

**REQUEST FOR PROPOSALS
FOR THE DIVESTITURE OF SOLID WASTE ASSETS BY THE COUNTY OF
SONOMA**

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

COUNTY OF SONOMA

**ISSUED June 11, 2008
ADDENDUM #1 ISSUED JULY 9, 2008
ADDENDUM #2 ISSUED AUGUST 6, 2008**

**County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Ste. B100
Santa Rosa, California 95403**

CERTAIN KEY DATES

<u>EVENT</u>	<u>DATE</u>
Issue Request for Proposals	June 11, 2008
Proposal Due Date	August 25, 2008 <u>at</u> <u>2:00 P.M. (Pacific)</u>
Proposals Received by the County Board of Supervisors	August 26, 2008
Target for Contract Award, Execution and Delivery	Fall 2008

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EXHIBITS

Exhibit A	Definitions and Acronyms
Exhibit B	Proposal Forms Instructions
Exhibit C	Financial Proposal Instructions
Exhibit D	Contract Comments Instructions
Exhibit E	Required Forms
Exhibit F	Summary and Order of Proposal Contents

FORMS

Form A	Proposal Letter
Form B	Information About Proposer
Form C	Non-Collusion Affidavit
Form D	Initial Purchase Price and System Royalty Offer Form
Form E	Proposal Security/Letter of Credit
Form F	Opinion of Counsel
Form G	Tip Fee Schedules Form
Form H	Minimum Committed Flow Form

INSTRUCTIONS TO PROPOSERS

(Request for Proposals: County of Sonoma Solid Waste Divestiture)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”), as may be amended from time to time, is issued by the County of Sonoma (“County”) to seek competitive proposals (individually, a “Proposal” and collectively, “Proposals”) for a purchase and sale agreement (“Contract”). The Contract shall provide that the successful Proposer (the “Purchaser”) shall purchase and acquire the Facilities (as defined below) and operate and maintain the same pursuant to the terms and conditions of the Contract (the “Divestiture”). The Divestiture covers the Central Landfill and the Annapolis, Central, Guerneville, Healdsburg and Sonoma Transfer Stations and related personal property, permits, contracts and other assets pertinent to the operation of the County’s solid waste system (collectively, the “Facilities”). The form of Contract is included in Volume II of the RFP.

The County is issuing this RFP to those Proposers shortlisted on February 8, 2008, based on the County’s evaluation of Statements of Qualification (“SOQs”) delivered to the County on January 8, 2008 in response to the Request for Qualifications for the Divestiture issued on November 7, 2007 (as amended, the “RFQ”). Only those Proposers shortlisted on February 8, 2008 may respond to this RFP and submit a Proposal.

Proposers must comply with these Instructions to Proposers (“ITP”) during the divestiture process and in their responses to the RFP. Proposers shall also take the Divestiture goals identified in Section 1.2 below into consideration in preparing their Proposals.

1.2 County Goals

The County’s primary goals for the Divestiture are as follows:

- Maximize the monetary return for divestiture of the Facilities;
- Reduce or eliminate exposure for past, current and future environmental, operational and closure/post-closure liabilities related to the Facilities;
- Provide a location for solid waste disposal of the municipal solid waste stream at reasonable prices;
- Transfer, through a divestiture, all of the Facilities;
- Assure that the Facilities be operated in the future in an environmentally sound and safe manner consistent with applicable law and regulations;

- Assure that the facilities are operated in the future in a manner that reduces greenhouse gases, complies with the California Global Warming Solutions Act of 2006 (AB 32) and other County climate protection initiatives, such as through the use of rail or other appropriate means; and
- Support diversion goals consistent with AB 939 and the Countywide Integrated Waste Management Plan.

The County's secondary goals for the Divestiture are as follows:

- Achieve an in-county Central Landfill solution, if the Divestiture terms are such that they substantially alter the findings of the Brown, Vence & Associates study, previously provided to the Proposers, which led to the County Board of Supervisors' decision to move towards a permanent out-haul solution;
- Assist impacted employees to compete for and find employment with the successful Purchaser;
- Involvement in tip rate setting process; and
- Preserve capacity at the Central Landfill for the County-generated waste stream.

These goals will be articulated and achieved through the terms of the Contract Documents.

1.3 Descriptions of the Facilities

Refer to the RFQ, the Contract and the Reference Information Documents for a more detailed description of the Facilities.

1.4 Documents in the Request for Proposals

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented (collectively, the "RFP Documents"):

Volume I - this ITP (including exhibits and forms),

Volume II - the Contract Documents,

~~Volume III - a list of the Reference Information Documents.~~

Refer to Section 1.1 and Schedules 8.4 and 9.6 of the Contract for a list of the Contract Documents ~~and to Volume III for a list of the Reference Information Documents.~~

The ~~list of~~ Reference Information Documents ~~is included in the RFP~~ are for the purpose of providing information to Proposers. Except as may be expressly provided otherwise in the Contract, the Reference Information Documents are not mandatory or binding. Proposers are not entitled to rely on the Reference Information Documents or any opinions or recommendations therein as presenting financing, design, engineering, permitting, construction, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the divestiture process, Permits or applicable laws.

The County shall not be responsible or liable in any respect for any causes of action, claims or losses whatsoever suffered by any Proposer by reason of (a) any use, in connection with participation in the divestiture process, of information, opinions or recommendations contained in the Reference Information Documents, or (b) any action or forbearance in reliance on the Reference Information Documents.

The County does not represent or warrant that the information, opinions and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions and recommendations are in conformity with the requirements of the RFP, Permits or applicable laws. Proposers shall have no right to compensation, or other claim in connection with participation in the divestiture process based on any incompleteness or inaccuracy in the Reference Information Documents.

1.5 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to the Contract for the meaning of capitalized terms and acronyms used but not defined herein or in said Exhibit A. As used herein, “include” shall mean “including, without limitation” and a “day” shall be a calendar day (unless otherwise specified).

1.6 Divestiture Schedule, Address for Proposal Delivery and Financial Close Deadline

1.6.1 Divestiture Schedule

The following represents the current schedule for the Divestiture.

<u>EVENT</u>	<u>DATE and TIME</u>
Issue Request for Proposals	June 11, 2008
Last date for Proposer submittal of initial questions/comments regarding the RFP	June 18, 2008
One-on-one meetings with Proposers	June 25-26, 2008
Additional one-on-one meetings/calls with Proposers (at option of the County)	If utilized, the County will notify Proposers in advance

<u>EVENT</u>	<u>DATE and TIME</u>
Last date for Proposer submittal of questions/comments regarding the RFP, as described in <u>Section 2.3.1</u>	July 16, 2008
Last date for the County responses to questions/comments regarding the RFP (if necessary)	August 6, 2008
Proposal Due Date	August 25, 2008 at 4 2:00 P.M. (Pacific)
County Board of Supervisors Receives Proposals	August 26, 2008
Anticipated Contract Award, Execution and Delivery	Fall 2008

All dates set forth above and elsewhere in this RFP are subject to change, in the County's sole discretion, by Addendum.

1.6.2 Address for Proposal Delivery

The completed Proposal shall be submitted and delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.6.1, respectively. The Proposal is to be delivered to the County at the following address:

County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Suite B100
Santa Rosa, California 95403
Attn: Jay Jasperse

1.6.3 Deadline for Contract Documents Execution and Payment of Deposit

A Proposer that has been selected for negotiations shall be required to, on or before 30 days after notification by the County of such selection, deliver to the County executed copies of the Contract Documents and the documents required under Section 5.2, remit payment of the Deposit Letter of Credit as required under the Contract Documents and otherwise satisfy all other conditions to award set forth in the RFP; provided, however, that the 30 day period shall be extended by the County if the County and such Purchaser are then in the process of negotiations (and the County has not terminated such negotiations). If, in lieu of negotiations, the County wishes to accept a Proposer's Proposal on the basis of the Contract Documents included in the RFP (e.g., excluding Contract Comments, but with such changes as are ~~as are (i)~~ necessary to fill in blanks; ~~(ii) or as are~~ expressly indicated in the RFP to be inserted from Proposer's Proposal to the Contract Documents, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity and (iii)

necessary to address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date), the Proposer so notified shall have 15 days after notification in which to deliver to the County executed copies of the Contract Documents and the documents required under Section 5.2, remit payment of the Deposit as required under the Contract Documents and otherwise satisfy all other conditions to award set forth in the RFP. As noted in Section 4.4, the form of Contract Documents shall be in the form included with the RFP (with such changes as are (1) necessary to fill in blanks; ~~(ii) or as are~~ expressly indicated in the RFP to be inserted from Proposer's Proposal to the Contract Documents, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity and (iii) necessary to address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date), except to the extent that the County, in its sole discretion, agrees to further negotiate and/or modify the terms of the Contract Documents based on some or all of the successful Proposer's Contract Comments. Except as set forth in the preceding sentence, Proposers shall not be entitled to submit comments to the Contract Documents or include any exception, exclusion, condition or assumption in their Proposals or modify the Proposal forms.

1.7 General Provisions Regarding Proposals

1.7.1 Proposal Contents

As used in the divestiture process, the term "Proposal" means a Proposer's complete response to this RFP, including a Financial Proposal and Proposal Forms. Proposers may, but are not obligated to, also submit Contract Comments.

Requirements for Proposal Forms are set forth in Exhibit B. Requirements for the Financial Proposal are set forth in Exhibit C, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit F, and shall be clearly indexed. Each Proposal component shall be clearly titled and shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in the County's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal Forms must be filled in as appropriate. No substantive change shall be made in the Proposal Forms.

1.7.2 Inclusion of Proposal in Contract Documents

Portions of the successful Proposer's Proposal will become part of the Contract Documents, as specified in the Contract. All other information is for evaluation purposes only and will not become part of the Contract Documents.

1.7.3 Ownership of Proposal

Subject to the exceptions specified herein, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, and graphic and visual aids submitted to the County during the divestiture process, whether included in the Proposal or otherwise submitted, become the property of the County upon delivery to the County and will not be returned to the submitting parties.

SECTION 2.0 DIVESTITURE PROCESS

2.1 Divestiture Method

This RFP is issued pursuant to and in accordance with the provisions of California Government Code Section 25515 *et seq.*, as amended (the "Statute") (which may be found at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=25001-26000&file=25515-25515.5>) and all other applicable provisions of law. The County will award the Contract (if at all) to the responsible Proposer offering the best overall value to the County, as determined pursuant to Section 4.3.

The County will accept Proposals for the Divestiture only from those Proposers that the County has shortlisted for the Divestiture based on their responses to the RFQ. As noted in ITP Section 2.10, the Proposer team must be the same as that which was submitted in its SOQ, unless otherwise approved by the County as set forth in ITP Section 2.10.

The County will not review or consider alternative proposals but Proposers may provide Contract Comments as described herein and such Contract Comments shall not be considered an alternative proposal.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP will be issued and made available to shortlisted Proposers in electronic format on the website for the Divestiture, which can be found at http://www.sonoma-county.org/tpw/20tpw_waste08/ (the "Website"). The Website is a password protected website accessible only by the shortlisted Proposers.

2.2.1 Authorized Representative

The County has designated the following individual to be its authorized representative for the Divestiture (the "Authorized Representative"):

County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Suite B100
Santa Rosa, California 95403
Attn: Jay Jasperse
Email: jjasper1@sonoma-county.org
Phone: (707) 565-2231
Fax: (707) 565-2620

From time to time during the divestiture process or pursuant to the Contract, the County may designate another Authorized Representative or representatives to carry out some or all of the County's obligations pertaining to the Divestiture.

2.2.2 Identification of Proposer Authorized Representative

A Proposer shall identify in its Proposal an individual authorized to act on behalf of the Proposer relating to the Divestiture ("Proposer Authorized Representative"). If a Proposer changes its Proposer Authorized Representative to receive documents, communications or notices in connection with this Divestiture subsequent to its submission of its Proposal, the Proposer shall provide the County's Authorized Representative with the name and address of such new Proposer Authorized Representative. Failure to identify a Proposer Authorized Representative in writing may result in the Proposer failing to receive important communications from the County. The County is not responsible for any such failure.

2.2.3 Rules of Contact

(a) From November 7, 2007 until issuance of the RFP, the rules of contact provisions in the RFQ, as modified by the letter agreement between the County and each Proposer, dated February 8, 2008, were applicable to this Divestiture.

(b) From and after the date of issuance of this RFP and ending on the earliest of (i) the execution and delivery of the Contract, (ii) rejection of all Proposals by the County or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process, with each Proposer having equitable access to information. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

(c) The specific rules of contact are as follows:

(i) No Proposer nor any of its team members may knowingly communicate with another Proposer or its team members with regard to this RFP or either team's Proposal, except that this prohibition does not apply to public discussions regarding the RFP at any County sponsored informational meetings.

(ii) Only the Proposer Authorized Representative shall correspond with the County regarding this RFP and only through the County's Authorized Representative.

(iii) No Proposer or representative thereof shall have any ex parte communications regarding the RFP, the Contract or the Divestiture with any member of the County Board of Supervisors or with any County staff, advisors, employees or consultants (including KNN Public Finance, Zions Bank, Zions Bancorporation, Nossaman, Guthner, Knox & Elliott, LLP, Brown, Vence & Associates and HDR, Inc. or Affiliates of any of the foregoing) involved with the Divestiture, except for communications expressly permitted by the RFP or except as approved in advance by the County's Authorized Representative, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the Divestiture, Contract or RFP or from participation in public meetings of the County or any public or joint Proposer workshop related to the Divestiture, Contract

or RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of the County.

(iv) Proposers shall not disclose any aspect of their Proposals or strategy until the earliest of (1) execution of the Contract by the County and the successful Proposer, (2) rejection of all Proposals by County or (3) cancellation of the Divestiture.

(v) The County intends to be the sole source of all public information (press releases, public notices, etc.) concerning the Divestiture and the Facilities.

(vi) Any communications determined by the County, in its sole discretion, to be improper may result in disqualification.

