department of Labor during the Term of this Agreement, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the indices had not been discontinued or revised. The County shall approve any replacement indices at its sole discretion.

#### B. Regulatory Costs Included in the Contractor Service Fees.

The Contractor Service Fees established under Section 8.2 already include all costs associated with complying with all existing Laws and governmental regulations (including, but not limited to, Environmental Laws) applicable to the Landfill and the Transfer Stations as of the Execution Date 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 Contractor Service 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 Contractor Service Fees. The Contractor Service Fee already includes and will not be increased as a result of any of the following:

- (1) The costs to comply with all Laws and governmental regulations, excluding Change in Law, including, but not limited to the following:
  - (a) “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);
  - (b) “Proposition 65” (California Health and Safety Code Section 25249.5 et seq., and Health and Safety Code Section 25192);
  - (c) “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.);
  - (d) Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.);
  - (e) California Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 40000, et seq.);
  - (f) Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.);
  - (g) California Hazardous Waste Control Act (California Health and Safety Code, Division 20, Chapter 6.5, Section 25100 et seq.);
  - (h) Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050);
  - (i) California Hazardous Materials Release Response Plan and Inventory Act (California Health and Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.);
  - (j) California Underground Storage Tank Act (California Health and Safety Code, Division 20, Chapter 6.7, Section 25280, et seq.);
  - (k) California Occupational Safety and Health act (California Labor Code, Division 5, Parts 1-10, Section 6300 et seq.);
  - (l) 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);
  - (m) Bay Area Air Quality Management District Regulation 8, Rule 34;

- (n) Title 14 California Code of Regulations;
- (o) Title 22 California Code of Regulations;
- (p) Title 27 California Code of Regulations;
- (q) “Subchapter 15” (Title 23 California Code of Regulations, Sections 2510-2610); and
- (r) 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) Expenses related to the disposal of Hazardous Materials, Designated Waste and Unpermitted Materials.

The Contractor Service 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 operations at the Landfill or the Transfer Stations, 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 Landfill and Transfer Stations by any party.

**C. Process for Requesting an Increase in Contractor Service Fees Resulting from Change in Law.**

If Contractor believes that complying with Change in Law will increase or decrease the costs of operating the Landfill or the Transfer Stations, then it must follow the procedures in this subsection before the Government Fee Component or the Service Component of the Contractor Service Fees will be adjusted.

(1) 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 Landfill and the Transfer Stations, 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.

(2) 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 Contractor Service 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 8.4(C)(2) 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 shall be allocated proportionately across the tonnage of Waste generated within Sonoma County and delivered to the Landfill and the Transfer Stations, 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 Contractor Service 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 allocated proportionately across the tonnage of Waste generated within Sonoma County and delivered to the Landfill and the Transfer Stations, 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 Contractor Service Fees may be adjusted shall be subject to County review and written approval.

## 8.5 Invoicing.

Contractor is responsible for submitting monthly invoices to County requesting payment for Contractor Service Fees. On or before the fifteenth (15th) day of each month, and beginning with the month immediately following the month in which work commences under this Agreement (e.g, following a notice to proceed with respect to the Landfill and following September 1, 2010 with respect to the Transfer Stations), Contractor shall invoice the County in a format and level of detail reasonably required by the County and consistent with 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.

If the County disputes a portion of an Application for Payment, it shall pay the undisputed portion within thirty (30) days and notify Contractor, in writing, of the reason(s) for nonpayment of the disputed amount.

The County may request clarification and/or additional information about an Application for Payment and/or report. Such a request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the clarification and/or additional

information requested promptly and in any event within thirty (30) days from the date of the request.

#### 8.6 Miscellaneous

The making of any payment to Contractor does not imply acceptance of work, nor lessen Contractor's responsibility to correct unsatisfactory work whether or not the unsatisfactory character of such work was apparent or detected at the time such payment was made.

### **ARTICLE 9. 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 10. INSURANCE**

#### 10.1 Insurance Scope and Limits

Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and shall maintain in force at all times during the Term the following types and amounts of insurance against Losses which may arise from or in connection with the performance of the work hereunder by Contractor or any member of the Contractor Parties. The maintenance of claims made against any insurance required of Contractor shall not be considered a waiver by County of any claim, rights or remedies the County may have against Contractor.

Contractor shall promptly notify the County of any Losses covered or potentially covered by any of the following policies. This report shall include the name and address of all claimants, the nature of the Loss, the date the Loss arose, the amount of the Loss (if known), and the identity of the insurance carriers that Contractor has notified of the claim.

#### **D. Worker's Compensation and Employers Liability Insurance**

Contractor shall provide Worker's Compensation Insurance as required by any Law . Employer's liability insurance shall be provided in amounts not less than Five Million Dollars (\$5,000,000) each accident for bodily injury by accident, Five Million Dollars (\$5,000,000) policy limit for bodily injury by disease, and Five Million Dollars (\$5,000,000) each employee for bodily injury by disease.

#### **E. General Liability Insurance**

Contractor shall maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out

of, or occasioned in any way by, directly or indirectly, performance by Contractor or any member of the Contractor Parties of, or their failure to perform, services under this Agreement. The coverage shall be at least as broad as 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.

F. **Automobile Liability**

Contractor shall maintain Automobile Liability Insurance for each of Contractor's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of Five Million Dollars (\$5,000,000) combined single limit per occurrence. The coverage shall be at least as broad as 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."

G. **Pollution Liability**

Contractor shall purchase and thereafter maintain environmental impairment insurance in the amount of \$10,000,000 per occurrence and aggregate limit shall be \$30,000,000. covering liability arising from the sudden and accidental release of pollution at the Facilities.

H. **Physical Damage**

Contractor shall maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that are owned by Contractor and used in providing service to the County under this Agreement, which shall be modified to incorporate replacement or back-up equipment used pursuant to this Agreement in the event primary equipment is unavailable or non-operable.

I. **Deductible and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either the insurer shall reduce or eliminate such deductibles or self insured retentions with respect to the County or Contractor shall provide evidence satisfactory to the County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

J. **Required Endorsements**

The insurance policies described in this Section 10.1 shall contain the following endorsements:

(1) 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.

(2) 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.

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

(4) 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.

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

K. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to County's Risk Manager.

L. **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.

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

M. **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.

N. **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.

O. **Other Provisions**

In the event any services are delegated to a subcontractor, Contractor shall require all such subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by this Section 10.1 shall cover Contractor's liability for acts of its approved subcontractors or each subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.1.

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.

Contractor shall comply with all requirements of the insurers issuing policies and shall require its subcontractors to do so. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 11.1. If any Losses are claimed by any Third Party against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the County.

## **ARTICLE 11. INDEMNIFICATION**

11.1 **Indemnification of the County.**

A. **Relating to Landfill**

With respect to the Landfill, Contractor agrees to accept all responsibility for loss or damages to any person or entity, and to defend, indemnify, hold harmless, and release the County and the County Group, from and against any and all Losses that may be asserted by any person or entity, including Contractor, to the extent arising out or in connection with the negligent performance of Contractor hereunder. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor of its agents under workers' compensation acts, disability benefits acts or other employee benefit acts. In addition, Contractor shall be liable to County for any Losses to County property, to the

extent arising from or in connection with Contractor's negligent performance hereunder. 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.

**B. Relating to Transfer Stations**

With respect to the Transfer Stations, Contractor agrees to accept all responsibility for loss or damages to any person or entity, and to defend, indemnify, hold harmless, and release the County and the County Group, from and against any and all Losses that may be asserted by any person or entity, including Contractor, arising out or in connection with the performance of Contractor hereunder, whether or not there is concurrent negligence on the part of County, but excluding liability due to the sole active negligence or sole willful misconduct of County. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor of its agents under workers' compensation acts, disability benefits acts or other employee benefit acts. In addition, Contractor shall be liable to County for any Losses to County property arising from or in connection with Contractor's performance hereunder. 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.

### C. Other Applicable Provisions

Notwithstanding Section 11.1(A) and Section 11.1(B), however, Contractor shall have no obligation to indemnify, defend or hold harmless the County Group or any other persons or parties, with respect to (i) any Closure and Post Closure Obligations, (ii) any Environmental Conditions, Hazardous Substances on, under, about or released from the Landfill, (iii) the Leachate Pipeline Claims, (iv) the Leachate Pipeline and the discharge of Leachate from the Landfill to the Subregional Wastewater Treatment and Reclamation System Laguna Plant or (v) any obligation with respect to Remediation of the Landfill. Except as set forth in Section 11.2 and the in the PSA, all responsibility for such Losses described in this paragraph shall remain at all times the responsibility of the County, and as to which the County shall indemnify the Contractor Parties as described in the following section.

Contractor's duty to indemnify, defend and hold harmless shall survive the expiration or earlier termination of this Agreement.

#### 11.2 Non Liability of County

Except as expressly set forth in Section 11.3, the County shall not be liable to Contractor for any Losses to Contractor or Contractor's property from any cause. Contractor expressly waives all claims against the County and any member of the County Group unless such injury or damage is caused by or due to the sole negligence or willful misconduct of the County.

#### 11.3 Environmental Conditions and Hazardous Substances Indemnification of Contractor.

The County shall indemnify, defend with counsel acceptable to the Contractor, protect and hold harmless each of the Contractor Parties from and against all Losses arising from or relating to, at any time, any one or more of the following: (1) existing and future off-site contamination within and outside of the Landfill; (2) Environmental Conditions at, under, about, released from or relating to the Landfill; (3) Hazardous Substances at, under, about, released from or relating to the Landfill; (4) Closure and Post-Closure Obligations; (5) Remediation at or related to the Landfill; (6) Leachate Pipeline Claims; (7) the Leachate Pipeline and the discharge of Leachate from the Landfill to the Subregional Wastewater Treatment and Reclamation System Laguna Plant and (8) Third Party Claims relating to: (a) whether the Landfill has contaminated properties, air, surface water, groundwater, or the environment, (b) whether the Landfill or its operation has caused conditions of nuisance or trespass on other properties, or (c) whether the Landfill or its operation has caused any personal injury or property damage.

The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e), the California Health and Safety Code Section 25364, and any other Environmental Laws, to defend, insure, protect, hold harmless and indemnify the Contractor Parties from liability.

The County's obligations in this Article shall survive termination of this Agreement; provided, however, that if the Closing occurs under the PSA, the County's obligations in this

Article shall be automatically and immediately null and void and of no further force and effect, including, without limitation, as to any Losses, claims or events that occurred during the Term of this Agreement (including, without limitation, any such Losses, claims or events that are pending or with respect to which Contractor has tendered an indemnity claim to the County and irrespective of whether the County has accepted such responsibility).

#### 11.4 Indemnification Applicable to Committed Cities

The indemnification obligations of Contractor under this Agreement, including [this Article 8, 11](#), shall expressly apply and include indemnification of each Committed City, its councilmembers, officers, directors, employees, consultants, successors and assigns.

### ARTICLE 12. FORCE MAJEURE

#### 12.1 Excuse From Performance

##### A. Excuse from Performance

The Parties shall be excused from performing their respective obligations to the extent that they are prevented from so performing by Force Majeure beyond the control of and not the fault of the Party claiming excuse from performance hereunder.

##### B. Notice

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

##### C. Waiver of Damages

In the event that either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any Losses sustained thereby.

##### D. Interruption or Discontinuance of Service

Provided that Contractor complies with its obligations under this Section, the partial or complete interruption or discontinuance of the Contractor's services caused by one or more of the events of Force Majeure and constituting an excuse from performance shall not constitute an event of default by Contractor under this Agreement.

Upon the occurrence and during the continuance of Force Majeure which prevents Contractor from accepting Waste for Disposal at the Landfill, Contractor shall, to the extent it is legally able to do so, accept and dispose of Waste at another landfill owned by Contractor or any of its Affiliates at the Contractor Service Fees set forth in this Agreement. If Contractor is unable to accept and Dispose of Waste at another landfill owned by Contractor or an Affiliate, Contractor shall arrange for all such Waste to be Disposed of at another landfill not owned by Contractor or its Affiliates, in which case Contractor shall pay any difference between: (x) the

landfill Disposal fees charged at such landfill plus any additional transportation and other costs incurred in delivering such Waste to the other landfill; and (y) the Contractor Service Fees set forth in this Agreement.

Upon the occurrence and during the continuance of Force Majeure which prevents Contractor from accepting Waste at a Transfer Station, Contractor shall, receive such Waste at another Transfer Station. If Contractor is unable to accept Waste at any other Transfer Station, Contractor shall arrange for all such Waste to be delivered to another facility and then Disposed of at the Landfill, another landfill owned by Contractor or its Affiliates or another landfill not owned by Contractor or its Affiliates, in which case the County shall pay any additional transportation and other costs incurred in delivering such Waste to the other facility.

## ARTICLE 13. BREACH, DEFAULT AND REMEDIES

### 13.1 Events Of Breach

The happening of any one of the following events shall constitute a Contractor Default:

#### A. **Bankruptcy, Insolvency, Liquidation.**

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

(2) 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

(3) 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.

#### B. **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.

C. **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.

D. **Failure to Maintain Letter of Credit.**

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

E. **Cessation of Services.**

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

F. **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 Contractor to perform its obligations under this Agreement, provided that 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.

G. **Seizure or Attachment of Equipment**

There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays.

H. **Failure to Notify County**

Contractor fails to notify the County in a timely manner of any receipt of notice of violation or official communication from those Governmental Authorities regulating Waste transportation, handling, processing, or Disposal activities.

I. **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 (i) within seventy-two (72) hours of notice from the County, provided that if the nature of the breach is such that it can be cured but will reasonably require more than seventy-two (72) hours to cure, Contractor shall not be in default so long as Contractor promptly commences to cure such breach and diligently proceeds to complete same, up to a maximum period of 30 days; or (ii) immediately, if the breach is such that the health, welfare, or safety of the public or any Customer is endangered as determined by the County. For example, and without limiting the generality of the foregoing, failure by Contractor to receive waste for a period of two (2) hours at the Landfill during normal operating hours would constitute a breach requiring immediate correction by the Contractor.

13.2 **Remedies**

Upon delivery of notice of a Contractor Default to Contractor, and subject to Contractor's rights to cure certain defaults as provided herein, then County may exercise any one or more of the following remedies:

A. **Compensatory Damages.**

Upon a Contractor Default, and subject to Contractor's rights to cure certain defaults as provided herein, then County shall have the right to recover any applicable damages to County or County's Transfer Company, including but not limited to the following:

1. **Incremental Operations Costs:**

The incrementally greater direct costs for operations of the Facilities.

2. **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 compensation payable to Contractor for disposal at the Landfill, plus the costs of transportation to such other facility(ies).

3. **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.

4. **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).

**B. Termination.**

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

**C. Right to Security.**

Upon a Contractor Default, and subject to Contractor's rights to cure certain defaults as provided herein, then 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.

**D. Remedies Cumulative; Equitable Remedies.**

In addition to the monetary damages specified in Section 13.2(A), 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 operations of the Facilities and 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.

**E. Rights/Remedies Under Contract Documents.**

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..

**13.3 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.

Notwithstanding the foregoing, the waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach or violation by the other Party of any provision of this Agreement.

#### 13.4 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 13.2(B). 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 14. COMPLIANCE WITH LAW**

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Laws. In particular, Contractor's operations at the Landfill and the Transfer Stations shall comply with all Laws, as now existing or as they may be later adopted, modified or amended, and shall further comply with the Permits and all approved closure and post-closure plans. In addition, Contractor shall comply with the provisions, conditions and requirements of all operating plans, Permit applications, and all other future Permit applications, operating plans and other documents for the Landfill and the Transfer Stations hereafter approved by the County.

### **ARTICLE 15. ASSIGNMENT**

#### 15.1 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 draw upon the Deposit Letter of Credit. Upon the date of such notice, 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 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.

#### 15.2 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 16. NOTICES; PARTY REPRESENTATIVES**

#### 16.1 Notices

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: | County of Sonoma<br>2300 County Center Drive, Suite B-100<br>Santa Rosa, CA 95403<br>Attention: Ms. Susan Klassen, Deputy Public Works<br>Director<br>Phone: (707) 565-2231<br>Fax: (707) 565-2620 |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                       |                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------|
| If to the Contractor: | <del>General Manager<br/>Keller Canyon Landfill Company<br/>901 Bailey Road</del> |
|-----------------------|-----------------------------------------------------------------------------------|

~~Pittsburg, CA 94565~~  
~~Phone:~~ [Republic Services of Sonoma County, Inc.](#)  
[441 N. Buchanan Circle](#)  
[Pacheco, CA 94543](#)  
[Attention: Michael Caprio, Area President](#)  
[Phone: 925-671-5809](#)  
[Fax: 925-685-4145](#)

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

## 16.2 Party Representatives

### A. County Representative

Authority to act on behalf of the County is hereby delegated to: ~~\_\_\_\_\_~~ [Ms. Trish Pisenti, Operations Manager](#). Except as expressly indicated to the contrary, all references to approval rights or approvals by the County in this Agreement shall require that the County provide written approval of such item.

### B. Contractor Representative

Authority to act on behalf of Contractor is hereby delegated to: ~~\_\_\_\_\_~~ [Mr. Michael Caprio](#). 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.

## **ARTICLE 17. OTHER RECORD KEEPING AND REPORTING REQUIREMENTS**

### 17.1 Record Keeping

Contractor shall maintain, in its office, records of the quantities of materials received, stockpiled, marketed and disposed. Said records shall be subject to the inspection provisions as provided in Section 17.2.

### 17.2 Right to Inspect Records

The County and its authorized officers, agents or employees, shall at any reasonable time have the right to review and inspect Contractor's records and enter Contractor's premises for the purposes of such review and shall provide seven (7) days advance notice to Contractor when such inspection or audit is to be conducted. The County's right to review and inspect Contractor's records in this Article shall survive termination of this Agreement.

### 17.3 Reporting Until September 1, 2010

This Section 17.3 shall apply through and until September 1, 2010.

Contractor shall prepare and maintain, at its offices, and shall furnish to the County, whenever requested by the County, all records required to be prepared and maintained of a landfill operator and transfer station operator in accordance with Law and the Permits, including but not limited to records of: (1) excavations which may affect the safe and proper operation of the Landfill or cause damage to adjoining properties; (2) a daily log book or file of the following information: fires, landslides, earthquake damage, unusual or sudden settlement, injury and property damage accidents, explosions, receipt or rejection of unpermitted wastes, flooding and other unusual circumstances; (3) records of all personnel training; (4) copies of written notification to the LEA, local health agency, and fire department of names, address and telephone numbers of the operator or responsible party of the site as required by Title 27 California Code of Regulations section 20615; (5) records of approvals, determinations and other requirements the LEA is authorized to make under CIWMB regulations; and (7) safety meeting documentation. Contractor shall also furnish the County with any additional reports as may reasonably be required by the County.

#### 17.4 Reporting After September 1, 2010

This Section 17.4 shall apply from and after September 1, 2010 through and until the expiration of the Term.