(vii) All official communications regarding the Divestiture will be in writing, on the County letterhead, and signed by the County's Authorized Representative or designee.

(viii) The County will not be responsible for, and a Proposer may not rely on, any oral or written exchange or any other information or communication that occurs outside the official process specified herein.

The Proposer shall note that no correspondence or information from the County or anyone representing the County regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(c)(i)-(viii).

2.2.4 Language Requirement

All correspondence regarding the RFP and Contract are to be in the English language.

2.3 Questions and Responses Regarding the RFP and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by the County prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer fails to understand. Failure of the Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the County. Proposers shall submit questions, comments and requests for written clarification in accordance with this Section 2.3.1. The County reserves the right not to respond to any such questions, comments and clarification requests received after the last date for Proposer submittal of questions regarding the RFP, as set forth in Section 1.6.1. To the extent responses are provided, they will not be considered part of the Contract Documents, nor will they be relevant in interpreting the Contract Documents, except as expressly set forth in the Contract Documents.

The County will only consider questions and comments regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the County's Authorized Representative, by facsimile, hard copy, or other electronic transmission in the prescribed format.

Such request may be submitted at any time during the Proposal preparation period, but the County will have no obligation to answer any request unless it is received by the County's Authorized Representative by the date and time set forth in Section 1.6.1 (which date will automatically be extended with respect to any Addendum issued within five days of such date, so as to allow the Proposer five days to submit a request concerning the Addendum, unless a longer time is specified by the County in such Addendum). Requests for clarification or interpretation must specifically reference the relevant RFP volume, section and page number, unless such request is of general application (in which case the request for clarification shall so note). Questions must be sequentially numbered and should not include information within the question that identifies the Proposer.

No telephone or oral requests will be considered, and e-mail requests must be followed up by a facsimile or other hard copy delivery. Communications will be deemed received upon receipt of the facsimile or other hard copy delivery. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Divestiture. No requests for additional information or clarification to any Person other than the County's Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative or its designee except as specifically approved by the County's Authorized Representative designee, and must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents.

The questions and the County's responses will be in writing and will be delivered to all Proposers, except that the County intends to respond individually to those questions identified by a Proposer or deemed by the County as containing confidential or proprietary information. If a Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as "confidential". The County reserves the right to disagree with the confidentiality of information provided by a Proposer. If the County disagrees with a confidentiality designation, it shall notify the Proposer, in which case the Proposer may retract the question in writing or retract the confidentiality designation, each within a time period specified by the County. Failure of the Proposer to respond within such specified time frame shall mean that the Proposer has retracted the confidentiality designation. If the Proposer retracts the question, the County will not answer the question unless it believes it must answer the question in the interest of maintaining a fair process or complying with applicable law (with such answer being transmitted to all Proposers). If the Proposer retracts the confidentiality designation, the County shall answer the question for all Proposers.

The County may modify or rephrase questions as it deems appropriate and may consolidate similar questions. The County contemplates issuing multiple sets of

responses at different times during the divestiture process. Except for responses to questions relating to the issuance of Addenda to the RFP, the last set of responses will be issued no later than the date specified in Section 1.6.1. A consolidated, final set of questions and answers will be compiled and delivered to the successful Proposer prior to award.

The County may convene pre-Proposal Due Date meetings with Proposers as it deems necessary (see Section 2.4), and Proposers must make themselves available to the County for such pre-Proposal meetings and to discuss any matters they submit to the County under this Section 2.3.1. If the County determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, the County will prepare and issue an Addendum.

2.3.2 Addenda

The County reserves the right, in its sole discretion, to revise, modify or change the RFP and/or divestiture process at any time before the Proposal Due Date (or, if BAFOs are requested, prior to the due date for the BAFOs). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the Website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts this RFP, as determined in the County's sole discretion, the County may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

The Proposer shall acknowledge in its Proposal Letter (see Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. The County reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. The County does not anticipate issuing any Addenda later than five business days prior to the Proposal Due Date. However, if the need arises, the County reserves the right to issue Addenda after such date. If the County finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Proposal Due Date determined necessary by the County.

2.4 Pre-Proposal Due Date Meetings

2.4.1 Informational Meetings

The County may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and the County. The County will provide written notice of any such informational meetings to all Proposers. If the

meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

Each Proposer shall attend informational meetings with appropriate members of its proposed key management personnel, and if required by the County, senior representatives of proposed team members identified by the County.

2.4.2 One-on-One Meetings

The County intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.6.1 herein, and on such other dates designated by the County in writing to the Proposers, to discuss issues and clarifications regarding the Divestiture and Divestiture-related documents or communications provided by the County or the Proposers (including the RFP). The County reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the County determines, in its sole discretion, that such disclosure would reveal a Proposer's confidential business strategies (unless the County believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable law). Participation at such meetings by the Proposers shall be mandatory.

The one-on-one meetings are subject to the following rules:

- The meetings are intended to provide Proposers with a better understanding of the Divestiture and Divestiture-related documents or communications provided by the County.
- The County, except as provided in this ITP, will not discuss with any Proposer any information submitted as part of this Divestiture (including other Proposals) other than its own.
- The Proposers shall not seek to obtain commitments from the County in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, material information about the Divestiture that the County reveals or discusses in response to questions raised in a one-on-one meeting will, except as provided in this ITP, be revealed to the other Proposers.
- The discussions or any statements made by either party in one-on-one meetings shall not be binding. No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules at each meeting.

2.4.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions, and the County may provide responses. However, any responses provided by the County during one-on-one meetings may not be relied upon unless questions were submitted in writing and the County provided written responses in accordance with Section 2.3.1. Such questions and responses will be provided in writing to all Proposers, except to the extent such questions are deemed by the County, in its sole discretion, to contain confidential or proprietary information relating to a particular Proposer's Proposal (unless the County believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable law). Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.5 Confidentiality

Pursuant to the Act and other applicable law, with certain specified exceptions, the County intends that the records related to this divestiture, including the Proposals, evaluation and selection procedures, and the records created during the evaluation and selection process, will remain confidential records until the Contract has been executed by all necessary officials of the selected Proposer and the County. The County has made a determination in accordance with Section 6255 of the California Government Code that the previously submitted SOQs and the foregoing materials shall not be made public by the County until after the County awards and executes a purchase and sale contract.

In connection with award and execution of the Contract, the County shall have the right to disclose any and all portions of all Proposals, other than those items which are protected under the Act. Each Proposer, by submitting a Proposal to the County in response to this RFP, consents to such disclosure and expressly waives any right to contest such disclosure under the Act.

Under no circumstances will the County or any of its agents, representatives, consultants, directors, officers or employees (the "County Parties") be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

If, prior to or in connection with award and execution of the Contract, the County receives a request for public disclosure of all or any portion of a Proposal, the County will use reasonable efforts to notify the applicable Proposer of the request and give such Proposer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Act or other applicable law within the time period specified in the notice issued by the County and allowed under the Act.

If a Proposer has special concerns about information which it desires to make available to the County but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure under the Act, such responding Proposer team shall specifically and conspicuously designate that information **by placing “CONFIDENTIAL” in the header or footer of each such page affected.** Blanket designations that do not identify the specific information shall not be acceptable and may be cause for the County to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the County by the Act or other applicable law. The provisions of the Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

All Proposers should obtain and thoroughly familiarize themselves with the Act and other applicable law. All Proposals received in response to this RFP shall conform to and contain the detailed information required by the Act and other applicable law. The County will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Act or other applicable law, as to the interpretation of such laws, or as to the definition of trade secret. The Proposer shall be solely responsible for all determinations made by it under applicable laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable laws to that Proposer’s own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, the Proposer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that the County reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys’ fees and costs) incurred by the County in connection with any litigation, proceeding or request for disclosure, whether as a result of the County’s intervention or otherwise, shall be reimbursed and paid by the Proposer whose Proposal is the subject thereof and such Proposer shall defend, indemnify and hold the County harmless from and against any and all such claims and/or litigation. Proposer’s acknowledgment of and agreement to undertake such obligation will be evidenced by the Proposer’s submittal of its Proposal.

2.6 Permitting Status of Central Landfill

In 2004, the North Coast Regional Water Quality Control Board (RWQCB) adopted Order No. R1-2004-0040, Waste Discharge Requirements for Continued Operation and Corrective Action at the County of Sonoma, Central Landfill and East Canyon Expansion Unit (WDRs). Since the WDRs were issued, the County has been working very closely with the RWQCB to address their concerns. As a result of the Order, the Central Landfill is currently not accepting waste for landfill disposal. Waste acceptance has been temporarily suspended since October 2005.

More recently, the County has entered into a Stipulated Notice, Order and Cooperative Agreement, dated as of December 28, 2007 with the CIWMB and the LEA (the “Order”)

regarding the permitting status of the landfill. Pursuant to the Order, the County ~~is required to prepare and submit~~ submitted final closure and post closure maintenance plans for the Central Landfill ~~by on or about~~ August 1, 2008. The Order does acknowledge the County's divestiture process and the fact that a new owner will likely want to continue landfilling operations at the Central Landfill. In particular, the Order states that the LEA and the CIWMB agree to work cooperatively with any new owner of the Landfill selected during the divestiture process and shall consider any reasonable requests by such new owner to: (i) recommence waste disposal at the Landfill; (ii) demonstrate remaining capacity at the Landfill; (iii) expand areas of the Landfill permissible for waste disposal; (iv) review and approve any extensions; and/or (v) adjust, revise or modify compliance and/or closure implementation schedules. A copy of the Order is contained on the Website. In addition, the County has entered into an additional Stipulated Notice and Order dated as of March 21, 2008 with the CIWMB requiring the County to post sufficient financial assurances at such time that the final closing and post-closure maintenance plans for the Landfill are required to be submitted to the CIWMB. The amount of such financial assurances ~~shall be~~ were based on the amounts set forth in the County's final closure and post-closure maintenance plans ~~and were~~ submitted on or around August 1, 2008. See the Contract concerning Purchaser's obligations with respect to Approved Financial Assurances.

2.7 Examination of RFP and Site Access

2.7.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents and any Addenda, and material posted on the Website and/or provided to the Proposers on DVDs, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of the Purchaser's obligations under the Contract Documents with the County. Each Proposer also is responsible for monitoring the Website for information concerning this RFP and the Divestiture. The Proposal Letter (Form A) includes an acknowledgment that the Proposer has received and reviewed all materials posted thereon. Failure of the Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and the County will provide no relief for any error or omission.

Each Proposer is responsible for conducting such investigations it deems necessary or appropriate in connection with its Proposal, regarding the condition of and future revenue and expense potential of the Facilities, including the existence and extent of any Hazardous Substances, the condition of permanent and temporary utilities, the landfill gas systems, monitoring wells, groundwater and subsurface conditions, permits, expansion opportunities, the location and condition of structures located on the real property of the Facilities, waste flows, potential revenue and applicable law. The Proposer's receipt of the County-furnished information does not relieve the Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that the Proposer has made the above-described examination and is satisfied as to all matters and conditions to be encountered and as to the requirements of the Contract Documents.

2.7.2 Access to the Facilities

Proposers may be allowed limited physical access, through the Proposal Due Date, to the Facilities, subject to the terms and conditions of a right of entry agreement satisfactory to the County, for purposes of reviewing operations, inspecting in-place assets and determining site conditions, including through non-destructive, non-intrusive investigations (such as sample collection or soil borings).

2.8 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the divestiture process in any of the documents supplied by the County, the Proposer shall have a duty to notify the County of the recommended correction in writing in accordance with Section 2.3.1.

2.9 Improper Conduct; Organizational Conflicts of Interest

2.9.1 Non-Collusion

Neither the Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form C).

2.9.2 Equitable Treatment of Proposers

Proposers are assured that, during the divestiture process (including the process for evaluation of Proposals), the County will make every reasonable effort to treat Proposers equitably.

2.9.3 Organizational Conflicts of Interest

The firms identified in Section 2.2.3(c)(iii) are ineligible to advise, assist, propose or join a Proposer team.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer will make an immediate and full written disclosure to the County that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the divestiture process, the County may, at its discretion, disqualify the Proposer. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose exists and the Proposer has entered into a purchase and sale agreement as the Purchaser, the County may terminate the

purchase and sale agreement. In either case, the County reserves all legal rights and remedies.

By way of illustration but without limiting the generality of the foregoing, an organizational conflict of interest may exist if a Proposer or Proposer team member or advisor has previously worked, or is currently working, for the County in connection with any of the Facilities. Utilization of certain of the County's consultants identified in, and in accordance with the terms of, the e-mail communication from Jay Jasperse on May 22, 2008, shall not be considered an organizational conflict of interest and need not be disclosed.

Proposers are also advised that the County's conflict guidelines in this RFP are intended to augment applicable law, including conflict of interest laws and rules.

2.10 Changes in Proposer's Organization

In order for a Proposer to remain qualified and eligible to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by the County, the Proposer's organization as identified in the SOQ must remain intact for the duration of the divestiture process. If a Proposer wishes to make changes in the Proposer team identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, the Proposer shall submit to the County a written request for approval of the change from the County as soon as possible but in no event later than 30 days before the Proposal Due Date. Any such request shall be addressed to the County at the address set forth in Section 2.2.1 herein, accompanied by the information specified for such entities or individuals in the SOQ. If a request is made to allow deletion of any Proposer team identified in its SOQ, the Proposer shall submit such information as may be required by the County to demonstrate that the changed team meets the RFQ criteria and will be able to deliver a compliant, responsive Proposal. The Proposer shall submit an original and ten copies of each such request package. The County is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein, a Proposer may not make any changes in the Proposer team identified in its SOQ after 30 days before the Proposal Due Date. Between such date and execution of the Contract, the County, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control or otherwise in the sole discretion of the County.