In addition to all records and reports set forth in Section 17.3, which shall remain the obligation of Contractor to prepare, maintain and deliver from and after September 1, 2010, Contractor shall additionally maintain and deliver to the County, upon request, all load checking records for the Facilities, and shall:

- (1) Each calendar quarter, deliver to the County a report setting forth:
  - (a) Tons of Waste delivered to the Landfill for disposal during the preceding calendar quarter, which must be accompanied by the weight records and disposal tickets for such month as well as any voided disposal tickets during such month;
  - (b) Tons of Waste delivered to each of the Transfer Stations during the preceding calendar quarter, the customer, the Ton of Waste delivered by such customer, and the rates paid by such customer on a per Ton basis for delivering such Waste;
  - (c) The amounts of regulatory fees, on a per Ton and aggregate basis, incurred and paid during the preceding calendar month as a result of the Waste disposed of in, on or at the Landfill, such information and calculations to be separately set forth by regulatory agency and applicable charge; and
  - (d) Tons of Waste from any source within the County of Sonoma that are delivered by the Contractor (or any Affiliate of Contractor) to any facility other than the Facilities during the preceding month, whether such facility is located within or outside of the County of Sonoma, such information to be accompanied by weight records and disposal tickets on a per vehicle basis.

- (2) Annually, deliver to the County a report setting forth:

- above;
- (a) A summary and aggregation of each of the items specified in clause (1)
  - (b) an analysis of the changes to the airspace of the Landfill since the previous report, if any;
  - (c) an analysis of the remaining capacity of the Landfill;
  - (d) a projection of the remaining life of the Landfill; and
  - (e) any and all filings made with any Governmental Authority regarding the Facilities and any and all notices of violation from any Governmental Authority relating to the Facilities.

(c) On or before 10 days after Contractor submits the quarterly and annual disposal reporting system reports to the CIWMB, Contractor shall send a full copy thereof to the County.

#### 17.5 Audit Rights of County

The County, upon not less than 5 days' prior notice to Contractor, may cause an audit to be made of the records, report and source information for the records and reports necessary (in the County's sole judgment) to audit Contractor's compliance with this Agreement. Contractor will make all such books and records available to the County and its consultants for such audit at the office located at the Landfill or such other location as is approved by the County in its reasonable discretion. Contractor shall cooperate with the County in connection with such audit and shall make available to the County and its consultants performing the audit personnel who are knowledgeable about the operations at the Facilities and the records, reports and source materials. Audits may be conducted once each calendar year, in the sole discretion of the County, or at such other time as the County, acting reasonably, believes that there has been a breach or default by Contractor under this Agreement.

#### 17.6 Inspection By The County

The County shall have the right to observe and review Contractor's operations and equipment, and to enter Contractor's premises for the purposes of such observations and review at any time with 24 hours notification.

### **ARTICLE 18. DISPUTE RESOLUTION**

## 18.1 Dispute Resolution Procedures.

### A. General

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**”).

### B. Initiation

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 “Arbitration Act”). A Party’s request shall be pursuant to written notice.

### C. Arbitration Proceedings

Arbitration proceedings will be determined in accordance with the Arbitration 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.

### D. Arbitrators

Except as noted in Section 18.1(C), 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.

### E. Timing of Proceedings; Tolling

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 13, 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.

F. **Valuation Disputes**

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).

G. **Binding Arbitration**

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.**

H. **Costs.**

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 13.

18.2 **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 19. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

Contractor, by acceptance of this Agreement, hereby makes the following representations and warranties for the benefit of the County as of the Execution Date, each of which shall be deemed remade as of the Effective Date, unless Contractor specifies in writing otherwise:

### **19.1 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.

### **19.2 Corporate Authorization and Binding Obligation**

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. This Agreement constitutes the legal, valid and binding obligation of Contractor to comply with each of the provisions of this Agreement.

### **19.3 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.

### **19.4 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.

19.5 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.

19.6 Ability to Perform. ➤

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

19.7 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder and has taken these matters into consideration in its agreement to provide these services in exchange for the compensation provided for under the terms of this Agreement.

19.8 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.

19.9 Representatives of the Parties

Contractor has designated and submitted to the County, in writing, the name, title and contact information of a responsible officer who shall serve as the representative of Contractor and who shall have authority in all daily operational matters related to the Agreement. The County may rely upon action taken by such designated representative as action of Contractor unless for actions not taken within the scope of the Agreement. Unless otherwise specified in this Agreement, any action authorized or required to be taken by the County may be taken by the Board or by an official or agent designated by the Board.

## ARTICLE 20. COUNTY REPRESENTATIONS AND WARRANTIES

### 20.1 County Representations

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 21. MISCELLANEOUS AGREEMENTS

### 21.1 Relationship of the Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the County and not as an officer or employee of the County nor as a partner of or joint venture with the County. No employee or agent of Contractor

shall be or shall be deemed to be an employee or agent of the County. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the 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 the County employees by virtue of their employment with the County.

#### 21.2 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.

#### 21.3 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.

#### 21.4 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.

#### 21.5 Binding on Successors

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

## 21.6 Parties in Interest

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

## 21.7 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.

## 21.8 Acknowledgement

It is acknowledged that each Party was, or had the opportunity to be represented by counsel in the preparation of and contributed equally to the terms and conditions of this 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.

## 21.9 Exhibits

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

## 21.10 Entire Agreement

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

## 21.11 Article and Section Headings

The article headings and sections headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement not to alter or affect any of its provisions.

## 21.12 Reference to Days

All references to days herein are to calendar days, including Saturdays, Sundays and Holidays, except as otherwise specifically provided.

## 21.13 Interpretation

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

#### 21.14 Amendment

This Agreement may not be modified or altered except by amendment in writing signed by both Parties.

#### 21.15 Severability

If any non-material 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.

#### 21.16 Counterparts

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

#### 21.17 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.

#### 21.18 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.

#### 21.19 Actions of County in its Governmental Capacity

Contractor understands and acknowledges that the LEA and certain of the other Governmental Authorities involved with issuing Permits and/or permitting or regulating the Landfill and the Transfer Stations are departments or divisions within the County of Sonoma. Notwithstanding anything to the contrary contained in this Agreement, Contractor acknowledges and agrees that nothing in this Agreement mandates or requires the LEA or such other Governmental Authorities within the County of Sonoma to issue any Permit or future Permit or to undertake any action that would waive or limit such entities' present or future regulatory or permitting powers or authority and that, except as explicitly indicated, for all purposes under this Agreement, Contractor acknowledges and agrees that the Landfill and the Transfer Stations shall remain subject to the periodic or annual review, as applicable, of the LEA and such other Governmental Authorities.

#### 21.20 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.

#### 21.21 Subcontractors

Contractor shall not engage any subcontractors for services provided under this Agreement without the prior written consent of the County.

#### 21.22 Time of the Essence

Time is of the essence of each term of this Agreement. Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act shall be strictly construed.

#### 21.23 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.

#### 21.24 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 County and Contractor have executed this Agreement as of the day and year first above written.

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Chief Deputy County Counsel

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

~~COUNTY: THE COUNTY OF SONOMA,~~

\_\_\_\_\_ a political subdivision of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Chief Deputy County Counsel

CONTRACTOR: ~~\_\_\_\_\_~~ REPUBLIC SERVICES OF SONOMA COUNTY, INC.,

\_\_\_\_\_ a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**DETAILED SCOPE OF SERVICES FOR LANDFILL DISPOSAL OPERATIONS**

**General Information**

All capitalized terms not defined in this Scope of Services are as defined in this Agreement or in the PSA, as applicable. Contractor shall be responsible for all items specified in this Agreement, in addition to the matters specified in this Scope of Services.

All provisions of this Scope of Work shall apply to the Contractor's operations at the Landfill Disposal Areas and only during the time periods that the Contractor is operating thereon pursuant to the Agreement .

**Load Checking Program**

Load checking for Waste that is received at the tipping apron will be the responsibility of the Contractor.

**Required Signage**

The County will provide signage, in English and Spanish, as specified in Section 3.1 of this Agreement. Contractor shall be responsible for providing all other on-site signage in accordance with California Code of Regulations Title 27, Section 20520.

**Waste Acceptance**

Contractor agrees to receive all Waste.

Contractor shall abide by all the requirements contained in the Joint Technical Document (JTD) for the Landfill and shall abide by all regulatory requirements, terms, and conditions of the Permits.

Materials that could pose a potential risk to the integrity of the Landfill liner shall be pulled from the tipping apron and stockpiled in a specified and segregated area so as to minimize the risk of fire, health and safety hazards, vector attraction, and other hazards and nuisances. Stockpiled materials shall be removed by Contractor and stored away from the operational area on a daily basis, or more often as necessary, and at the discretion of the Local Enforcement Authority (LEA).

**Days and Hours of Operation**

Contractor shall operate the Landfill for receipt and disposal of Waste according to the following schedule:

Monday through Friday: 6:30 a.m. to 3:30 p.m.

Saturday: 6:30 a.m. to 2:00 p.m.

Contractor shall have full and unimpaired access to the site during these hours for the purpose of: 1) servicing equipment and vehicles; 2) removing the previous day's cover; 3) transporting and disposing of Waste from the Transfer Stations; 4) moving and compacting Waste on the Landfill; 5) performing dust and litter control; and 6) performing all other requirements of the Agreement.

### **Priority**

The primary purpose of the Landfill is to dispose of Waste delivered to the Landfill. Waste may come from the operator of the Transfer Stations, the County, Committed Cities, other Cities, self-haulers, franchised and licensed haulers and other parties. Materials received at the Central Transfer Station shall be transferred to the Landfill Disposal Area tipping apron by haul vehicle. Franchised and licensed haulers and self-haulers with vehicles too large to be received in the Central Transfer Station building shall dispose of material directly to the Landfill Disposal Areas. All other self-haul vehicles shall be required to tip their loads inside the Central Transfer Station building.

### **Waste Types**

Below are some of the forms of Waste categories that may be delivered to the Landfill for disposal under this Agreement:

#### **(A) ~~Residential~~ Residential Waste**

Residential wastes are non-hazardous materials originating in residential households. These waste materials include food waste and miscellaneous discarded household items such as rubber, plastic, paper, garden waste, yard trimmings, lumber, metal and glass.

#### **(B) Commercial Waste**

Commercial wastes are solid wastes that originate in businesses, such as office buildings, stores, markets, theaters, hospitals, schools, and other institutional establishments. These wastes may include paper, cardboard, food wastes, metal, glass, plastics and ceramics.

#### **(C) Construction and Demolition Waste**

The construction/demolition category includes inert and other waste building materials and rubble resulting from the construction, remodeling, repair and demolition operations of houses, commercial buildings, pavements, and other structures. These wastes may include lumber, scrap metal, asphalt, roofing materials, plaster, sheetrock and compound, cement, vitreous china fixtures, rubber products, wallpaper, shingles, rock, soil, and insulation (excluding asbestos).

#### **(D) High Liquid Content Waste**

Dewatered sewage or water treatment sludge may be discharged into Landfill if the sludge contains at least 20% solids (by weight) if primary sludge, or at least 15% solids if

secondary sludge, it is a mixture of primary and secondary sludge, or if it is water treatment sludge. In addition, there must be a minimum of solids to liquids ratio of 5:1 by weight.

### **Hazardous Substances**

Hazardous Substances are not accepted at the Landfill Disposal Areas. Household Hazardous Waste not intercepted by the Load Checking Program, and discovered on the tipping apron, shall be stored in the Household Hazardous Waste storage lockers located at the Landfill and provided and maintained by the County until September 1, 2010 and thereafter by the Contractor.

### **Other Wastes Requiring Special Handling**

Other wastes requiring special handling that are accepted at the Landfill Disposal Areas operation include dead animals, autoclaved medical waste and contaminated soil. Procedures for handling special wastes are described in the JTD, and Contractor shall follow all such procedures.

### **Inert and Soil Stockpiles**

Contractor shall keep inert material and soil stockpiles consolidated, accessible to the County, and free of trash, litter and inappropriate Waste material. Contractor shall keep the designated stockpile area(s) graded to ensure positive drainage away from materials and prevent ponding. Contractor shall develop and provide adequate Best Management Practices (BMPs) to prevent erosion and sediment runoff from the stockpiles. BMPs for this area shall be included in the annual Winterization Plan.

In addition, Contractor shall comply with all parts of the County's Storm Water Pollution Prevention Plan (SWPPP) for the Landfill and will maintain consistency with the General Permit to Discharge Storm Water Associated With Industrial Activities as it relate to operations of the Landfill. Except for the County's obligations set forth in Section 3.16, Contractor shall also comply with all other discharge specifications consistent with the Waste Discharge Requirements, Order No. R1-2004-0040, for the Landfill with respect to Contractor's operations.

**EXHIBIT B**  
**FINAL GRADING PLAN**

The Landfill Grading Plan is as depicted in Figure 11 of that certain Preliminary Final Grading Plan for the Central Disposal Site prepared by GeoSyntec Consultants dated as of February 2005.

**EXHIBIT C**  
**CONTRACTOR LABOR RATES**

~~[REPUBLIC TO PROVIDE. THIS IS IN THE CONTEXT OF SPECIAL (EXTRA) SERVICES AND SHOULD BE HOURLY RATES BY POSITION]~~

| <u>Equipment Type</u>               | <u>Hourly Rate</u>    |
|-------------------------------------|-----------------------|
| <u>Front Loader with Operator</u>   | <u>\$175 per hour</u> |
| <u>Excavator with Operator</u>      | <u>\$200 per hour</u> |
| <u>D8 with Operator</u>             | <u>\$200 per hour</u> |
| <u>D9 with Operator</u>             | <u>\$225 per hour</u> |
| <u>Water Truck with Operator</u>    | <u>\$100 per hour</u> |
| <u>Motor Grader with Operator</u>   | <u>\$175 per hour</u> |
| <u>ADT Dump Truck with Operator</u> | <u>\$175 per hour</u> |
| <u>Laborers (per person)</u>        | <u>\$30 per hour</u>  |

Note: All rates quoted above are straight time rates. Overtime rates increase hourly rate by 25%.

**EXHIBIT D**  
**DETAILED SCOPE OF SERVICES FOR TRANSFER STATION OPERATIONS**

**GENERAL DUTIES**

This Scope of Services is attached to and made a part of this Agreement. All capitalized terms not defined in this Scope of Services are as defined in this Agreement. Contractor shall be responsible for all items specified in Articles 4 and 6 of this Agreement, in addition to the matters specified in this Scope of Services. In the event of any conflict between the terms of the Agreement and this Scope of Services, the Agreement shall govern and control.

**Accepting Waste**

(1) Contractor agrees to provide all necessary labor, equipment, tools, supplies, solid waste and recyclable materials handling equipment, and any other resources necessary to operate and maintain the Transfer Stations as required by the Agreement.

(2) Contractor agrees to provide all necessary labor, parts, fuels, and lubricants necessary to maintain and operate any and all equipment needed to operate the Transfer Stations.

(3) Contractor agrees to receive all Waste delivered to the Transfer Stations.

(4) Contractor shall develop and maintain adequately sized unloading areas for Waste, including specially handled waste such as soil, asphalt, concrete, tires, etc., so as to provide a safe and efficient environment for customers to unload their vehicles. Unloading areas shall be of sufficient design to provide safe distances between public and commercial vehicles in the Transfer Stations. Contractor shall establish a routine queuing of vehicles during peak hours of operation to ensure that vehicles do not come into contact with any type of harmful materials, including sludge, Leachate and similar items while unloading their vehicles

**Sorting Waste**

(1) **Recycling.** Contractor shall maintain the recycling programs currently in effect at the Transfer Stations and shall sort, stockpile and remove all recyclable materials recovered by Contractor prior to loading Waste into transfer vehicles for disposal.

(2) **Prohibited Material Removal.** Contractor shall staff the floor of each Transfer Station with at least one employee who is trained to identify and remove non-permitted and Hazardous Substances discovered on the tipping floor of the Transfer Stations, and who can safely store those wastes in the Hazardous Waste lockers located at each Transfer Station. Contractor shall be responsible for packaging and removing Hazardous Substances from the lockers at least once every 90 days, or when the material has exceeded the storage capacity of the lockers.

(3) **Sufficient Equipment.** Contractor shall supply and maintain sufficient numbers and types of equipment, as identified in the regular reports to the County, to ensure ongoing

compliance with the State of California minimum standards identified in California Code of Regulations Title 27, Section 21600.

### **Waste Removal**

(1) **Waste**. Contractor shall be responsible for the transfer of all Waste from each Transfer Station to either the Landfill operations tipping apron or to an alternate permitted landfill facility as set forth in the Keller Agreement. Contractor shall provide a sufficient number of transfer vehicles to remove Waste from each Transfer Station floor in accordance with California Code of Regulations Title 27 and the conditions of the Solid Waste Permit for each Transfer Station.

(2) **Gray Water**. Contractor shall be responsible for removing and transporting the gray water (contact water) from the holding tanks at each Transfer Station by a licensed hauler. Contractor shall transport the contents of the tanks to a permitted waste water treatment facility.

When notified by County, Contractor shall dispatch a licensed hauler immediately to remove the contents of the tank. If the hauler cannot remove all the contents of the tank in a single load, the hauler will make successive trips until all the contents of the tank have been completely evacuated.

When contacted by the County to remove the contents of the tank the hauler shall arrive at the site with an empty tanker. If the hauler knowingly or negligently allows a substance to contaminate the contents of the gray water tank, such that the combination of liquids cannot be accepted at the waste water treatment plant, the Contractor shall be responsible for, and bear the cost of, alternative disposal.

### **Load Checking Program**

Contractor shall follow the provisions of the County's Load Checking Program, which meets the minimum operating standards of California Code of Regulations Title 14, section 17409.5, and the requirements of the CIWMB, the RWQCB, and all other applicable Law and Permits. The Load Checking Program shall require Contractor to reject loads that are discovered to contain prohibited material including Household Hazardous Wastes. Contractor shall implement the approved Load Checking Program in a diligent, reasonable and non-discriminatory manner.

Contractor shall utilize the approved Household Hazardous Waste lockers as temporary storage at the Landfill and at the Transfer Stations for Hazardous Substances and Household Hazardous Wastes which are discovered through the Load Checking Program (or otherwise) in conjunction with Contractor's operation of the Transfer Stations. The Contractor shall be responsible for the proper handling and safe storage of all Hazardous Substances and Household Hazardous Waste from the Transfer Stations. The Contractor shall be responsible for the transport and disposal of all temporarily stored material.

(1) **Prohibited Material**. Contractor shall not accept the following non-permitted wastes at the Transfer Stations: Hazardous Substances, liquid wastes and sludges; septic tank

pumping; infectious wastes; putrescible agricultural wastes containing more than 60% liquid; tree stumps greater than 18-inches in diameter; concrete slab material exceeding 2-feet on a side and 6-inches thick; and any other Waste that is restricted by Law or Permits, or that County specifies from time to time as non-permitted. Should any of these non-permitted wastes be discovered on the tipping floor, and the Contractor is unable to identify the owner of the materials, they shall be handled in the following manner:

(a) Sludges, tree-stumps, and concrete slab material exceeding the specified dimensions shall be immediately loaded onto an appropriate vehicle and transported to either the Landfill or an alternate permitted disposal site.