2.11 Single Purpose Entities; Guarantees

The County shall permit a Proposer to identify an entity other than the Proposer to act as Purchaser either in its Proposal, prior to execution of the Contract or after execution of the Contract (subject to the terms thereof). If the Proposer or the entity is a newly formed entity, a single purpose or single asset entity, a limited liability entity, an entity that does not have separate audited financials or is not the ultimate parent entity of its corporate organization, the Proposer may, in the sole discretion of the County, be

required to provide a guarantor acceptable to the County (which guarantor must be the ultimate parent company of such entity), which shall be required to execute the guaranty attached to the form of Contract. A guaranty shall also be required, in the County's sole discretion, (i) if so indicated by the County in conjunction with shortlisting of such Proposer in response to the RFQ; (ii) in the event of any material change in the financial condition of the Proposer or a guarantor between submission of the SOQ and execution of the Contract; or (iii) if the Proposer has not at any time, in the County's sole discretion, demonstrated that it will have the financial means to fulfill its obligations under the Contract Documents, including those that occur after financial closing of the divestiture.

If the entity is identified in the Proposal, the Proposal Security shall have to be provided to cover such entity. If the entity is identified prior to execution of the Contract, the Proposal shall be binding on such entity, the Proposal Security shall have to be amended to cover such entity and the original Proposer shall not be released from any obligations. If the entity is identified after execution of the Contract, the Proposer shall use the form of Assignment of Purchase Agreement attached to the Contract to effect such assignment and otherwise shall be subject to the requirements, terms and conditions of the Contract.

If an entity identified as the Purchaser in the successful Proposal is not formed as contemplated herein, or fails to comply with the requirements set forth herein, the entity(ies) that signed the Proposal shall have the obligation either to enter into the Contract itself or to provide a substitute Purchaser acceptable to the County, in its sole discretion.

SECTION 3.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY THE COUNTY

3.1 General Submittal Requirements

Each Proposal shall include the Proposer Forms meeting the requirements of Exhibit B and a Financial Proposal meeting the requirements set forth in Exhibit C.

3.1.1 Proposal Due Date

The completed Proposal shall be delivered in sealed containers no later than the Proposal Due Date. The relevant time, for purposes of determining the Proposal Due Date, shall be that which is on the clock in the reception area of the County's Department of Transportation and Public Works.

3.1.2 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by the Proposer and all Equity Participants and shall be accompanied by evidence of signatory authorization as specified in Form A.

3.1.3 Certified Copies

Where certified copies of the Proposal are required, the Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer's Authorized Representative.

3.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if the County determines that the Proposer did not follow the foregoing instructions. It is the Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time due shall be rejected without consideration or evaluation.

3.2 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP. If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits and forms, it may be disqualified.

Each Proposal must be submitted in the official format which is specified by the County in this RFP. The Proposer shall sign the original copy of the Proposal submitted to the County. Multiple or alternate proposals may not be submitted; provided, however, that

Proposers may provide Contract Comments as described herein and such Contract Comments shall not be considered a multiple or alternate proposal.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

(i) If the Proposal is submitted in a paper form or on a disk other than that specified by the County; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;

(ii) If the County determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;

(iii) If multiple or alternate Proposals are submitted or if the Proposal includes any conditions, exclusions, assumptions or provisions reserving the right to accept or reject an award or to enter into a Contract following award;

(iv) If the Proposer attempts to limit or modify the Proposal Security, if the Proposal Security (see Exhibit B, Section 2.2) is not provided, and/or if requested information deemed material by the County is not provided; and

(v) Any other reason the County determines the Proposal to be non-compliant.

3.3 Format

Legibility, clarity, accuracy and completeness of the Financial Proposal are essential.

Submittals must be bound with all pages in a binder sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than twelve-point.

3.4 Additional Requirements for Proposal Delivery

The completed Proposal shall be delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.6.1. They are to be delivered to the County at the following address:

County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Suite B100
Santa Rosa, California 95403
Attn: Jay Jasperse

Each binder of the Proposal shall be labeled to indicate its contents. The original Financial Proposal shall be clearly identified as "original"; copies of the Proposals shall be sequentially numbered, labeled and bound.

3.4.1 Proposal Forms and Financial Proposal

All of the binders comprising the Proposal Forms and the Financial Proposal, together with an electronic copy on one or more CDs setting forth the Proposal Forms and the Financial Proposal, shall be packaged in one or more segregated containers, clearly addressed to the County as provided herein, and labeled “[Proposer Name]: Proposal Forms and Financial Proposal for the County of Sonoma Solid Waste Divestiture.” The Proposer shall provide 10 copies of the Proposal Forms and Financial Proposal.

The electronic copy shall be in Adobe Acrobat (.pdf) format on CD(s); provided, however, that corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

3.4.2 Proposal Security

One original and three certified copies of the Proposal Security shall be provided with the Proposal Forms and the Financial Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the County of Sonoma Solid Waste Divestiture.”

3.4.3 Contract Comments

If the Proposer wishes to submit Contract Comments, all of the binders comprising the Contract Comments, together with an electronic copy on one or more CDs setting forth such comments, shall be packaged and sealed in one or more segregated containers, clearly addressed to the County as provided herein, and labeled “[Proposer Name]: Contract Comments for the County of Sonoma Solid Waste Divestiture.” The CDs must include the Contract Comments in pdf and Word formats. The Proposer shall provide 10 copies of the Contract Comments.

The format and instructions for Contract Comments shall be as set forth in Exhibit D.

3.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only.

3.6 Modifications, Withdrawals and Late Submittals

3.6.1 Modifications to a Proposal

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date if it has submitted its Proposal prior to the Proposal Due Date. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If

multiple modifications are submitted, they shall be sequentially numbered so the County can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits C and D. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

3.6.2 Withdrawal and Validity of Proposals

The Proposer may withdraw its Proposal that has been submitted prior to the Proposal Due Date at any time prior to the time due on the Proposal Due Date by means of a written request signed by its Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by the County upon the Proposal Security. Proposals shall initially be valid for a period of 180 days after the Proposal Due Date. Such 180-day period shall be automatically extended by the apparent highest ranked Proposer and any other Proposer with which the County has commenced negotiations for an additional 90 days if directed by the County. In addition, a Proposer shall not withdraw its Proposal, which shall remain valid, for an additional 90 days (270 days from the Proposal Due Date), if notified by the County that it is selected for negotiation or execution of the Contract within such 180-day period. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

3.6.3 Late Proposals

The County will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to the Proposer without consideration or evaluation.

3.7 Forfeiture of Proposal Security; Relief from Obligation to Close By Specified Deadline

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security (i) if, other than as expressly permitted by Section 3.6.2, the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet any commitments made in its Proposal; (ii) if it fails to extend the Proposal Security as required under Section 3.6.2 or Exhibit B, Section 2.2; (iii) if the Proposer is selected as the apparent highest ranked Proposer (or is otherwise selected for execution of the Contract Documents) and (A) execution of the Contract Documents does not occur by the deadline specified herein, (B) the conditions to award set forth in Section 5.1 have not been satisfied by such Proposer (including the payment of the Deposit) by the deadline specified herein; (C) the Proposer fails to submit the documents and items in accordance with Section 4.8 or Section 5.2; or (D) if the guarantor, if any, does not execute the required guaranty by the deadline specified herein, unless such failure is directly attributable to the County's election not to enter into the Contract Documents in the form included with the RFP (with such changes as are (1) necessary to fill in blanks.

~~(2) or as are~~ expressly indicated in the RFP to be inserted from Proposer's Proposal to the Contract Documents, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (3) necessary to address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date; or (iv) if the Proposer is selected as the apparent highest ranked Proposer (or is otherwise selected for negotiation of the Contract Documents) and the Proposer does not engage in negotiations, if any, in good faith as set forth in Section 4.11.

For purposes of this Section 3.7, Proposer's obligation to achieve "execution of the Contract Documents" shall be satisfied when Proposer has executed and delivered to the County the Contract Documents and all documents required hereby, including the documents described in Section 5.2, and provides the Deposit Letter of Credit as required under the Contract Documents.

Any Proposal that contains a material alteration, as determined by the County, in its sole discretion, to the ITP forms or exhibits, including any material alteration to the form of Proposal Security (Form E), may be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by the County will not be considered material. If a Proposal is deemed non-responsive or non-compliant, the County may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

Each Proposer, by submittal of its Proposal, is deemed to have agreed to the foregoing.

3.8 Acceptance of Delivery by the County

The County will provide a receipt for Proposals that are timely delivered to the County as specified herein.

3.9 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before award and execution of the Contract, including costs incurred for any interviews, and costs relating to the finance process, shall be borne by the Proposer. The foregoing shall apply in all instances, including if no award occurs.

SECTION 4.0 EVALUATION AND POST-SELECTION PROCESS.

The County's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this divestiture.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, followed by an evaluation of the Financial Proposal and Contract Comments, if any. The process may include a request for Best and Final Offers, and may, in the County's sole discretion, include a negotiations phase

with the selected Proposer. The evaluation and selection process is subject to modification by the County, in its sole discretion.

The evaluation process will involve the following steps:

1. On or around August 26, 2008, the County Board of Supervisors will receive the Proposals in an open, public meeting and will refer the Proposals to the Assistant County Administrator or his designee for processing and evaluation. Proposals will not be opened or reviewed at this meeting.
2. A County evaluation committee will:
 - (a) evaluate the Proposals and determine which Proposer has offered the apparent highest ranked Proposal, based on the specific evaluation criteria set forth herein and
 - (b) provide a recommendation to the Assistant County Administrator regarding the apparent highest ranked Proposal and whether any other Proposers should also be selected for negotiations on the basis of their Proposal and Contract Comments.
3. The Assistant County Administrator will (i) review and consider the recommendations from the County evaluation committee, (ii) authorize staff to notify the apparent highest ranked Proposer and (iii) determine whether the County shall select any other Proposers for negotiations. With the apparent highest ranked Proposer and any other Proposers selected for potential negotiations, the County, in its sole discretion, may commence negotiations with such Proposer(s) pursuant to Section 4.11 (provided, however, that, if the form of the HHW Lease, the Agency Agreement or the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date has materially changed since the Proposal Due Date, the County shall negotiate the impact, if any, of such change(s) on the Proposer's Proposal). The County may engage in simultaneous or sequential negotiations with more than one Proposer.
4. If the County elects to have negotiations and such negotiations are successful with a Proposer, such Proposer will be required to execute the Contract Documents in their negotiated form. If the County does not wish to engage in negotiations or at any time during the negotiations or before the commencement of negotiations, the County may require that the Proposer execute the Contract Documents in the form included with this RFP (except to (i) fill in blanks; ~~and (ii)~~ include information that the form of Contract Documents indicate is required from the Proposal, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (iii) address the impact, if any, of any material change (if any) to the form of the HHW

Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date).

5. After receipt of executed copies of the Contract, the Assistant County Administrator will provide a recommendation for award to the County Board of Supervisors. If approved, the County Board of Supervisors will pass an ordinance ~~resolution~~ approving the award of the Contract to the Proposer and authorize execution by the County of the Contract.
6. The County Board of Supervisors will have the right to approve, reject or modify the recommendations brought before it.

The details of the evaluation and selection process are set forth more fully in this Section 4.

4.1 Organization of the County Evaluation Committees

Evaluation of Proposals will be conducted by the County's Evaluation and Selection Recommendation Committee ("ESRC") with assistance from two separate subcommittees: a Proposal Forms Pass/Fail and Responsiveness Subcommittee and a Financial Proposal Pass/Fail and Responsiveness Subcommittee.

The ESRC will be comprised of and chaired by representatives from the County, and other qualified individuals, at the sole discretion of the Assistant County Administrator. In addition to voting members, the ESRC may also be assisted by advisors, including County representatives and outside consultants who will offer advice on the financial and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the ESRC in making an educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, in the County's sole discretion, observers from other agencies with specific interests and responsibilities associated with the Divestiture may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements.

4.2 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Proposal Forms and the Financial Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittees. They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposal that fails to achieve a passing score on any of the pass/fail portions of the evaluation will not be eligible for recommendation for award. Responsiveness shall be assessed on the basis of overall responsiveness, with the County retaining the sole discretion to disregard or waive minor irregularities, omissions, nonconformities and discrepancies.

4.2.1 Proposal Forms

The Proposal Forms will be evaluated based on the following pass/fail criteria:

(a) The business form of the Proposer, the proposed Purchaser, and any entities that will have joint and several liability under the Contract or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation bylaws or equivalent documents) is consistent with the requirements of the Divestiture and Contract Documents.

(b) The information, certifications, signed statements and documents as listed in Exhibit B, Section 2.1 are included in the Proposal and do not identify any material adverse information.

(c) The Proposer has delivered Proposal Security in the form of a complete, properly executed letter of credit that complies with the requirements of Exhibit B, Section 2.2.

4.2.2 Financial Proposals

Financial Proposals will be evaluated based on the following pass/fail criteria:

(a) The Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer continues to have the financial capacity to complete the Divestiture and perform its obligations under the Contract Documents. Factors that will be considered in evaluating the Proposer's financial capacity include the following:

- (i) Profitability;
- (ii) Capital structure;
- (iii) Ability to service existing debt;
- (iv) Ability to invest equity; and
- (v) Other commitments and contingencies.

If the County determines that a Proposer does not appear to have the financial capability to fulfill its obligations under the Contract Documents, it may offer the Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to the County.

(b) If a guarantor is required pursuant to Section 2.11 of this RFP or otherwise, such guarantor has irrevocably committed in writing to execute the form of guaranty attached to the Contract.

Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

4.2.3 The County's Right to Exclude Proposals from Consideration or to Waive Mistakes

Those Proposals not responsive to this RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and the Proposer will be so advised. The County may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. The County reserves the right to waive non-material informalities, irregularities, discrepancies, omissions and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

4.3 Financial Proposal and Contract Comment Evaluations

The ESRC will evaluate the Financial Proposal and Contract Comments to determine the best overall value to the County. The "overall value" will be determined by assessing the Initial Purchase Price, the Net Present Value of the System Royalty, the Tip Fee Schedule and the Minimum Flow Commitment, as well as any Contract Comments that would modify the ~~financial aspects of the~~ Proposal. The apparent highest ranked Proposer shall be the Proposer that, in the County's sole discretion, provides the County with the best overall value and package, taking into account the Initial Purchase Price, the Net Present Value of the System Royalty, the Tip Fee Schedule, the Minimum Flow Commitment and any Contract Comments. The County may select an apparent highest ranked Proposer (or any other Proposer to negotiate with) that does not provide (i) the highest aggregate Initial Purchase Price and Net Present Value of the System Royalty; (ii) the lowest Tip Fee Schedule; (iii) the lowest Minimum Flow Commitment; (iv) the most favorable Contract Comments; or (v) any combination of the foregoing. In addition, even though Contract Comments will be evaluated, the County reserves the rights to disregard some or all of the Contract Comments, as more particularly described in Section 4.4.

For purposes of determining the dollar amounts of the Initial Purchase Price and the System Royalty, the Initial Purchase Price will not be discounted as it will be paid at close of escrow under the Contract Documents. The Net Present Value of the System Royalty shall be determined using a discount rate of 6%. The Landfill Royalty shall not be considered for purposes of evaluation of the best overall value, except to the extent it is addressed and modified in Contract Comments.

PROPOSERS ARE ADVISED THAT THE AMOUNTS PROPOSED FOR THE SYSTEM ROYALTY AND TIP FEE SCHEDULE WILL BE ASSESSED IN THE FOREGOING MANNER FOR EVALUATION PURPOSES ONLY. ACTUAL AMOUNTS OF THE SYSTEM ROYALTY PAYABLE UNDER THE CONTRACT DOCUMENTS MAY DIFFER FROM THE AMOUNTS PROPOSED AND WILL BE BASED ON ACTUAL TONNAGE OF WASTE (AS MORE PARTICULARLY DESCRIBED IN THE CONTRACT), NOT THE ASSUMED TONNAGE OF WASTE SET FORTH IN FORM D. REFER TO SECTION 6.16, SECTION 6.17, SCHEDULE 6.17 AND EXHIBIT N OF THE CONTRACT FOR CERTAIN PROVISIONS CONCERNING TIP FEES, TIERING OF TIP FEES AND THE PAYMENT OF TIP FEES. SIMILARLY, THE TIP FEES PAYABLE BY THE COUNTY AND/OR CITIES THAT COMMIT THEIR WASTE SHALL BE BASED ON ACTUAL TONNAGE OF WASTE.

No consideration will be given to the anticipated date of close of escrow in calculating the net present value of the financial offers.

4.4 Contract Comments

As part of its evaluation of the Proposals, the ESRC shall open and review any Contract Comments submitted by the Proposers. In all cases, the Contract Comments submitted by a Proposer must represent the full and comprehensive set of issues and provisions that the Proposer wishes to negotiate should it be selected for negotiations.

Should a Proposer be selected for negotiations of a final form of the Contract, it shall only be entitled to negotiate on the basis of the Contract Comments submitted. Attempts to introduce material additional issues outside of the Contract Comments may, in the County's sole discretion, result in termination of negotiations and shall be considered bad faith negotiations, resulting in forfeiture of the Proposal Security.

If a Proposer is selected as the apparent highest ranked Proposer or otherwise selected for negotiations, the County may elect to have negotiations with the Proposer on the basis of some or all of such Contract Comments or it may elect to require that the Proposer execute the Contract Documents in the form included with this RFP (except to (i) fill in blanks; and (ii) include information that the form of Contract Documents indicate is required from the Proposal, such as the Initial Purchase Price, System Royalty, the Tip Fee Schedule, the Minimum Flow Commitment and the name of the Proposer entity; and (iii) address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date). If the County elects to engage in negotiations and such negotiations are successful, the Proposer will be required to execute the Contract Documents in their negotiated form. If the County does not wish to engage in negotiations or at any time during the negotiations or before the commencement of negotiations, the County may require that the Proposer execute the Contract Documents in the form included with this RFP (except to (1) fill in blanks; and (2) include information that the form of Contract Documents indicate is required from the Proposal, such as the Initial Purchase Price, System Royalty, the Tip Fee Schedule, the Minimum Flow Commitment and the name of the Proposer entity; and (3) address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date). Should the Proposer and the County not agree on modifications to the Contract Documents based on the Proposer's Contract Comments, such Proposer shall remain obligated to execute the Contract Documents in the form included with this RFP (except to (A) fill in blanks; (B) and include information that the form of Contract Documents indicate is required from the Proposal, such as the Initial Purchase Price, System Royalty, the Tip Fee Schedule, the Minimum Flow Commitment and the name of the Proposer entity; and (C) address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date) and failure to do so shall result in forfeiture of such Proposer's Proposal Security.

The County encourages the submission of Contract Comments related to enhanced waste diversion and climate protection, as well as those Contract Comments that improve the overall value and package of Proposer's Financial Proposal and which address and help achieve the County's goals for Divestiture (refer to Section 1.2 of the ITP).

4.5 Requests for Clarification

The County may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two business days from receipt of the request (or such other time as is specified by the County). The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, the County.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

4.6 Requests for Best and Final Offers

The County may, at any time after receipt of Proposals and prior to award and execution of the Contract, determine that it is appropriate to request changes to the Proposals ("Best and Final Offers" or "BAFOs"). If the County elects to request BAFOs, they shall be requested from all responsive Proposers that have passed the pass-fail criteria set forth in Section 4.2. The request for BAFOs will identify any revisions to the RFP and will specify terms and conditions applicable to the BAFO, including identifying a time and date for delivery. In the event that BAFOs are requested, the term "Proposal," as used in the RFP Documents, shall mean the original Proposal, as modified by the BAFO.

Upon receipt of BAFOs, the ESRC, with assistance from the subcommittees, as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

4.7 Identification of Apparent Highest Ranked Proposal and Other Proposers for Negotiations and/or Execution

Once the ESRC has determined the overall value of each Proposal and assigned rankings to the Proposals based on the overall value, ESRC will present its recommended rankings to the Assistant County Administrator. A responsive Proposal that passes all pass/fail criteria and has the best overall value shall be assigned the highest ranking. The Assistant County Administrator will (i) review and consider the recommendations from the ESRC, (ii) authorize staff to notify the apparent highest ranked Proposer and (iii) determine whether the County shall select any other Proposers for negotiations. With the apparent highest ranked Proposer and any other Proposers selected for potential negotiations, the County may, in the County's sole

discretion, commence negotiations with such Proposer(s) pursuant to Section 4.11; provided, however, that, if the form of the HHW Lease, the Agency Agreement or the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date has materially changed since the Proposal Due Date, the County shall negotiate the impact, if any, of such change(s) on the Proposer's Proposal. The County may engage in simultaneous or sequential negotiations with more than one Proposer. If the County elects to have negotiations and such negotiations are successful with a Proposer, the Proposer will be required to execute the Contract Documents in their negotiated form. If the County does not wish to engage in negotiations or at any time during the negotiations or before the commencement of negotiations, the County may require that the Proposer execute the Contract Documents in the form included with this RFP (except to (1) fill in blanks; and (2) include information that the form of Contract Documents indicate is required from the Proposal, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (3) address the impact, if any, of any material change (if any) to the form of the HHW Lease, Agency Agreement and PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date.) After receipt of executed copies of the Contract Documents, the Assistant County Administrator will provide a recommendation for award to the County Board of Supervisors. The County Board of Supervisors will consider the recommendation and may award the Contract.

4.8 Documents to be Submitted Following Notification of Apparent Highest Ranked Proposer or of Commencement of Negotiations

As a condition precedent to award of the Contract, the Proposer identified as the apparent highest ranked Proposer and any other Proposer selected for negotiations shall deliver the following to the County, for the County's review and approval, within 7 days after notification that it is the apparent highest ranked Proposer (or has been selected for negotiations):

(a) Evidence of authority to transact business in the State of California for all members of the Proposer's team that will transact business in the State, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in California along with a Certificate of Good Standing from the state of organization of the member; (ii) a Certificate of Good Standing from the California Secretary of State; or (iii) other evidence acceptable to the County; and

(b) If not previously submitted, a copy of the final organizational documents for the Proposer and, if the Proposer is a limited liability company, partnership or joint venture, for each member or partner of the Proposer. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal; and

(c) If security or a guaranty for the Proposer's obligations under the Contract is required by the County pursuant to Exhibit C, Section 2.0, pursuant to Section 2.11 or otherwise, identification of the guarantor, which shall be acceptable to the County, in its sole discretion (if not already indicated by the County), who shall execute the form of

the guaranty attached to the Contract, and copies of the materials described in clauses (a)-(b) of this Section 4.8 with respect to the guarantor.

In addition, as a condition to award, the successful Proposer shall deliver drafts of the deliverables identified in Section 5.2, for pre-approval by the County. Failure to deliver such documents under this Section 4.8 shall result in forfeiture of the Proposer's Proposal Security.

4.9 County Comment on Post-Selection Deliverables

The County shall provide comments on any documents required to be delivered to the County pursuant to Section 4.8 for review and approval hereunder, within 14 days of the date of the County's receipt of such deliverable. The County shall have 7 days to review and respond to subsequent submittals of the deliverable.

4.10 Award of Contract

Award of the Contract is conditioned upon (a) receipt by the County of all of the documents and payments required to be provided prior to execution of the Contract under Section 4.8 and Section 5.2, (b) delivery by the Proposer of the Deposit Letter of Credit as required by the Contract Documents; and (c) any other conditions required by the County Board of Supervisors.

The County Board of Supervisors decision regarding award of the Contract shall be final.

4.11 Finalization and Negotiation of Contract Documents

If authorized by the Assistant County Administrator, the County will proceed with the apparent highest ranked Proposer to finalize the Contract Documents, which shall ~~constitute~~ include (i) filling in the blanks in the Contract Documents and the information expressly indicated in the RFP to be inserted from Proposer's Proposal into the Contract Documents, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (ii) addressing the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date.

As set forth in Section 4.4, the County may agree to negotiate various aspects of the Contract Documents with the apparent highest ranked Proposer and any other Proposer selected for negotiations based on their respective Contract Comments; however, any decision to commence, continue or terminate negotiations regarding the terms of the Contract Documents, as well as which terms may be negotiated, is at the County's sole discretion (provided, however, that, if the form of the HHW Lease, the Agency Agreement or the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date has materially changed since the Proposal Due Date, the County shall negotiate the impact, if any, of such change(s) on the Proposer's Proposal). The

County may engage in simultaneous or sequential negotiations with more than one Proposer.

By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, without negotiation or variation, except to (i) fill in blanks and include information that the form of Contract indicates is required from the Proposal, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (ii) address the impact, if any, of any material change (if any) to the form of the HHW Lease, Agency Agreement and PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date.

If the County elects to negotiate various aspects of the Contract Documents and a Contract satisfactory to the County cannot be negotiated with a Proposer, the County may formally end negotiations with that Proposer and take action consistent with the direction provided by the Assistant County Administrator. Such action may include (a) requiring such Proposer to execute the Contract Documents in the form included with this RFP (except to (i) fill in blanks and include information that the form of Contract Documents indicate is required from the Proposal, such as the Initial Purchase Price, System Royalty, Tip Fee and the name of the Proposer entity; and (ii) address the impact, if any, of any material change (if any) to the form of the HHW Lease, Agency Agreement and PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date); (b) rejection of all Proposals, or (c) undertaking such other actions reserved by the County hereunder or otherwise available under applicable law.

In the event the County elects to commence negotiations with a Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with the County and shall forfeit its Proposal Security as set forth in Section 3.7 if the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with the County or insists upon terms or conditions for any documents to be negotiated or provided by the Purchaser hereunder, that are inconsistent with the Contract Documents or their Contract Comments (including by attempting to introduce material additional issues outside of the Contract Comments).

SECTION 5.0 AWARD AND EXECUTION; POST-EXECUTION ACTIONS

5.1 Award, Execution and Delivery of Contract Documents

If a Proposer has not already executed the Contract Documents pursuant to this RFP, upon the successful completion of negotiations (if any), and finalization of the Contract Documents and satisfaction of all conditions to award specified in this ITP other than this Section 5.1, the County will deliver four sets of execution copies of the Contract to the selected Proposer along with a number of sets of execution copies as reasonably requested by the Proposer. The selected Proposer shall execute and deliver all such execution copies to the County within 7 days of receipt, together with the required documents described in Section 5.2 below, and provide the Deposit Letter of Credit as required by the Contract Documents. If the Proposer is a joint venture or a partnership, the Contract must be executed by all joint venture members or general partners, as applicable. The County will then schedule a meeting of the County Board of Supervisors at which the Board of Supervisors will review the recommendations of the Assistant County Administrator and the Contract Documents and make its decision on whether to award the Contract. If the Board of Supervisors approves the award, it shall pass an ordinance resolution and authorize the County to execute the agreements, retain four sets and deliver the other executed sets to the Proposer. Award shall be deemed to have occurred upon delivery of the fully executed sets to the Proposer.

5.2 Documents To Be Delivered By Proposer With Executed Contract

The Proposer with whom the County chooses to execute the Contract shall deliver the documents listed below to the County concurrently with the executed sets of the Contract, as a condition to execution of the Contract by the County. In addition to such documents, the Proposer shall provide the Deposit Letter of Credit as required under the Contract Documents. On or before the date that the County delivers the execution sets of the Contract to the Proposer, the County shall notify the Proposer regarding the number of originals and copies required to be delivered. Failure to deliver the Deposit Letter of Credit, executed sets of the Contract and such documents under this Section 5.2 shall result in forfeiture of the Proposer's Proposal Security.

(a) Evidence of approval of the final form of the Contract, and of due authorization, execution, delivery and performance, by the Proposer and (if the Proposer is a joint venture) by its joint venture members. Such evidence shall be in form and substance satisfactory to the County. If the Proposer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s) resolution, certified by an appropriate officer of the managing

member(s), or (3) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member.