(b) Liquid wastes and sludges, septic tank pumping, infectious wastes, and putrescible agricultural wastes containing more than 60% liquid shall be disposed at a facility that is permitted to accept those types of wastes.

Non-permitted materials listed above, other than Hazardous Substances, are not to be stored in the Hazardous Substances Storage Lockers.

(2) **Hazardous Substances.** Contractor will not knowingly allow Hazardous Substances, or any waste described in paragraph 1. above, to enter any of the Transfer Stations. Contractor shall take all measures needed to determine the type of Waste being delivered and to ensure that excluded and Hazardous Substances are not unloaded onto the Transfer Stations' tipping floors.

Contractor shall have full authority to reject any non-permitted and Hazardous Substances from being unloaded onto the Transfer Stations' tipping floors and to evict any person attempting to deliver and unload non-permitted wastes. Contractor agrees to refund any tipping fees for any such rejected wastes.

(3) **Hazardous Substances Storage and Compatibility.**

(a) County will supply Hazardous Substances Storage Lockers within which the Contractor shall temporarily store non-dangerous Household Hazardous Substances that Contractor determines can be safely stored. Non-dangerous wastes are wastes that do not pose an immediate health threat to the public or to Transfer Station personnel.

(b) Contractor shall only place in the Hazardous Substances Storage Locker those materials that can be safely stored, based on Contractor's reasonable determination. When determining whether a material can be safely stored, Contractor shall consider the compatibility of the materials stored in the same compartment of the Hazardous Substances Storage Locker, containment features of the Hazardous Substances Storage Locker, ventilation, capacity, etc. In placing materials in the Hazardous Materials Storage Lockers, Contractor shall separate materials by hazard class as defined by the federal Environmental Protection Agency, federal Department of Transportation, and the California Occupational Safety and Health Administration.

(c) Materials that may be considered for storage in the Lockers include, but are not limited to: Household Hazardous Wastes (such as cleansers and detergents), infectious wastes, automotive products (such as brake fluid, power steering fluid, antifreeze, etc.), solvents (such as thinners, turpentine, kerosene, acetone), paints (oil and latex based), pesticides (insecticides, fungicides, herbicides), wood preservatives, sealants, and pool chemicals. Used motor oil and oil filters and automotive batteries are to be stored in their respective containers in other locations.

(d) The Contractor will ensure that the Hazardous Substances Storage Lockers will be emptied at least every 90 days or sooner if lockers exceed the capacity of the unit. The lockers shall be emptied by a licensed hauler and transported to a facility permitted to handle and dispose of hazardous wastes.

(e) The County will be responsible for the maintenance and upkeep of the Hazardous Substances Storage Lockers. The lockers shall be kept clean, painted, and free of oxidation and penetrations. Vents, doors and locks shall be kept in good working order.

(4) **Responsibilities.** Contractor shall be responsible for clean-up and disposal of any material on the tipping floor except as follows:

(a) County shall be responsible for disposal of material Contractor places in the Hazardous Substances Storage Lockers.

(b) County shall pay for the services of any response or clean-up contractors dispatched by Sonoma County Emergency Services for clean-up of any materials that spill onto the tipping floors, provided, however, that Contractor shall be responsible for such costs in the event the spill was caused directly or indirectly by Contractor's negligence.

### **Materials Scavenging and Salvaging**

Contractor shall take all steps reasonably necessary and consistent with Prudent Solid Waste Practices to prevent its employees, customers, and any other users of the Transfer Stations from engaging in any materials scavenging activities.

Materials salvaging, as approved by the Local Enforcement Agency (LEA), shall be conducted in a planned and controlled manner and shall not interfere with other aspects of the site operation. Salvaged materials that have been pulled from the Transfer Stations' floors shall be temporarily stored in a specified and segregated area so as to minimize the risk of fire, health, and safety hazards, vector attraction, and other hazards and nuisances. Storage areas shall be strategically placed so as not to interfere with solid waste operations. Salvaged materials shall be removed from the operational area daily, or more often as necessary, and at the discretion of the LEA.

### **Recycling Operations**

Contractor shall provide the necessary labor, equipment, tools, supervision, containers, and all other resources to provide required recycling services at the Transfer Stations. Contractor shall provide and place sufficient numbers of rain-tight containers at various locations at each

Transfer Station. The location, the number, and the type of container to be used for the deposition of recyclable materials shall be approved by the Director of the County Department of Transportation and Public Works or his or her designee. Recycling services at each Transfer Station shall be made available to the public by the Contractor during the hours that each Transfer Station is open to the public (see Table -- Public Hours of Access).

(1) **Title to Recyclable Material**

(a) Material that has been placed in the Contractor’s containers shall become the property of the Contractor and, as such, the Contractor shall assume all legal title to, interest in, and liability for, the material.

(b) Contractor shall assume all regulatory obligations for recycled materials.

(2) **Materials to be Accepted**

Table I.F

Recyclable Material Accepted by Site

| Site        | Yard Waste | Tires | Appliances | News Paper | Card-Board | Mixed Paper♥ | Plastic | Glass | Aluminum | Scrap Metal | Oil & Filters | Batteries | Other |
|-------------|------------|-------|------------|------------|------------|--------------|---------|-------|----------|-------------|---------------|-----------|-------|
| Annapolis   | ♦          | ♦     | ♦          | ♦          | ♦          | ♦            | ♦       | ♦     | ♦        | ♦           | ♦             | ♦         | ♦     |
| Central     | ♦          | ♦     | ♦          | ♦          | ♦          | ♦            | ♦       | ♦     | ♦        | ♦           | ♦             | ♦         | ♦     |
| Guerneville | ♦          | ♦     | ♦          | ♦          | ♦          | ♦            | ♦       | ♦     | ♦        | ♦           | ♦             | ♦         | ♦     |
| Healdsburg  | ♦          | ♦     | ♦          | ♦          | ♦          | ♦            | ♦       | ♦     | ♦        | ♦           | ♦             | ♦         | ♦     |
| Sonoma      | ♦          | ♦     | ♦          | ♦          | ♦          | ♦            | ♦       | ♦     | ♦        | ♦           | ♦             | ♦         | ♦     |

♦Materials accepted at each site.

♥Mixed Paper Includes: newspaper, office paper, junk mail, telephone directories, and magazines

♠Plastic includes PET #1 and HDPE (#2) narrow neck containers

♣Other includes: mattresses, vitreous china toilets and sinks, urethane foam, clean dimensional lumber (no paint, no stain) and latex paint.

(a) **Tires.** Contractor shall accept ownership of, collect, and transport tires, to a permitted facility, from all Transfer Stations. Tires shall be managed and disposed of in accordance with California Code of Regulations Title 14, Chapter 3, Article 5.5, and all other regulatory requirements.

(b) **White Goods.** Contractor shall accept ownership of and be responsible for transport of scrap metal, appliances and white goods at all Transfer Stations. Contractor shall

assume responsibility for and ensure that all freon and other chemical refrigerant, mercury switches and mercury containing appurtenances, and PBC and lubricating oil is removed from the appliances prior to transport. Contractor shall assume all liability for the proper removal and disposal of all items removed from the appliances in accordance with California Code of Regulations Title 22.

(c) **Small Engine Equipment.** Contractor shall accept gas-powered small engine equipment, such as lawn mowers, edgers, leaf blowers, chain saws, etc. Prior to accepting such equipment for recycling, Contractor shall check the engine of each item to ensure that all fuels and oil lubricants have been removed.

(d) **Metals and Plastics.** Contractor shall accept ownership of aluminum cans, steel cans, bi-metal cans, plastic PET and HDPE narrow-neck containers, glass food and beverage containers, newspaper, mixed paper, cardboard, and telephone directories and magazines at all Transfer Stations.

(e) **Used Automotive Oil and Filters.** Contractor shall accept ownership of all used automotive type lubricating oils and oil filters from the public. Contractor will not be responsible for accepting automotive type lubricating oils for recycling from commercial haulers, including commercial non-profit dealers, and loads containing more than five (5) gallons of oil. County shall supply oil recycling tanks that shall be used to temporarily store the oil.

At Central, Guerneville, Healdsburg and Sonoma Transfer Stations, the tanks are housed in concrete buildings equipped with built-in sump storage to help prevent accidental spills. Contractor shall be responsible for the continuous maintenance of both the storage tanks and the concrete buildings. Contractor shall keep the tanks clean and all gauges and alarms shall be kept in good working condition. The concrete buildings shall be kept clean such that no overspill is allowed to pool on the floor of the building. Doors, vents, and locks shall be kept in good working condition and the buildings shall be maintained to prevent the contents from exposure to outside elements. Contractor shall accept ownership of and be responsible for storage, removal and transport of all contents of the storage tanks. Contractor shall be responsible of the periodic cleaning of the concrete buildings in which the tanks are housed.

(f) **Used Automotive Batteries.** Contractor shall accept ownership of all used automotive batteries that are in recyclable condition and transported for recycling by the public. Contractor will not be responsible for accepting automotive type batteries for recycling from commercial haulers, including commercial non-profit dealers, and loads containing more than two (2) batteries. Contractor shall supply and maintain in good working condition non-permeable, leak proof containers fitted with rain-tight lids that shall be used to temporarily store the batteries. Contractor shall ensure that automotive batteries are removed from each Transfer Station by a licensed hauler at least every 90 days, or more frequently, if needed.

(g) **Universal Waste.** Universal waste is a class of Hazardous Substances that includes electronic waste, such as televisions, cell phones, computers, computer monitors, batteries and, florescent bulbs. Universal waste shall be removed by Contractor and temporarily stored in a designated area adjacent to, but not interfering with, the solid waste operations of each Transfer Station. All universal waste shall be removed from the operational areas daily, or

more often if necessary, and stockpiled in an area approved by the County. All such waste shall then be properly stored on pallets or in cages in preparation for removal from the site by a licensed hauler.