(b) A written opinion from counsel for the Proposer and the guarantor, if any, which counsel shall be approved by the County (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., Proposer, joint venture member, etc.) and the qualification to do business in California and the enforceability opinion shall be provided by an attorney licensed in the State of California), in substantially the form attached hereto as Form F (with such changes as agreed to by the County, in its sole discretion), provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware but who will issue an opinion under Delaware law;

(c) Executed escrow agreement (in a form and with an escrow company approved by the County);

(d) If security or a guaranty for the Proposer's obligations under the Contract is required by the County pursuant to Exhibit C, Section 2.0, pursuant to Section 2.11 or otherwise, executed guarantees from Guarantor(s) in the form attached to the Contract and the materials described in clause (a) with respect to the guarantor and the guaranty;

(e) Any documents or other deliverables required as a condition to execution and effectiveness of the Contract; and

(f) Any other requirements determined during pre-award finalization of Contract Documents.

SECTION 6.0 PROTESTS

6.1 Applicability

This sets forth the exclusive protest remedies available with respect to this RFP and prescribes exclusive procedures for protests regarding:

(a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the Divestiture, exceed the County's authority or otherwise arise out of or relate to the RFP or Divestiture (and which are not addressed in Sections 6.1(b) and (c) below);

(b) a determination as to whether a Proposal is responsive to the requirements of the Request for Proposals, as applicable; and

(c) award of a Contract.

6.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 6.1(a) may be filed only after the Proposer has informally discussed the nature and basis of the protest with the County, following the procedures for those discussions prescribed in the RFP. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to the County Authorized Representative. The written request should include an agenda for the proposed one-on-one meeting. The County will meet with the Proposer as soon as practicable to discuss the nature of the allegations.

6.3 Deadlines for Protests

6.3.1 Protests concerning the issues described in Section 6.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five business days after the Addendum is issued.

6.3.2 Protests concerning the issues described in Section 6.1(b) must be filed no later than 5 business days after receipt of the notification of non-responsiveness.

6.3.3 Protests concerning the issues described in Section 6.1(c) must be filed no later than 10 days after the earliest of the notification of the public meeting at which the Contract will be awarded, and notification of the apparent highest ranked Proposer.

6.4 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient

detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

6.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 2.2.1 above. A protest must be accompanied with a cashier's check, to be held as a deposit, in the amount of \$25,000. The County may distribute the protest to any other Proposer.

6.6 Comments from other Proposers

In the event County distributes the protest to other Proposers, such other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. The County shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

6.7 Burden of Proof

The protestant shall have the burden of proving its protest. The County may, in its sole discretion, discuss the protest with the protestant and other Proposers. Except as otherwise provided herein, no hearing will be held on the protest. The protest shall be decided on the basis of written submissions, unless the County decides to permit a hearing before the County Administrator or his designee, in which case, the protest will be decided on the basis of the written submissions and finding of the County Administrator or his designee following the hearing.

6.8 Decision on Protest

The County Administrator or his designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest, or if the County Administrator determines to hold a hearing, within 30 days after the date of the hearing. If necessary to address the issues raised in a protest, the County may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda. The decision of the County Administrator or his designee shall be the final decision by the County. The procedure and time limits set forth in this Section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including filing claim under the government claims procedures in the Government Code claim or other legal proceedings. Failure to strictly follow these procedures shall irrevocably and unconditionally constitute a waiver of any further rights to dispute the County's decisions and determinations made during the RFP and Divestiture process.

6.9 Protestant's Payment of Costs

If a protest is denied, the Proposer filing the protest shall be liable for the County's costs reasonably incurred to defend against or resolve the protest, including legal and

consultant fees and costs, and any unavoidable damages sustained by the County as a consequence of the protest. Proposer's liability for damages shall not be limited to the \$25,000 deposit made pursuant to Section 6.5.

6.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 6.0, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section, it shall indemnify and hold the County and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 7.0 COUNTY RIGHTS AND DISCLAIMERS

7.1 County Rights

The County may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform the Purchaser's obligations under the Contract Documents. The County reserves the right, in its sole discretion, to:

- (a) Reject any or all of the Proposals;
- (b) Modify any dates set or projected in this RFP and extend any deadlines;
- (c) Cancel, modify or withdraw the RFP in whole or in part;
- (d) Terminate this Divestiture and commence a new divestiture for part or all of the Facilities;
- (e) Terminate evaluations of Proposals received at any time;
- (f) Suspend and terminate negotiations at any time, elect not to commence Contract negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer;
- (g) Modify the Divestiture process (with appropriate notice to Proposers);
- (h) Waive or permit corrections to data submitted with any response to this RFP until such time as the County declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (i) Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by the County until such time as the County declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (j) Appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (k) Disclose information contained in a Proposal to the public as described herein;
- (l) Approve or disapprove changes in the Proposer's organization;
- (m) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

- (n) Disqualify any Proposer that violates the terms of the RFP;
- (o) Select a Proposer for negotiations or execute Contract Documents with a Proposer that does not provide (i) the highest aggregate Initial Purchase Price and Net Present Value of the System Royalty; (ii) the lowest Tip Fee Schedule; (iii) the lowest Minimum Flow Commitment; (iv) the least Contract Comments; or (v) any combination of the foregoing;
- (p) Enter into simultaneous or sequential negotiations with more than one Proposer;
- (q) Enter into negotiations, execute Contract Documents and close escrow with any Proposer if the transaction with the selected Proposer does not close pursuant to the terms of the Contract Documents, whether as a result of falling out of escrow or otherwise; and
- (r) Exercise any other right reserved or afforded to the County under this RFP and applicable law.

7.2 County Disclaimers

This RFP does not commit the County to enter into a contract. The County assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall the County be bound by, or liable for, any obligations with respect to the Divestiture until such time (if at all) as the Contract Documents, in form and substance satisfactory to the County, has been authorized and executed by the County and, then, only to the extent set forth therein. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

Exhibit A

DEFINITIONS AND ACRONYMS

“**Act**” means the California Public Records Act, California Constitution Article I, Section 3 and California Government Code Section 6250 *et seq.*

“**Addenda/Addendum**” means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

“**Best and Final Offer**” has the meaning set forth in ITP Section 4.6.

“**Contract**” means the Purchase and Sale Agreement to be entered into between the successful Proposer (Purchaser) and the County.

“**Contract Comments**” means optional comments to the Contract submitted by a Proposer pursuant to ITP Exhibit D.

“**Equity Participant**” means (a) each entity with a direct equity interest in the Proposer (whether as a member, partner, joint venture member, or otherwise), (b) each entity proposed to have a direct equity interest in the Purchaser, and (c) each entity that will hold a 10% or greater indirect interest in the Proposer. Notwithstanding the foregoing, if the Proposer is a publicly traded company, shareholders with less than a 10% interest in the Proposer shall not be considered Equity Participants.

“**Evaluation and Selection Recommendation Committee**” or “**ESRC**” means the committee that will review and evaluate the Proposals and make a recommendation to the Assistant County Administrator as set forth in ITP Section 4.0.

“**Financial Proposal**” means the portion of the Proposal as described in ITP Exhibit C.

“**Instructions to Proposers**” or “**ITP**” means those documents, including exhibits and forms in Exhibit E, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

“**Minimum Flow Commitment**” means the Tons of Waste per day, based on a 260 calendar day year, proposed by a Proposer on Form H, which amount indicates the Tons of Waste that the Proposer requires to be committed by the Cities as a condition to the effectiveness of the Contract, as set forth in Section 1.3 of the Contract.

“**Overall value**” has the meaning set forth in ITP Section 4.3.

“**Proposal Due Date**” means the deadline for submission of Proposals identified in ITP Section 1.6.1.

“**Proposal Forms**” means the portion of the Proposal as described in ITP Exhibit B.

“**Proposal Security**” means the letter of credit as described in Section 2.2 of Exhibit C to the ITP.

“**Proposer**” means the entity submitting a Proposal for the Divestiture in response to this RFP.

“**Proposer Authorized Representative**” has the meaning set forth in ITP Section 2.2.2

“**Request for Qualifications**” or “**RFQ**” means the County’s Request for Qualifications issued on November 7, 2007, as amended.

“**Request for Proposals**” or “**RFP**” means the set of documents identifying the Divestiture in response to which a Proposal may be submitted by a Proposer/Purchaser. The RFP includes the ITP, Contract Documents, and Reference Documents. The RFP is issued only to Proposers that have been shortlisted following RFQ review.

“**RFP Documents**” has the meaning set forth in ITP Section 1.4.

“**Statement of Qualification**” or “**SOQ**” means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by the County.

“**Tip Fee Schedule**” means the schedules for tip fees for Waste submitted by a Proposer pursuant to ITP Form G

For definitions of other initially capitalized terms, see the Contract Documents.

Exhibit B

PROPOSAL FORMS INSTRUCTIONS

1.0 General Instructions

This Exhibit B describes the submission format for the Proposal Forms.

The Proposer shall submit the information required by this Exhibit B in the organization and format specified herein. The Proposal Forms shall be organized in the order listed in Exhibit F, and shall be clearly indexed. Each component of the Proposal Forms shall be clearly titled and identified.

All forms named herein are found in Exhibit E unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms. Item B on page 6 of Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories.

2.0 Contents of the Proposal Forms

The required contents and organization of the Proposal Forms are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit F. Proposers are to provide all the information set out in this Exhibit B. The Proposal Forms shall not contain any information relating to the Financial Proposal.

The Proposal Forms shall consist of the following major elements:

(vi)(A) Proposer Information, Certifications, and Documents (including required Forms A-C); and

(vii)(B) Proposal Security.

2.1 Proposer Information, Certifications, and Documents

2.1.1 Proposal Letter

The Proposal shall include the Proposal Letter (Form A). The Proposer shall **attach include with to** the Proposal Letter evidence of authorization to execute and deliver the Proposal the Contract and all other documents required to be executed by the Proposer or Purchaser in connection with the Contract and award of the Contract, and shall identify its authorized representative(s).

2.1.2 Information About the Proposer

The Proposal shall include a completed Form B providing information about the Proposer and its team as specified therein.

The Proposal shall include copies of organizational documentation described in pages 5 and 6 of Form A for the Proposer, Purchaser and Equity Participants), as well as other documentation required by Form B. If any modification to the organizational documents for such entity is contemplated prior to award or, if the Proposer intends to form an affiliated entity to be the Purchaser, the Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in pages 5 and 6 of Form A) for such proposed entity.

2.1.3 Changes in Proposer's Organization

If the Proposer's organization has changed since submission of the SOQ, the Proposer shall specifically describe such changes and, if applicable, include a copy of the County's approval letter provided under ITP Section 2.10.

2.1.4 Non-Collusion Affidavit

Each Proposer and Equity Participant shall complete and submit a non-collusion affidavit (Form C).

2.1.5 List of Optional Assigned Contracts.

Each Proposer shall submit (a) a list identifying which of the contracts identified on Schedule 2.1(dD) of the Contract as "Optional Assigned Contracts" that it unconditionally elects and commits to treat as an Assigned Contract; and (b) a list identifying which of the contracts identified on Schedule 2.1(dD) of the Contract as "Optional Assigned Contracts with Third Party Consent" that it unconditionally elects and commits to treat as an Assigned Contract if the Third Parties thereto consent to such assignment. For those contracts listed pursuant to clause (b) by the successful Proposer, the County will attempt to obtain the required consents to assignment (but makes no guarantee with respect thereto and shall have no liability should it be unable to secure such consent). Unless and until a Proposer includes an optional contract on its list(s) submitted pursuant to this Section 2.1.5, a Proposer is not obligated to have such optional contracts assigned to it at Closing and may elect to do so in its sole discretion as part of this element of its Proposal. Schedule 2.1(dD) of the Contract shall be revised in connection with award and execution thereof to reflect the successful Proposer's election as set forth in its Proposal.

2.2 Proposal Security

An irrevocable standby letter of credit in the amount of One Million Dollars (\$1,000,000) shall be provided by the Proposer, which shall be substantially in the form of Form E issued by a financial institution with a credit rating of "A" or better according to Standard

& Poor's and with an office in California at which the letter of credit can be presented for payment or, alternatively, if the issuing bank does not have offices in California, the letter of credit may be submitted provided it is also confirmed by a financial institution with a credit rating of "A" or better according to Standard & Poor's having an office in California at which the letter of credit can be presented for payment. The County may draw against the letter of credit and the funds represented by the letter of credit shall be released to the County and become and remain the property of the County under the circumstances described in ITP Section 3.7, unless the Proposer is excused from performance as set forth in ITP Section 3.7. Each letter of credit will be retained until the Contract has been fully executed with a Proposer and the Deposit Letter of Credit has been received from such Proposer by the County or this RFP has been canceled, after which the letter of credit for each unsuccessful Proposer, except those letters of credit which have been drawn against, will be returned to the respective Proposers. The letter of credit for the successful Proposer shall be returned at such time as the Proposer has satisfied all conditions of award and execution, including payment of the Deposit and the other conditions set forth in ITP Section 5.1. A letter of credit submitted by a Proposer shall be valid for no less than 270 days after the Proposal Due Date.

Forfeiture of Proposal Security in accordance with Section 3.7 of the ITP will constitute liquidated damages. By submission of its Proposal, Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate the County for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Facilities, the County's solid waste program, with policy makers, with regulatory agencies and with the general public, delays to the Divestiture and additional costs of administering this or a new divestiture (including financial advisory, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Divestiture and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the County would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer.

Exhibit C

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C describes the submission format for financial proposals and outlines the required information that will comprise a Financial Proposal.

The Proposer shall submit the information required by this Exhibit C in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit F, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit E unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.1 Format of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts shall be clearly identified as real or nominal dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between the sum of individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial terms are to be included in the Financial Proposal.

The required contents and organization of the Financial Proposal are presented in this Exhibit C and summarized in the Proposal checklist provided in Exhibit F. Proposers are to provide all the information set out in this Exhibit C.

2.0 Financial Capacity Information

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the SOQ.

The Financial Proposal shall include the following information for the Proposer and all Equity Participants :

- Audited financial statements for all periods subsequent to those included in the SOQs, audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP).

- In addition, interim unaudited statements for the period since the most recent completed fiscal year for the Proposer and Equity Participants are to be provided.

The Financial Statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

1. Financial Statement information must include:
 - a. Opinion Letter (Auditor's Report)
 - b. Balance Sheet
 - c. Income Statement
 - d. Statement of Changes in Cash Flow

Footnotes audited by a certified public accountant in accordance with generally accepted accounting principles (GAAP).

2. Financial Statements must meet the following requirements:
 - a. **GAAP** – Financial Statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP). If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP.
 - b. **U.S. Dollars** - Financial statements must be provided in **U.S. dollars**. If financial statements are not available in U.S. dollars, the Proposer must include summaries of the Income Statements and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.
 - c. **Audited** – Fiscal year end financial Statements must be audited by an independent party qualified to render audit opinions (e.g. Certified Public Accountant). If audited financials are not available for an Equity Participant, the SOQ shall include unaudited financial statements for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.
 - d. **English** – Financial Statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all Financial Statement information must be accompanied with the original financial statement information.

3. Other information and requirements:

a. **Newly Formed Entity** - If the Proposer is a newly formed entity and does not have independent financial statements, financial statements for the Equity Participants shall be provided (and the Proposer shall expressly state that the Proposer is a newly formed entity and does not have independent financial statements).

b. **Guarantor Letter of Support** - If Financial Statements of a parent company or affiliate company ("Guarantor") are provided to demonstrated financial capability of the Proposer or Equity Participants, an appropriate letter from the Guarantor must be provided confirming that it will guarantee all the obligations of the Proposer or Equity Participants with respect to the Divestiture. Proposers shall note that the County may, in its discretion based upon the review of the information provided specify that an acceptable guarantor is required as a condition of shortlisting.

c. **SEC Filings** - If the team or any other entity for whom financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.

d. **Credit Ratings** - Appropriate credit ratings must be supplied for each Proposer and Equity Participant, and Guarantor to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.

e. **Material Changes in Financial Condition** - A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the SOQs and those that are pending. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date as such information becomes public.

The following list identifies certain items that the County would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of the County, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Divestiture development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately

for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Divestiture from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Material Changes

- A. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;
- B. A downward change in tangible net worth of 10% or more of shareholder equity;
- C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;
- D. A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;
- E. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- F. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity; and
- G. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material

change in financial condition since submission of the SOQs or may be pending for the next reporting period;

- f. **Off-Balance Sheet Liabilities** - A letter from the certified public accountant, chief financial officer, treasurer or certified public accountant for each entity for which financial information is submitted, identifying all material off balance sheet liabilities; and

The information required under this Section 2.0 shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer's organization (i.e., Equity Participant, lead design firm, subcontractor, etc.).

3.0 Payments to the County – Initial Purchase Price and System Royalty Offer Form

Proposers are required to **fully** complete the Initial Purchase Price and System Royalty Offer Form (Form D). The financial offer is to include an upfront payment (the Initial Purchase Price as described in the Contract Documents) to the County, payable at Closing, and an ongoing royalty stream (the System Royalty as described in the Contract), payable each month to the County as set forth in the Contract. Both payment amounts are to be provided in real U.S. dollars as of the Proposal Due Date.

4.0 Tip Fee Schedule

Proposers are required to fully complete the Tip Fee Schedules Form (Form G). The Tip Fee Schedules reflect the tip fees that the Proposer will commit to charge the County (for County-Controlled Waste) and the Committed Cities (for their respective Waste), as set forth in the Contract, during the periods (i) at which disposal of Waste is not allowed at the Landfill and (ii) at which disposal of Waste is allowed at the Landfill. Tip fee amounts are to be provided in real U.S. dollars as of the Proposal Due Date.

5.0 Minimum Flow Commitment.

Proposers are required to fully complete the Minimum Flow Commitment Form (Form H). The form indicates the minimum amount of Waste that the Proposer will require from the Cities to be committed in the manner described in Section 6.17 of the Contract (e.g., so such City will be considered a Committed City) before all elements of the Contract become effective and binding on the County and Purchaser (see Section 1.3 of the Contract). The amount of Tons of Waste proposed by Proposer on Form H is intended to solely reflect potential Waste commitments from the Cities and not County-Controlled Waste or Self-Haul Waste. Proposers should consider County-Controlled Waste and Self-Haul Waste in formulating the amount proposed on Form H, but such amounts will not be credited towards the "minimum flow commitment" indicated.

6.0 Verification

Each Proposer shall satisfy itself as to the revenues, costs and tax consequences of entering into a Contract and becoming a Purchaser. The County makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, costs or the consequences of federal or the state income tax treatment of Purchaser under the Contract.

Exhibit D

CONTRACT COMMENTS INSTRUCTIONS

1.0 General Instructions

This Exhibit D describes the submission format for the Contract Comments. See ITP Section 4.4 for the manner in which Contract Comments may be utilized, if at all.

Contract Comments are not a mandatory part of the Proposal and need not be submitted by the Proposer. Contract Comments will be evaluated as part of the evaluation of the Proposals; provided, however, that the County may disregard Contract Comments and require that the Proposer execute the form of the Contract included in the RFP (with such changes as are (i) necessary to fill in blanks; ~~or as are (ii)~~ expressly indicated in the RFP to be inserted from Proposer's Proposal to the Contract Documents, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (iii) necessary to address the impact, if any, of any material change (if any) to the form of the HHW Lease, Agency Agreement and PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date). Contract Comments shall not be considered an alternate Proposal and shall not be considered reservations, exclusions, conditions or assumptions to the Proposal. Proposer's submission of a Proposal shall be its unconditional agreement to enter into the form included with the RFP (with such changes as are (1) necessary to fill in blanks; ~~or as are (2)~~ expressly indicated in the RFP to be inserted from Proposer's Proposal to the Contract Documents, such as the Initial Purchase Price, System Royalty, Tip Fee Schedule, Minimum Flow Commitment and the name of the Proposer entity; and (3) necessary to address the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date). If the Proposer elects to submit Contract Comments, such Contract Comments shall be organized in the manner listed in Exhibit F, and shall be clearly indexed.

2.0 Contents of Contract Comments

Contract Comments can seek to modify provisions of the Contract Documents, offer additional items or commitments on behalf of the Proposer or alter the structure of the transaction and Contract Documents.

The County will be most interested in those Contract Comments related to enhanced waste diversion and climate protection, as well as those Contract Comments that improve the overall value and package of Proposer's Financial Proposal and which address and help achieve the County's goals for Divestiture (refer to Section 1.2 of the ITP ~~and, specifically, additional diversion programs and opportunities~~).

As noted in Section 3.4.3 of the ITP, Contract Comments must be delivered in a separate, segregated and sealed container.

3.0 Format for Contract Comments

Proposers wishing to submit Contract Comments shall do so either through a detailed mark-up of the form of the Contract (with suggested language and revisions) or pursuant to a tabular format as follows:

Document and Section Reference (e.g., Purchase and Sale Agreement Section 4.5)	Existing Provision (to be inserted by Proposer)	Proposed Revised Provision (detailed mark-up of Existing Provision is required)	Dollar Impact of Comment and Item(s) Impacted (e.g., impact on the Initial Purchase Price, Royalty Payments and/or Tip Fee Schedules)

If a detailed mark-up of the form of the Contract is utilized to provide Contract Comments, the Proposer should identify, to the maximum extent possible, the dollar impact of specific Contract Comments or categories of Contract Comments (e.g., impact on the Initial Purchase Price, Royalty Payments and/or Tip Fee Schedules), the impact of such Contract Comment(s) on other provisions of the Contract (and how and which provisions) and to the extent that Contract Comments are interrelated or independent of each other (and, where possible, the dollar impact of accepting some Contract Comments but not others). As an example of the foregoing, if a Purchaser were to propose the implementation of enhanced diversion programs (such as construction and operation of a materials recovery facility or a construction and demolition facility at a Transfer Station), the Proposer would indicate the dollar impact on the Tip Fee Schedule, the Initial Purchase Price and the Royalty Payments, if any, as a result of that facility.

In addition to the tabular comments or detailed mark-up of the form of the Contract, the Proposer may, but is not required to, also include (i) an executive summary not to exceed 10 pages in length that summarizes its general approach set forth in the specific Contract Comments and how that approach maximizes the overall value to the County; and (ii) a description of up to 10 pages in length summarizing the Proposer's experience with diversion programs and climate protection and providing additional narrative explanation of any Contract Comments relating to enhanced waste diversion and climate protection.

In all cases, the Contract Comments submitted by a Proposer must represent the full and comprehensive set of issues and provisions that the Proposer wishes to negotiate should it be selected for negotiations.

Should a Proposer be selected for negotiations on the basis of Contract Comments, it shall only be entitled to negotiate on the basis of the Contract Comments submitted. Attempts by the Proposer to introduce material additional issues outside of the Contract Comments may, in the County's sole discretion, result in termination of negotiations and shall be considered bad faith negotiations, resulting in forfeiture of the Proposal Security. The County, in response to Contract Comments, may introduce additional issues or concepts during the negotiations.

Exhibit E
REQUIRED FORMS

(see attached)

**COUNTY OF SONOMA
SOLID WASTE ASSETS DIVESTITURE
INSTRUCTIONS TO PROPOSERS—Form A
PROPOSAL LETTER**

PROPOSER: _____

Proposal Date: _____, 2008

The undersigned (“**Proposer**”) submits this proposal (this “**Proposal**”) in response to that certain Request for Proposals (as amended, the “**RFP**”) issued by the County of Sonoma (“**County**”), dated June 11, 2008, to purchase and acquire the Facilities (as defined below) and operate and maintain the same pursuant to the terms and conditions of a purchase and sale agreement (the “**Divestiture**”), as more specifically described herein and in the documents provided with the RFP (the “**RFP Documents**”). The Divestiture covers the Central Landfill and the Annapolis, Central, Guerneville, Healdsburg and Sonoma Transfer Stations and related personal property, permits, contracts and other assets pertinent to the operation of the County’s solid waste system (collectively, the “**Facilities**”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for the County supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] ***[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally,” and delete the brackets otherwise delete the entire phrase]:***

(viii)a) to keep this Proposal open for acceptance initially for 180 days after the Proposal Due Date, and if requested by the County within such 180-day period, for an additional 90 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of any partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of the County, in the County’s sole discretion; and

(vi)b) if this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the due performance of the Purchase and Sale Agreement (the “**Contract**”) and other related documents, as stipulated in the Contract and the RFP.

If selected by the County, Proposer agrees to do the following or to cause the Purchaser to do the following: (a) if requested by the County, in its sole discretion,

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enter into good faith negotiations with the County regarding the Contract Comments and in accordance with the requirements of the RFP, (b) enter into the Contract without varying or amending its terms (except for (i) filling in the blanks in the Contract Documents and the information expressly indicated in the RFP to be inserted from Proposer’s Proposal into the Contract Documents, such as the Initial Purchase Price, System Royalty, Minimum Flow Commitment, Tip Fee Schedules and the name of the Proposer entity; (ii) addressing the impact, if any, of any material change (if any) to the form of the HHW Lease, the Agency Agreement and the PWRPA Agreement that were provided to the Proposers prior to the Proposal Due Date and (iii) such other modifications agreed to by the County, in its sole discretion) and satisfy all other conditions to award of the Contract, including delivering the documents required under Sections 4.8 and 5.1 (including remitting the Deposit as required by the Contract); and (c) perform its obligations as set forth in the ITP and Contract, including compliance with all commitments contained in this Proposal. Purchaser understands that failure to do any of the foregoing shall result in forfeiture of its Proposal Security.

The following individual(s) is/are authorized to enter into negotiations with the County on behalf of the Proposer and Purchaser in connection with this RFP, the Divestiture and the Contract: _____ *[insert applicable names]*

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Proposer Information, Certifications and Documents and Proposal Security
- Financial Proposal

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

Addendum 1 issued July 9, 2008

Addendum 2 issued _____ August 6, 2008

[list other addenda] _____

Responses issued _____,
_____, _____,
_____, _____,

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the Website, the materials provided by the County on DVDs, the Addenda and responses to questions, and is satisfied that the RFP Documents provide sufficient

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detail regarding the obligations to be performed by the Purchaser and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other investigations which are prudent and reasonable in preparing this Proposal; and that it has notified the County of any deficiencies in or omissions from any RFP Documents or other documents provided by the County and of any unusual site conditions observed prior to the date hereof. The Proposer agrees that it has submitted its Proposal in compliance and subject to the terms of the RFP Documents and agrees to all of the terms thereof, including the protest rights and procedures.

Proposer represents that all statements made in the SOQ previously delivered to the County (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer understands that the County is not bound to award the Contract and that the County may select an apparent highest ranked Proposer (or any other Proposer to negotiate with) that does not provide (i) the highest aggregate Initial Purchase Price and Net Present Value of the System Royalty; (ii) the lowest Tip Fee Schedule; (iv) the lowest Minimum Flow Commitment; (iv) the most favorable Contract Comments; or (v) any combination of the foregoing. Proposer understands that the selection shall be made based upon the County's assessment, in its sole discretion, of which Proposal offers the County the best overall package.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.

Proposer consents to the County's disclosure of its Proposal pursuant to California Constitution Article I, Section 3 and California Government Code Section 6250 *et seq.* to any Persons, in the County's sole discretion. Proposer acknowledges and agrees to the disclosure terms of the ITP. Proposer expressly waives any right to contest such disclosures.

Proposer agrees that the County will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of California.