3. **Changes to the List of Accepted Materials.** The County may request, in writing, that Contractor accept additional non-hazardous wastes for reuse and recycling that are not specifically set forth above. Contractor shall accept these requested additional materials within thirty (30) days of the request in accordance with this Agreement. In addition, Contractor may request that certain accepted materials listed above be deleted. Contractor shall make such requests, in writing, to the County and include all the reasons for the request and all documentation supporting Contractor's request. County shall consider such requests, in its reasonable discretion.

### **Signage**

(1) The County will provide and maintain any and all informational signage that clearly identifies, in English and Spanish, the Transfer Station and all signs that describe current Facility Rates, hours of public access, prohibited materials, and any other information deemed necessary by the County.

(2) The County will provide and maintain any and all informational signage that clearly describes, in English and Spanish, the materials that are accepted at the recycling area and any sorting and placement directions.

(3) The County will provide and maintain any and all informational signage that clearly describes, in English and Spanish, areas where no smoking is allowed, fire hazards, fall hazards, and any other hazard that might potentially exist at the site.

(4) The County will be responsible for providing and maintaining, in good and legible condition, all other on-site signage in accordance with California Code of Regulations Title 27, Section 20520.

### **Use of Premises**

Contractor shall use the Transfer Stations only for the receipt and transshipment of Waste to the Landfill or alternative permitted disposal site, and for recycling and salvaging activities as specified in this Scope of Services and in strict accordance with the requirements of Law, the Permits and Governmental Authorities, including, but not limited to, the California Integrated Waste Management Board (CIWMB), the Regional Water Quality Control Board (RWQCB), and the Local Environmental Authority (LEA). Contractor shall not store surplus debris boxes, debris boxes not in use, or debris boxes that contain material but are not in use at any of the Transfer Stations or on any County property without express written permission from the County.

### **Access To The Transfer Stations**

No waste shall be deposited at any Transfer Station by any person at any time that such Transfer Station is not open to the public (see Operating Hours, below).

Table - Public Hours of Access

| Site                         | Days                                      | Hours of Access        |
|------------------------------|-------------------------------------------|------------------------|
| Annapolis Transfer Station   | Wednesday – Saturday                      | 8:00 a.m. to 4:00 p.m. |
| Central Transfer Station     | Monday – Saturday                         | 7:00 a.m. to 3:00 p.m. |
| Guerneville Transfer Station | Monday and Tuesday<br>Thursday – Saturday | 8:00 a.m. to 4:00 p.m. |
| Healdsburg Transfer Station  | Monday – Saturday                         | 8:00 a.m. to 4:00 p.m. |
| Sonoma Transfer Station      | Monday – Saturday                         | 7:00 a.m. to 3:00 p.m. |

1. **Public Access**

(a) All sites are closed on the following holidays: Thanksgiving Day, Christmas Day, New Years Day, Labor Day, Easter Sunday, and Independence Day.

County reserves the right to either shorten or lengthen the daily hours of operation or increase or decrease the number of operating days per year. Contractor shall agree to all other hours of operation criteria for the Transfer Stations as specified in this Agreement.

(b) Contractor shall operate the recycling areas as specified in this Scope of Services during the days and hours that the Transfer Stations are open as listed in Table - Public Hours of Access.

2. **Contractor Access**

Contractor shall have full and unimpaired access to the Transfer Stations according to the schedule in Table – Contractor Hours of Access but at no other times unless approved by the County in writing.

Table - Contractor Hours of Access

| Site                         | Days  | Hours of Access        |
|------------------------------|-------|------------------------|
| Annapolis Transfer Station   | Daily | 6:30 a.m. to 6:00 p.m. |
| Central Transfer Station     | Daily | 6:30 a.m. to 5:00 p.m. |
| Guerneville Transfer Station | Daily | 7:00 a.m. to 5:30 p.m. |
| Healdsburg Transfer Station  | Daily | 5:30 a.m. to 6:00 p.m. |
| Sonoma Transfer Station      | Daily | 24-hours               |

**Operating Standards**

**1. Litter**

(a) Contractor shall be responsible for general clean-up, housekeeping, and litter control over the tipping floor, recycling area, and within the immediate area around each Transfer Station building. Litter in these areas shall be controlled and routinely collected to prevent safety hazards, nuisances, and off-site migration to the greatest extent possible given existing weather conditions.

(b) Contractor shall clean each Transfer Station each operating day and remove all loose material and litter, including the transfer bays.

(c) Contractor shall police the permitted boundary area surrounding each Transfer Station, at least daily, to check for and remove all loose material and litter.

2. **Drainage Control.** Contractor shall control drainage at each Transfer Station, to the greatest extent possible, in order to minimize the creation of, and prevent uncontrolled off-site migration of, contact water.

3. **Medical Waste.** Contractor shall not accept medical waste at any Transfer Station.

4. **Noise Control.** Contractor shall control excessive noise at each Transfer Station to the greatest extent possible in order to prevent nuisance to nearby residences, if any. Contractor shall discourage the use of “jake brakes” and excessive use of truck air horns. Contractor shall, under no circumstances unless authorized by the County, operate any of the Transfer Stations before or after the permitted hours of operation listed in Table - Contractor Hours of Access.

5. **Nuisance Control.** Contractor shall ensure that operations at each Transfer Station are conducted in such a way as to not create unnecessary nuisances that might be in

direct conflict with any mitigation measures applicable to such Transfer Station through applicable California Environmental Quality Act environmental review documentation.

6. **Dust Control.** Contractor shall take adequate measures to minimize the creation and emission of excessive amounts of dust and particulates that might create a public hazard caused by obscured visibility.

7. **Sanitary Facilities.** Contractor shall provide and routinely maintain, in a clean and sanitary manner, one portable toilet at each of the Transfer Stations, on or adjacent to the tipping floor, for the Contractor's employees and for the public.

8. **Load Checking.** Contractor shall conduct routine load checks, of both self-haul and franchise haulers, in accordance with this Scope of Services.

9. **Training.** Contractor shall provide all necessary training to its personnel as required by Contractor's Injury, Illness, and Prevention Plan. Contractor's employees assigned to operations at the Transfer Stations shall be adequately trained in all subjects as they pertain to the operation and maintenance of solid waste facilities, Hazardous Substances recognition, screening, and handling, equipment use, environmental controls, and emergency procedures. Contractor shall be responsible for providing and maintaining records of all such training.

### **Maintenance Program**

1. **General Cleanliness.** Contractor shall maintain all areas of the Transfer Stations, as they are defined in the Transfer/Processing Report (Report of Facility Information) required to be submitted to ~~\_\_\_\_\_~~ [the Local Enforcement Agent at the County Department of Health Services - Environmental Health Division](#), in a neat, litter free, clean, and orderly manner.

2. **Paint.** Contractor shall be responsible for washing and maintaining the paint, including touch-up paint, on the Transfer Station buildings to the extent the paint: 1) protects the building against rust or corrosion and; 2) needs to be washed or touched-up due to damage caused as a result of industrial activities. Contractor shall be responsible for the repair and replacement of the external skin of the Transfer Station buildings due to damage that is a result of daily industrial activities at the Transfer Stations.

3. **Structural.** Contractor shall be responsible for maintenance, repair, and replacement of all structural components of the Transfer Station buildings, such as concrete walls, steel posts and girders, loading hoppers, down spouts, and any other external appurtenances that are damaged as a result of industrial activities at the Transfer Stations.

4. **Infrastructure.** Contractor shall be responsible for the maintenance, repair and replacement of Transfer Station infrastructure components, such as electrical distribution systems, gray water tanks and alarm systems, septic tanks and alarm systems, security alarm systems, fire alarm and systems, including the water tank, fire extinguishers and hoses and any other components of the fire suppression system. Contractor shall also be responsible for all irrigation systems and landscaping at the Transfer Stations.

5. **Fuel Tanks.** At each Transfer Station, Contractor shall supply and maintain in good working order an approved fuel tank fabricated in accordance with UL Standard 142 with built-in secondary containment. The tanks shall be of such size that the tanks may be housed in the existing containment areas at each Transfer Station. Contractor shall maintain the containment areas in a clean and orderly manner, free from litter, excessive wind-blown dust and dirt, storm water build-up, and spilled fuel. Contractor shall check the tank and containment area on a daily basis for damage and leaks. The tank and all appurtenances shall be inspected annually by a licensed inspector. Any and all damage to people, property or the environment resulting from a fuel spill shall be the sole responsibility of the Contractor.

6. **Asphalt.** Contractor shall be responsible for the maintenance and repair of all asphalt turn around areas, landings, driveways and access areas. Contractor shall use street tracks on all track-mounted dozers used at the Transfer Stations and shall use all available means to prevent unnecessary damage to asphalt surfaces when running track-mounted equipment. Extra care should be used when turning track vehicles to minimize damage to those surfaces.

7. **Transfer Station Floors.** Contractor will repair the floors of the Transfer Stations to the extent that the wear on the floors, due to Contractor's operations, is greater than the wear that would normally occur in accordance with Prudent Solid Waste Practices.

8. **Gray Water Tanks.** Contractor shall be responsible for the periodic cleaning and inspecting of the Transfer Stations' gray water tanks such that adequate storage capacity in the tanks is maintained. Contractor shall also clean, on a daily basis, the gray water grate systems located at the front of the Transfer Stations' floors. The systems must be maintained in order to prevent clogging of the gray water collection and distribution infrastructure which would result in the comingling of sites' gray water systems and storm water systems.

9. **Security Fences.** Contractor shall be responsible for the maintenance, repair, and replacement of all perimeter security fences and gates.

### **Health and Safety**

Contractor shall operate the Transfer Stations at all times in a safe and careful manner demonstrating consideration for the health and safety of all persons, employed or otherwise in the Transfer Stations, including the general public. Contractor shall operate equipment in a professional, courteous, and workman like manner and adhere to all state and local health and safety policies, including without limitation, California Code of Regulations Title 22, Section 66264.16 (Personnel Training), California Code of Regulations Title 8, Section 3380 (Personal Protective Devices) and Section 5192 (Hazardous Waste Operations and Emergency Response).

1. **Injury and Illness Prevention Program.** Contractor shall develop and implement an Injury and Illness Prevention Program, SB-198, in accordance with the requirements of California Code of Regulations Title 8, Section 3203.

2. **Special Occurrences.** Contractor shall develop and complete a Special Occurrence Form and submit completed forms to the County within 24-hours of the occurrence of an unusual situation at any Transfer Station. An unusual situation would include, but not be

limited to: fires; injuries; property damage; accidents; explosions; theft; vandalism; mechanical failure of any portion of a Transfer Station; environmental incidents such as chemical or liquid spills or the release of Hazardous Substances; flooding; violations, and other concerns. The report shall specify the area of concern, action taken, dates of actions and inspection, when needed by inspectors.

3. **Evacuation Plan**. Contractor shall develop and supply to the County, within thirty (30) days of the execution of the Agreement, with a copy of an Evacuation Plan to evacuate personnel in the case of fires or other emergencies.

4. **Safety**. Contractor shall apply all safety measures in accordance with the California Department of Transportation “Manual of Traffic Safety for Construction and Maintenance Zones,” California Occupational Safety and Health Administration, and all other applicable safety codes.

### **Protection of the Environment**

1. **Emergency Response Plan**. Contractor shall develop and maintain an Emergency Response Plan that, among other things, addresses the steps the Contractor will take in the event of an environmental release or Environmental Condition. The Plan will include the name, address, and telephone number of a company, with whom the Contractor has a signed agreement, that is licensed in the State of California, to perform environmental clean-up. In addition, the Emergency Response Plan will include the name, address, and telephone number of a company, with whom the Contractor has a signed agreement, that is licensed in the State of California, to perform water sampling and analysis.

2. **Spill Kits**. Contractor shall provide and maintain spill kits in good working order at all times. The spill kits shall contain any and all materials that Contractor might need to prevent a spill from entering a Transfer Station’s storm water system. The kits should be strategically located and with frequency to ensure a timely response to a spill.

3. **Releases**. Contractor shall document and report immediately to the County, any release of any pollutant and identify steps taken to clean-up the release.

### **Permits and Legal Requirements**

The Transfer Stations are subject to Law and Permits. Contractor shall be familiar with and comply with all such Laws and Permits and supporting documents including, without limitation: General Permit to Discharge Storm Water Associated with Industrial Activities, Order No. 97-03-DWQ and supporting documents - Storm Water Pollution Prevention Plans, issued by the California Regional Water Quality Control Board and; Solid Waste Facility Permits and supporting document – Transfer/Processing Reports, issued by the California Integrated Waste Management Board.

1. Contractor shall bear the cost of any fines and re-inspections issued for any violations by the Contractor of any of the terms of any Permits, or any other applicable requirements of Law, and Governmental Authority.

2. Contractor shall secure, from the applicable Governmental Authority, any and all necessary permits, consents and authorizations for the performance of work and any site improvements performed by Contractor in conjunction with this Scope of Services. In the cases when the County directs Contractor to perform work that is the County's express responsibility under the Agreement or this Scope of Services, the County will acquire any necessary permits.

### **Reporting Requirements**

1. Contractor shall accurately complete the Recovered Materials Report and submit a copy to the County within fifteen (15) days following the month that the Report summarizes.

2. Contractor shall maintain a record of all equipment and facility maintenance, repairs, and replacement and shall submit copies of the records monthly or as otherwise requested by the County.

**EXHIBIT E**  
**DEPICTION OF EXCLUDED AREAS**

**EXHIBIT F**  
**LIST OF VENDORS, CONTRACTORS, LICENSEES AND LESSEES**

|                                                           |                                                                                                   |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <a href="#"><u>West Coast Metals/GRI</u></a>              | <a href="#"><u>Re-use areas at Central and Healdsburg</u></a>                                     |
| <a href="#"><u>Clean Harbors</u></a>                      | <a href="#"><u>HHW contractor</u></a>                                                             |
| <a href="#"><u>Sonoma Compost Company</u></a>             | <a href="#"><u>Compost Facility Contractor</u></a>                                                |
| <a href="#"><u>Landfill Energy Systems</u></a>            | <a href="#"><u>Co-gen Plant Operators</u></a>                                                     |
| <a href="#"><u>ECS Refining</u></a>                       | <a href="#"><u>CRT/Electronics Recycler all sites</u></a>                                         |
| <a href="#"><u>SCS Field Services</u></a>                 | <a href="#"><u>Gas Field and Maintenance Central and Healdsburg</u></a>                           |
| <a href="#"><u>Sonoma Garbage Collectors</u></a>          | <a href="#"><u>Re-use area Sonoma Site</u></a>                                                    |
| <a href="#"><u>Pacific GeoScience</u></a>                 | <a href="#"><u>Well and Gas Monitoring All Sites</u></a>                                          |
| <a href="#"><u>UNAVCO</u></a>                             | <a href="#"><u>Central – Lease for Geological Monitoring Station</u></a>                          |
| <a href="#"><u>Sunrise Garbage Service(North Bay)</u></a> | <a href="#"><u>Guerneville – Building and surrounding area up in back of Guerneville T.S.</u></a> |

**EXHIBIT G**  
**CONTRACTOR SERVICE FEES/GATE FEES**

**Through August 31, 2010 (Subject to adjustments under Section 8.4)**

**Central Landfill**

| Government Fee Component | Service Fee Component                    | Total Contractor Service Fee/Gate Fee    |
|--------------------------|------------------------------------------|------------------------------------------|
| N/A                      | \$ <del>_____</del> <u>36.87</u> per ton | \$ <del>_____</del> <u>36.87</u> per ton |

The County shall pay for government fees for Waste disposed of at the Landfill.

**Keller Landfill**

| Government Fee Component                | Service Fee Component                    | Total Contractor Service Fee/Gate Fee |
|-----------------------------------------|------------------------------------------|---------------------------------------|
| \$ <del>_____</del> <u>8.52</u> per ton | \$ <del>_____</del> <u>28.35</u> per ton | \$36.87 per ton                       |

**Forward Landfill**

| Government Fee Component                | Service Fee Component                    | Total Contractor Service Fee/Gate Fee |
|-----------------------------------------|------------------------------------------|---------------------------------------|
| \$ <del>_____</del> <u>4.09</u> per ton | \$ <del>_____</del> <u>32.78</u> per ton | \$36.87 per ton                       |

Notwithstanding the foregoing, from and after November 1, 2009 through the expiration of this Agreement, with respect to all Waste that consists of the residuals after processing from Redwood Empire's or its Affiliates' materials recovery facilities located within the County of Sonoma, which County has directed to the Landfill or Keller Landfill pursuant to the Redwood Empire Franchise Agreement, the Contractor Service Fee shall be \$36.87 per Ton for deliveries to the Keller Landfill and \$54.50 per Ton for deliveries to the Landfill, in each case, up to 100 Tons per day (5 day week). Amounts of residuals above 100 Tons per day shall be chargeable at the same rates as other County-Controlled Waste under this Agreement. Such residuals shall be transported directly by Redwood Empire and its Affiliates. The foregoing rates of \$36.87 and \$54.50 per Ton are as of the Execution Date (and are inclusive of all components, including

government and host fees, taxes and surcharges). Such rates shall be subject to annual adjustment as set forth in Section 8.4, including adjustments to reflect increased or new federal, state or local fees, taxes and surcharges or Changes in Law, in each case, in an amount proportional to the adjustments to the Contractor Service Fees set forth in Exhibit G. In consideration for this rate for such residual materials, the County shall cause Redwood Empire to deliver all residuals from any materials recovery facilities owned or operated by Redwood Empire or its Affiliates at any location within the County of Sonoma to the Landfill or Keller Landfill (prior to the resumption of disposal operations at the Landfill or during any cessation thereof) up to a maximum of 100 Tons per day (5 day week).

**From and After September 1, 2010 (Subject to adjustments under Section 8.4)**

**Central Landfill**

| Government Fee Component | Service Fee Component    | Total Contractor Service Fee/Gate Fee |
|--------------------------|--------------------------|---------------------------------------|
| N/A                      | \$ <del>79</del> per ton | \$ <del>79</del> per ton              |

The County shall pay for government fees for Waste disposed of at the Landfill.

**Keller Landfill**

| Government Fee Component   | Service Fee Component       | Total Contractor Service Fee/Gate Fee |
|----------------------------|-----------------------------|---------------------------------------|
| \$ <del>8.52</del> per ton | \$ <del>70.48</del> per ton | \$79.00 per ton                       |

**Forward Landfill**

| Government Fee Component   | Service Fee Component       | Total Contractor Service Fee/Gate Fee |
|----------------------------|-----------------------------|---------------------------------------|
| \$ <del>4.09</del> per ton | \$ <del>74.91</del> per ton | \$79.00 per ton                       |

In addition to the foregoing, Contractor will be paid to transport green waste, wood waste and other organics from Transfer Stations (other than the Central Transfer Station) to the Compost Facility in an amount per Ton equal to the rates currently paid by the SCWMA to the County and its operators for such transportation, as such rates may be renegotiated by Contractor and the SCWMA prior to August 31, 2010.