Proposer's business address:

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(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from below]

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

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3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney in Fact

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ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. Describe in detail the legal structure of the Proposer/Purchaser and Equity Participants.
1. If the Proposer/Purchaser/Equity Participant is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for the Proposer/Purchaser/Equity Participant and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 2. If the Proposer/Purchaser/Equity Participant is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Purchaser/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 3. If the Proposer/Purchaser/Equity Participant is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Purchaser/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 4. If the Proposer/Purchaser/Equity Participant is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Purchaser/Equity Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability

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company and joint venture) certified by an appropriate individual. Attach evidence to the Proposal and to each letter that the person signing has authority to do so. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.
- C. The Purchaser's partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to the County, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Divestiture. Proposers should submit the applicable agreement to the County and identify on a cover page where in the agreement the provision can be found. If the Purchaser is not yet formed, provide draft organizational documents and indicate where the provision is found.

INFORMATION ABOUT PROPOSER ORGANIZATION—Form B

1.0 Name of Proposer: _____
 Name of Purchaser _____

2.0 Type of entity: Proposer: _____
 Purchaser: _____

3.0 Proposer's address: _____

 Telephone

 Facsimile

4.0 How many years has the Proposer, Purchaser and each Equity Participant been in its current line of business and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5.0 Under what other or former names has the Proposer, Purchaser and Equity Participants operated?

Proposer: _____
 _____:
 _____:
 _____:

_____:

6.0 Except as updated by the following information, the Proposer's SOQ is hereby incorporated as if set forth in full and the Proposer represents and warrants to the County that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

STATE OF _____)

)

COUNTY OF _____)

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

NOTARY PUBLIC SIGNATURE

(NOTARY PUBLIC SEAL)

NON-COLLUSION AFFIDAVIT – Form C

STATE OF _____)

)SS:

COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against County or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. The Proposer will not, directly or indirectly, divulge information or data regarding the price, tip fees, minimum flow commitment, financial offer or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price, tip fees, financial offer or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title) (Title)

Subscribed and sworn to before me this ___ day of _____, 2008.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of the entity(ies) making the Proposal.]

INITIAL PURCHASE PRICE AND SYSTEM ROYALTY OFFER FORM – Form D

- This form must be completely filled out and executed by the Proposer.
- All amounts are to be provided in US dollars, rounded to the nearest dollar.
- As used in this Form D, “Waste” includes (i) all Waste that is delivered to or enters into any Facility; and (ii) all Waste from any source within the County of Sonoma that is delivered to or enters into any other facility located within the County of Sonoma and owned or operated by the Purchaser or any Affiliate; provided, however, that, as used in this Form D, Waste excludes ~~Source Separated green waste, Source Separated wood waste and other Source Separated Recyclable Materials (e.g., 100% recyclable, except for minor residual amounts).~~
- For purposes of this Form D and the evaluation, the assumed Tons of Waste is 335,000 Tons per year and escalates at 1% per annum.
- For purposes of this Form D and the evaluation, the discount rate is 6% per annum.
- The Proposer is only to fill in the top two blocks of the spreadsheet. All other elements of the spreadsheet are locked and cannot be altered or modified in any manner by the Proposer.
- The amount of System Royalty to be filled in by the Proposer must be either “0” or a positive number. As set forth in the Contract, the rate of the System Royalty indicated by Proposer shall escalate at 3% per annum. The System Royalty will be payable for 20 years after the commencement of payment thereof.
- The year after the Closing Date in which the System Royalty commences must be a number between 0 and 5. If a “0” is filled in, Proposer intends to commence payment of the System Royalty as of the Closing Date (and if a “1” is filled in, Proposer intends to commence payment of the System Royalty on the 1st anniversary of the Closing Date, etc.).
- **ACTUAL AMOUNTS OF THE SYSTEM ROYALTY PAYABLE UNDER THE CONTRACT DOCUMENTS MAY DIFFER FROM THE AMOUNTS PROPOSED AND WILL BE BASED ON ACTUAL TONNAGE OF WASTE (AS MORE PARTICULARLY DESCRIBED IN THE CONTRACT), NOT THE ASSUMED TONNAGE OF WASTE SET FORTH IN FORM D.**

INITIAL PURCHASE PRICE AND SYSTEM ROYALTY OFFER FORM

Initial Purchase Price: \$ _____ [if no Initial Purchase Price is proposed, insert "0"]

Present Value of System Royalty: \$ _____ (from the attached spreadsheet) [if no System Royalty is proposed, insert "0"]

Start Year of System Royalty: _____ [if no System Royalty is proposed, insert "N/A"]

Executed by:

Proposer: _____

By: _____

Name: _____

Title: _____

**Example System Royalty Bid Sheet:
FOR ILLUSTRATION PURPOSES ONLY**

Inputs:

Amount of System Royalty, Dollars per Ton of Waste (Must be Zero or Positive) ==>

\$10.00

Start of the Year After the Closing of the Transaction in Which
the System Royalty Commences (Must be 0, 1, 2, 3, 4, 5) ==>

4

Present Value Calculation:

<u>End Of Evaluation Year</u>	<u>Evaluation Tons Processed Per Year</u>	<u>Evaluation Growth of TPY</u>	<u>Evaluation System Royalty Fee Per ton</u>	<u>Evaluation System Royalty Fee Growth</u>	<u>Evaluation System Royalty Cash Flow</u>
1	335,000	N/A	\$0.00	3.0%	\$0
2	338,350	1.0%	0.00	3.0%	0
3	341,734	1.0%	0.00	3.0%	0
4	345,151	1.0%	0.00	3.0%	0
5	348,602	1.0%	10.00	3.0%	3,486,023
6	352,088	1.0%	10.30	3.0%	3,626,510
7	355,609	1.0%	10.61	3.0%	3,772,659
8	359,165	1.0%	10.93	3.0%	3,924,697
9	362,757	1.0%	11.26	3.0%	4,082,862
10	366,385	1.0%	11.59	3.0%	4,247,401
11	370,048	1.0%	11.94	3.0%	4,418,572
12	373,749	1.0%	12.30	3.0%	4,596,640
13	377,486	1.0%	12.67	3.0%	4,781,885
14	381,261	1.0%	13.05	3.0%	4,974,595
15	385,074	1.0%	13.44	3.0%	5,175,071
16	388,925	1.0%	13.84	3.0%	5,383,626
17	392,814	1.0%	14.26	3.0%	5,600,586
18	396,742	1.0%	14.69	3.0%	5,826,290
19	400,709	1.0%	15.13	3.0%	6,061,089
20	404,716	1.0%	15.58	3.0%	6,305,351
21	408,764	1.0%	16.05	3.0%	6,559,457
22	412,851	1.0%	16.53	3.0%	6,823,803
23	416,980	1.0%	17.02	3.0%	7,098,802
24	421,150	1.0%	17.54	3.0%	7,384,884
25	425,361	1.0%	0.00	3.0%	0

Discount Rate 6.00%

Present Value	\$43,850,034
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System Royalty Bid Sheet:

Inputs:

Amount of System Royalty, Dollars per Ton of Waste (Must be Zero or Positive) ==>

\$0.00

Start of the Year After the Closing of the Transaction in Which the System Royalty Commences (Must be 0, 1, 2, 3, 4, 5) ==>

0

Present Value Calculation:

<u>End Of Evaluation Year</u>	<u>Evaluation Tons Processed Per Year</u>	<u>Evaluation Growth of TPY</u>	<u>Evaluation System Royalty Fee Per ton</u>	<u>Evaluation System Royalty Fee Growth</u>	<u>Evaluation System Royalty Cash Flow</u>
1	335,000	N/A	\$0.00	3.0%	\$0
2	338,350	1.0%	0.00	3.0%	0
3	341,734	1.0%	0.00	3.0%	0
4	345,151	1.0%	0.00	3.0%	0
5	348,602	1.0%	0.00	3.0%	0
6	352,088	1.0%	0.00	3.0%	0
7	355,609	1.0%	0.00	3.0%	0
8	359,165	1.0%	0.00	3.0%	0
9	362,757	1.0%	0.00	3.0%	0
10	366,385	1.0%	0.00	3.0%	0
11	370,048	1.0%	0.00	3.0%	0
12	373,749	1.0%	0.00	3.0%	0
13	377,486	1.0%	0.00	3.0%	0
14	381,261	1.0%	0.00	3.0%	0
15	385,074	1.0%	0.00	3.0%	0
16	388,925	1.0%	0.00	3.0%	0
17	392,814	1.0%	0.00	3.0%	0
18	396,742	1.0%	0.00	3.0%	0
19	400,709	1.0%	0.00	3.0%	0
20	404,716	1.0%	0.00	3.0%	0
21	408,764	1.0%	0.00	3.0%	0
22	412,851	1.0%	0.00	3.0%	0
23	416,980	1.0%	0.00	3.0%	0
24	421,150	1.0%	0.00	3.0%	0
25	425,361	1.0%	0.00	3.0%	0

Discount Rate 6.00%

Present Value \$0

PROPOSAL SECURITY -- Form E**

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:

PLACE FOR PRESENTATION OF DRAFT: (Name and Address of Bank/Branch)

APPLICANT: _____

BENEFICIARY: County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Ste. B100
Santa Rosa, California 95403

LETTER OF CREDIT NUMBER:

PLACE AND DATE OF ISSUE:

AMOUNT: One Million Dollars (\$1,000,000)

STATED EXPIRATION DATE: _____, 2009.

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of Beneficiary for the amount of One Million United States Dollars (\$1,000,000), available by draft at sight drawn on the Issuer. Any draft under this Irrevocable Standby Letter of Credit shall be in the amount of not less than One Million United States Dollars (\$1,000,000) and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and
2. Be accompanied by the Beneficiary's signed and dated statement stating one of the following:

(a) "This drawing is due to Applicant's withdrawal of all or any part of its Proposal (as defined in the Instructions to Proposers, as amended (the "ITP")), without Beneficiary's consent, prior to the time allowed in the ITP, as such time may be extended pursuant to the terms thereof."

or

(b) "This drawing is due to Applicant's withdrawal, repudiation or other indication prior to execution of the Contract Documents (as defined in the Instructions to Proposers, as amended) that it will not meet the commitments made in its Proposal (as defined in the Instructions to Proposers, as amended)."

or

(c) “This drawing is due to Applicant’s failure to provide the Proposal Security (as defined in the Instructions to Proposers (“ITP”)), to extend the Proposal Security as required under the ITP, to engage in good faith negotiations under ITP Section 4.11 if elected by the Beneficiary, to execute the Contract Documents (as defined in the ITP) if and as required by the ITP, to satisfy the conditions to award set forth in the ITP (including ITP Sections 4.8, 5.1 and 5.24), to cause the guarantor, if any, to execute and deliver the required guaranty or to pay the Deposit (as defined in the Purchase and Sale Agreement) by the deadline set forth in ITP Section 1.6.3 without excuse under ITP Section 3.7.”

All drafts will be honored if presented to _____ (Bank/Branch - Name & Address) _____ on or before the Stated Expiration Date described above.

If a ~~d~~Demand for ~~P~~ayment is made by you hereunder at or prior to 10:00 a.m., California Time, on any weekday (i.e., Monday through Friday, excluding California state holidays and U.S. federal holidays) (a “Business Day”), and provided that such ~~D~~demand for ~~P~~ayment conforms to the terms and conditions hereof, payment shall be made by us to you in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party (subject to any court order or judgment), to the account designated below or such other account at a national bank in the United States of America that you may designate in the ~~D~~demand for ~~P~~ayment on the next Business Day after demand is made. If a ~~D~~demand for ~~P~~ayment is made by you hereunder after 10:00 a.m., California Time, on a Business Day, and provided that such ~~D~~demand for ~~P~~ayment conforms to the terms and conditions hereof, such payment shall be made no later than the close of business, California Time to the account designated below or such other account at a national bank in the United States of America that you may designate in the ~~D~~demand for ~~P~~ayment, on the second Business Day after demand is made. Payment under this Letter of Credit shall be made in same day funds, by wire transfer to your account described below or such other account as you may designate in writing.

Financial Institution: Bank of America
Government Services Sacto/1436
555 Capitol Mall, Suite 1555
Sacramento, CA 95814-4582
Routing Number: 0260-0959-3
Account Name: Sonoma County Treasurer
Account Number to Credit: 00432-80100
Reference: Department of Transportation and Public Works, Solid Waste
Divestiture
Attention: Karen Richards, 1-888-841-8159, Option 3, ext. 61683

All bank charges and commissions incurred in connection with the issuance, administration, advisement, confirmation, negotiation or any other fees associated with this Letter of Credit (including any drawings hereunder) shall be for the account of the applicant.

Except so far as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 (the "Uniform Customs"), which shall in all respects be deemed a part hereof as fully as if incorporated herein except as modified hereby.

This Letter of Credit is issued under the laws of the State of California and applicable U.S. federal law, and shall, as to matters not governed by Uniform Customs, be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law.

Any failure by you to draw upon this Letter of Credit as permitted hereunder shall not cause this Letter of Credit to be unavailable for any future drawing, provided that this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, we agree that such proceeding shall be subject to California courts and law.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at _____,
Attention: _____, specifically referring to the number of this Letter of Credit.

Issuer:

By: _____ (Authorized signature of Issuer)

****Note: The exact form of this Letter of Credit may be modified in a nonsubstantive manner in order to conform to a specific issuing bank/financial institution format**

OPINION OF COUNSEL - Form F

[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 5.2(b) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS]

County of Sonoma
Department of Transportation and Public Works
2300 County Center Drive, Ste. B100
Santa Rosa, California 95403

Re: Purchase and Sale Agreement (“Contract”) for Solid Waste Facilities dated as of _____, 2008, by and between the County of Sonoma, and _____ (the “Purchaser”)

Gentlemen:

[Describe relationship to Purchaser and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery of the proposal and execution of the Contract.] This letter is provided to you pursuant to Section 5.2(b) of the Instructions to Proposers of that certain Request for Proposals issued by the County of Sonoma (“the County”) on June 11, 2008, as amended.