Notwithstanding the foregoing, from and after November 1, 2009 through the expiration of this Agreement, with respect to all Waste that consists of the residuals after processing from Redwood Empire's or its Affiliates' materials recovery facilities located within the County of Sonoma, which County has directed to the Landfill or Keller Landfill pursuant to the Redwood Empire Franchise Agreement, the Contractor Service Fee shall be \$36.87 per Ton for deliveries to the Keller Landfill and \$54.50 per Ton for deliveries to the Landfill, in each case, up to 100 Tons per day (5 day week). Amounts of residuals above 100 Tons per day shall be chargeable at the same rates as other County-Controlled Waste under this Agreement. Such residuals shall be transported directly by Redwood Empire and its Affiliates. The foregoing rates of \$36.87 and

\$54.50 per Ton are as of the Execution Date (and are inclusive of all components, including government and host fees, taxes and surcharges). Such rates shall be subject to annual adjustment as set forth in Section 8.4, including adjustments to reflect increased or new federal, state or local fees, taxes and surcharges or Changes in Law, in each case, in an amount proportional to the adjustments to the Contractor Service Fees set forth in Exhibit G. In consideration for this rate for such residual materials, the County shall cause Redwood Empire to deliver all residuals from any materials recovery facilities owned or operated by Redwood Empire or its Affiliates at any location within the County of Sonoma to the Landfill or Keller Landfill (prior to the resumption of disposal operations at the Landfill or during any cessation thereof) up to a maximum of 100 Tons per day (5 day week).

From and after September 1, 2010 through the expiration of this Agreement, with respect to all Waste that consists of Construction and Demolition Wastes hauled by Redwood Empire and its Affiliates, which County has directed to the Central Transfer Station pursuant to the Redwood Empire Franchise Agreement, the Contractor Service Fee shall be \$50.00 per Ton. Such Construction and Demolition Wastes shall be transported directly by Redwood Empire and its Affiliates. The foregoing rate of \$50.00 per Ton is as of the Execution Date (and is inclusive of all government and host fees, taxes and surcharges). Such rate shall be subject to annual adjustment as set forth in Section 8.4, including adjustments to reflect increased or new federal, state or local fees, taxes and surcharges or Changes in Law, in each case, in an amount proportional to the adjustments to the Contractor Service Fees set forth in Exhibit G. The Redwood Empire Franchise Agreement shall direct Redwood Empire and its Affiliates to deliver all such Construction and Demolition Wastes to Central Transfer Station. In consideration for this rate for such Construction and Demolition Wastes, County shall cause Redwood Empire to deliver all Construction and Demolition Waste collected by Redwood Empire and its Affiliates in the County of Sonoma and within all of its cities, except for the Town of Windsor, to the Central Transfer Station.

**EXHIBIT H**  
**HAUL ROUTES**

| FROM ANNAPOLIS TRANSFER STATION                                                                                                                                   |                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| <u>To Keller Canyon Landfill</u><br><br>Annapolis Road<br><br>To Skaggs Springs Road<br><br>To Dry Creek Road<br><br>To Hwy 101<br><br>To Hwy 37<br><br>To Hwy 80 | <u>To Forward Landfill</u><br><br>Same as Keller |

| FROM GUERNEVILLE TRANSFER STATION                                                                                                                          |                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| <u>To Keller Canyon Landfill</u><br><br>Hwy 116/Gravenstein Hwy to Cotati<br><br>To Hwy 101<br><br>To Hwy 37 (via Lakeville St. optional)<br><br>To Hwy 80 | <u>To Forward Landfill</u><br><br>Same as Keller |

| FROM SONOMA TRANSFER STATION                                                                                         |                                                  |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| <u>To Keller Canyon Landfill</u><br><br>Hwy 116/Stage Gulch Road<br><br>To Hwy 121<br><br>To Hwy 37<br><br>To Hwy 80 | <u>To Forward Landfill</u><br><br>Same as Keller |

| FROM CENTRAL TRANSFER STATION          |                            |
|----------------------------------------|----------------------------|
| To Keller Canyon Landfill              | <u>To Forward Landfill</u> |
| Mecham Road                            | Same as Keller             |
| To Stony Point Road                    |                            |
| To Hwy 101                             |                            |
| To Hwy 37 (via Lakeville St. optional) |                            |
| To Hwy 80                              |                            |

| FROM HEALDSBURG TRANSFER STATION       |                            |
|----------------------------------------|----------------------------|
| <u>To Keller Canyon Landfill</u>       | <u>To Forward Landfill</u> |
| Alexander Valley Road                  | Same as Keller             |
| To Healdsburg Ave.                     |                            |
| To Lytton Springs Road                 |                            |
| To Hwy 101                             |                            |
| To Hwy 37 (via Lakeville St. optional) |                            |
| To Hwy 80                              |                            |

**EXHIBIT I**  
**GATEHOUSE/SCALEHOUSE SCOPE OF WORK**

**Scalehouse Personnel, Procedures.** Contractor shall operate and maintain the scalehouses at the Transfer Stations. The County shall be provided access to the scalehouse at all times to observe operations. Contractor shall provide trained personnel to operate the scale. In addition to the training required in this Agreement, Contractor's personnel shall be trained to identify non-permitted and hazardous wastes and shall be familiar with all other aspects of the County's Load Checking Program. Contractor personnel shall also be responsible for inspecting the Waste delivered to the Transfer Stations and for undertaking and complying with the County's Load Checking Program (which may be modified from time to time upon written notice by the County)..

Contractor shall maintain (including but not limited to the performance of all calibration and testing required by Law or otherwise) the scales and associated scalehouse equipment (i.e., computer, indicator, mechanical beam), or shall arrange for such maintenance to be performed by an independent contractor at the Contractor's expense. The scales shall be calibrated on or before November 1, 2010, and, thereafter, at least annually. Contractor shall comply with all applicable Laws in the operation of the scales. Contractor shall provide the County with copies of all documents verifying calibration of the scales. Contractor shall perform all necessary repairs and provide all parts and labor to maintain the scales at each of the Transfer Stations. All repairs that are performed by Contractor shall maintain the integrity and compatibility between the scales and the County's computerized cash register system.

**Maintenance.** Contractor shall provide semi-annual cleaning of all scales at all Transfer Stations, which cleaning shall include, at minimum, the following tasks: pull all deck cover plates; clean inside the scale; inspect the load cell; clean and seal all electrical load cell connectors and junction box connections; and re-calibrate the scale. Contractor shall annually, or more frequently at the request of the County, arrange with the Sonoma County Weights and Measures Division to provide calibration testing with the County's Heavy Capacity Test Truck to confirm, or adjust if necessary, all scales to within those weight tolerances required by Law.

Contractor shall keep all scalehouses, interior and exterior, at all the Transfer Stations clean, orderly and in good working condition. Contractor shall provide regular maintenance of all scalehouses, inside and outside. At the Annapolis, Healdsburg, Central and Sonoma Transfer Stations, Contractor shall be responsible for servicing and maintaining, in good working condition, all septic lines, septic tanks and sumps, and septic leach fields.

**Records.** Contractor shall require scale operators to weigh and record the amount of Waste delivered to the Transfer Stations. Original tonnage records shall be maintained on-site by Contractor as part of the Transfer Stations' operating records and as required by applicable Law. Contractor shall track and retain daily records of receipt of Waste, by Tons, and compile the daily records into monthly tonnage reports in a format deemed acceptable by the County, the CIWMB, the LEA and any other applicable Governmental Authority. All disposal tickets shall be consecutively numbered and shall include, at a minimum, the following information: date and time of in-bound, date and time of outbound (if applicable), customer name, vehicle number,

gross weight, net weight, waste type, amount of charge, tax, total of charge, and ticket number. Contractor shall provide an electronic copy of tonnage records and disposal tickets to the County on a monthly basis to be included with its invoice. Contractor shall determine and record the type of Waste of all loads and its acceptability in accordance Applicable Laws. The disposal tickets, monthly tonnage reports, and any other scalehouse reports shall be available for inspection upon request by the County (and its agents), the CIWMB, the LEA, or any other applicable Governmental Authority.

Contractor shall track and retain daily records of the number of vehicles that enter each Transfer Station by type of vehicle, and compile the daily records into monthly traffic reports in a format deemed acceptable by the County, the CIWMB, the LEA and any other applicable Governmental Authority. The monthly traffic reports shall be available for inspection upon request by the County (and its agents), the CIWMB, the LEA, or any other applicable Governmental Authority.

**Fee Collection.** Contractor shall collect from Customers at the Landfill and the Transfer Stations the Facility Rates established by County. The Contractor shall not charge any amount in excess of or less than the County-approved Facility Rates. The County shall provide the Contractor with the approved Facility Rates. The County will retain responsibility and control of all Customer accounts and shall maintain all accounts receivable. The Contractor shall not extend credit to any Customer who does not possess an active County account card. Contractor shall deposit all cash and checks received on a daily basis to the County's accounts. County shall have sole control over such account, and Contractor shall have no economic or legal interest in or right to access such accounts. In no event shall Contractor withhold or offset any paid Facility Rates or other compensation paid by or on behalf of Customers for the use of any Facility, including against any amounts payable by the County to Contractor under this Agreement.

**Annual Audit Of Billings And Gate Receipts.** County may, in its sole discretion, retain an independent certified public accountant or have its internal auditor or other County staff conduct an audit of billings and gate receipts for some or all of the Landfill and the Transfer Stations. Contractor shall cooperate fully with County and its agents in performance of any such audit and shall provide the County and such agents full and unrestricted access and right to copy and inspect all records and information relating to billings, gate receipts, Tonnage, Customers and Facility Rates.

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