In giving this opinion, we have examined _____ ***[insert relevant documents, such as the Contract Documents, good standing certificates, Purchaser certificate, etc.]*** We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the divestiture process as we have deemed necessary or advisable. [if certificate used/obtained from Purchaser or Guarantor, such certificate should also run in favor of the County and should be attached to opinion]

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of Purchaser and that Purchaser has corporate power to own its properties and assets, carry on its business, make the Proposal, enter into the Contract and to perform its obligations under the Contract] [if Purchaser is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

2. [opinion regarding good standing and qualification to do business in State of California for Purchaser] [if Purchaser is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

3. [opinion regarding organization/formation and existence of Guarantor and that Guarantor has corporate power to own its properties and assets, to carry on its business, to enter into the Guaranty and to perform its obligations under the Guaranty] [if Guarantor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners] [if there is no Guaranty, this opinion may be omitted]

4. [opinion that Proposal and Contract have been duly authorized by all necessary corporate action on the part of the Purchaser and the Proposal and Contract have been duly executed and delivered by Purchaser] [if Purchaser is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Purchaser"]

5. [opinion that Guaranty has been duly authorized by all necessary corporate action on the part of Guarantor and the Guaranty has been duly executed and delivered by Guarantor] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]

6. [opinion that the Contract constitutes a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms] [if Purchaser is a partnership/joint venture, add: and its joint venture members/general partners after the second "Purchaser"]

7. [opinion that the Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms; [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the second "Guarantor"] [if there is no Guaranty, this opinion may be omitted]

8. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Proposal and the Contract; and that neither the Proposal nor the Contract conflict with any agreements to which Purchaser is a party [if Purchaser is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Purchaser is bound [if Purchaser is a partnership/joint venture, add: and its joint venture members/general partners are bound]]

9. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Guaranty; and that the Guaranty does not conflict with any agreements to which Guarantor is a party [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Guarantor is bound] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are bound] [if there is no Guaranty, this opinion may be omitted]

10. [opinion that execution, delivery and performance of all obligations by Purchaser under the Proposal and the Contract do not conflict with, and are authorized by, the articles of incorporation and bylaws of Purchaser [if Purchaser is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Purchaser is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Purchaser is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]

11. [opinion that execution, delivery and performance of all obligations by Guarantor under the Guaranty does not conflict with, and is authorized by, the articles of incorporation and bylaws of Guarantor] [if Guarantor is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if Guarantor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Guarantor is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation] [if there is no Guaranty, this opinion may be omitted]

12. [opinion that execution and delivery by the Purchaser of the Proposal and the Contract do not, and the Purchaser's performance of its obligations under the Proposal and the Contract will not, violate any current statute, rule or regulation applicable to the Purchaser or to transactions of the type contemplated by the Proposal or the Contract]

13. [opinion that execution and delivery by the Guarantor of the Guaranty do not, and the Guarantor's performance of its obligations under the Guaranty will not, violate any current statute, rule or regulation applicable to the Guarantor or to transactions of the type contemplated by the Guaranty] [if there is no Guaranty, this opinion may be omitted]

TIP FEE SCHEDULES - Form G

- This form must be completely filled out and executed by the Proposer.
- All amounts are to be provided in US dollars.
- Section 6.17 and Schedule 6.17 of the Contract provides the terms under which the tip fees may be increased.
- The Proposer is only to fill in the dollar amounts on the form. All other elements of the form cannot be altered or modified in any manner by the Proposer.
- Tip fees shall be proposed on the basis of two scenarios: (i) during the period in which the Landfill is allowed to accept Waste for disposal; and (ii) during the period in which the Landfill is not allowed to accept Waste for disposal.
- During the period in which the Landfill is not allowed to accept Waste for disposal, the tip fees should be proposed as a “total” tip fee comprised of 4 individual elements, as set forth on Form G: (1) the Fuels Component; (2) the Government Fee Component; (3) the Other Public Agency Host Fee Component; and (4) the Disposal Component.
- During the period in which the Landfill is allowed to accept Waste for disposal, the tip fees should be proposed as a “total” tip fee comprised of 3 individual elements, as set forth on Form G: (1) the Fuels Component; (2) the Government Fee Component; and (3) the Disposal Component.
- The Fuels Component shall set forth the Proposer’s fuel costs, on a per Ton basis, ~~associated with the long-haul transfer from the Facilities to a disposal facility outside of the County of Sonoma. The Fuels Component shall not be relevant or proposed as part of the tip fee during the period in which the Landfill is allowed to accept Waste.~~
- The Government Fee Component shall set forth the Proposer’s costs, on a per Ton basis, for the federal and state regulatory fees (which must include any LEA fees) that are charged on a per Ton basis. Proposers shall provide a detailed list of the federal and state regulatory fees (which must include any LEA fees) that supports its proposal for the Government Fee Component, including the assessing agency and the amount per Ton of Waste in effect as of the Proposal Due Date. The Government Fee Component shall not exceed the amounts set forth on the detailed list.
- The Other Public Agency Host Fee Component shall set forth the Proposer’s costs, on a per Ton basis, of any host fee assessed on a per Ton basis by any county, city, joint powers authority or other regional agency on a facility located within its jurisdiction (and outside of the County of Sonoma) that the Proposer will

utilize to dispose of Waste during the period the Landfill is not allowed to accept Waste. The Other Public Agency Host Fee Component shall not be relevant or proposed as part of the tip fee during the period in which the Landfill is allowed to accept Waste.

- The Disposal Fee Component shall set forth the remaining balance of the Proposer's tip fee, exclusive of all other components.
- The tip fees set forth in this Form G shall only be for purposes of evaluation and setting the tip fees in effect as of the Closing Date. Tip fees after the Closing Date shall only be adjusted pursuant to the Contract Documents.
- The tip fees proposed by the Proposer must be exclusive of the Program Fees (the Solid Waste System Fees and the SCWMA Fees), which shall, as set forth in Section 6.12 of the Agreement, be charged in addition to the tip fees.
- Under the Contract, other than the Program Fees, Purchaser shall not be entitled to charge any amount above the tip fees proposed.

PROPOSED REFUSE DISPOSAL FEE SCHEDULE AT ALL FACILITIES

Effective upon close of escrow during period in which the Landfill is not allowed to accept Waste for disposal

Item	Tip Fee for County-Controlled Waste Plus 0-199 Tons per day of Committed City Waste (Tier A)	Tip Fee for County-Controlled Waste Plus 200-399 Tons per day of Committed City Waste (Tier B)**	Tip Fee for County-Controlled Waste Plus 400-599 Tons per day of Committed City Waste (Tier C)**	Tip Fee for County-Controlled Waste Plus 600 or More Tons per day of Committed City Waste (Tier D)**
General Refuse (compacted refuse)*	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Other Agency Host Fee Component) D. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through D)	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Other Agency Host Fee Component) D. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through D)	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Other Agency Host Fee Component) D. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through D)	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Other Agency Host Fee Component) D. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through D)

~~*Any per vehicle unit rates shall be based upon the average Tons of Waste in the vehicle multiplied by the rate per Ton (as determined by an annual weight survey performed by Purchaser).~~ In-bound vehicles with compacted refuse and other commercial vehicles shall be weighed. Rates for items not covered by the above may be set by the Purchaser and are not part of this Schedule.

**Tons per day for each City is as set forth in the following table. These amounts were determined by dividing the aggregate generation of Tons of franchised wWaste for calendar year 2007 of a City or Cities by 260 days. If a City commits its Waste flow as set forth in Section 6.17 of the Agreement, the franchised wWaste flow set forth in the table below shall be credited towards the increments set forth in the table above for purposes of determining the applicable tip fee as of the Closing Date for the County-Controlled Waste and the applicable City's Waste.

City	Tons Per Day
Cotati	16
Cloverdale	19
Healdsburg	36
Petaluma	120
Rohnert Park	90
Santa Rosa	317
Sebastopol	22
Sonoma	36
Windsor	54

Section B. Other Refuse

Item	Charge
<u>Wood Waste</u> ***(including Dimensional Lumber)	Central Landfill – \$27.60 Ton \$5.35/CY
Yard Debris***	Central Landfill – \$34.10/Ton \$5.50/CY
Pickups with yard debris only, no refuse***	Central Landfill – \$14.50/Each

Television and Computer Monitors****	No Charge
--------------------------------------	-----------

CY= cubic yard

***These rates to be set by Sonoma County Waste Management Agency per the Agency Agreement, until such time as the Sonoma County Waste Management Agency run green and wood waste program at the Compost Facility has permanently moved from the Landfill. After the Compost Facility has permanently moved from the Landfill, the Purchaser may set the rates for any green waste ~~or~~ and wood waste. After Closing, Purchaser shall also be entitled to set the rates for any green waste and wood waste delivered to the Transfer Stations.

**** There shall be no charge for these items as long as the State reimbursement program for these items exists (currently under SB 20). If the program is discontinued (and is not replaced), Purchaser may establish rates. These items are not permitted to be disposed of in the Landfill.

PROPOSED REFUSE DISPOSAL FEE SCHEDULE AT ALL FACILITIES

Effective upon close of escrow during period in which the Landfill is allowed to accept Waste for disposal

Item	Tip Fee for County-Controlled Waste Plus 0-199 Tons per day of Committed City Waste (Tier A)	Tip Fee for County-Controlled Waste Plus 200-399 Tons per day of Committed City Waste (Tier B)**	Tip Fee for County-Controlled Waste Plus 400-599 Tons per day of Committed City Waste (Tier C)**	Tip Fee for County-Controlled Waste Plus 600 or More Tons per day of Committed City Waste (Tier D)**
General Refuse (compacted refuse)*	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through C)	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through C)	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through C)	A. \$_____/Ton (Fuels Component) B. \$_____/Ton (Government Fee Component) C. \$_____/Ton (Disposal Component) \$_____/Ton (Total: sum A through C)

~~*Any per vehicle unit rates shall be based upon the average Tons of Waste in the vehicle multiplied by the rate per Ton (as determined by an annual weight survey performed by Purchaser).~~ In-bound vehicles with compacted refuse and other commercial vehicles shall be weighed. Rates for items not covered by the above may be set by the Purchaser and are not part of this Schedule.

**Tons per day for each City is as set forth in the following table. These amounts were determined by dividing the aggregate generation of Tons of ~~franchised w~~Waste for calendar year 2007 of a City or Cities by 260 days. If a City commits its Waste flow as set forth in Section 6.17 of the Agreement, the ~~franchised w~~Waste flow set forth in the table below shall be credited towards the increments set forth in the table above for

purposes of determining the applicable tip fee as of the Closing Date for the County-Controlled Waste and the applicable City's Waste.

City	Tons Per Day
Cotati	16
Cloverdale	19
Healdsburg	36
Petaluma	120
Rohnert Park	90
Santa Rosa	317
Sebastopol	22
Sonoma	36
Windsor	54

Section B. Other Refuse

Item	Charge
<u>Wood Waste</u> ***(including_Dimensional Lumber)	Central Landfill – \$27.60 Ton \$5.35/CY
Yard Debris***	Central Landfill – \$34.10/Ton \$5.50/CY
Pickups with yard debris only, no refuse***	Central Landfill – \$14.50/Each
Television and Computer Monitors****	No Charge

CY= cubic yard

***These rates to be set by Sonoma County Waste Management Agency per the Agency Agreement, until such time as the Sonoma County Waste Management Agency run green and wood waste program at the Compost Facility has permanently moved from the Landfill. After the Compost Facility has permanently moved from the Landfill, the Purchaser may set the rates for any green waste ~~and/or~~ wood waste. After Closing, Purchaser shall also be entitled to set the rates for any green waste ~~of and~~ wood waste delivered to the Transfer Stations.

**** There shall be no charge for these items as long as the State reimbursement program for these items exists (currently under SB 20). If the program is discontinued (and is not replaced), Purchaser may establish rates. These items are not permitted to be disposed of in the Landfill.

Executed by:

Proposer: _____

By: _____

Name: _____

Title: _____

Minimum Flow Commitment - Form H

The amount of Tons of Waste per day to be inserted into Section 1.3 of the Contract is:

_____ Tons of Waste per day **[amount cannot exceed the aggregate amount of the amounts set forth in the Table below, which is 710 Tons per day].**

As set forth in Section 1.3 of the Contract, Tons of Waste per day for each City will be calculated as set forth in the following table. If a City commits its Waste flow as set forth in Section 6.17 of the Agreement, the **franchised wWaste** flow set forth in the table below shall be credited towards the proposed Minimum Flow Commitment. The amount of Tons of Waste proposed by Proposer on this Form H is intended to solely reflect potential Waste commitments from the Cities and not County-Controlled Waste or Self-Haul Waste. Proposers should consider County-Controlled Waste and Self-Haul Waste in formulating the amount proposed on Form H, but such amounts will not be credited towards the “minimum flow commitment” indicated.

City	Tons Per Day
Cotati	16
Cloverdale	19
Healdsburg	36
Petaluma	120
Rohnert Park	90
Santa Rosa	317
Sebastopol	22
Sonoma	36
Windsor	54

Executed by:

Proposer: _____

By: _____

Name: _____

Title: _____

EXHIBIT F

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Proposal Forms Component	Form (if any)	ITP Section Cross-Reference
<u>BA.</u> Proposer Information, Certifications & Documents		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 2.1.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 2.1.1</u>
Information About Proposer Organization	<u>Form B</u>	<u>Exhibit B, Section 2.1.2</u>
Letter(s) Approving Changes in Proposer's Organization	No forms are provided	<u>Exhibit B, Section 2.1.3</u>
Non-Collusion Affidavit	<u>Form C</u>	<u>Exhibit B, Section 2.1.4</u>
C. Forms		
<u>BD.</u> Appendices		
Copies of Organizational Documents	(As required by <u>Form A</u>)	<u>Exhibit B, Section 2.1.2</u>
<u>EC.</u> Proposal Security (Letter of Credit)		
Letter of Credit	<u>Form E</u>	<u>Exhibit B, Section 2.2</u>

Financial Proposal	
<p>Proposers shall follow the order of the Financial Proposal Checklist in their submissions. A reference copy of this document shall be submitted with the Financial Proposal.</p>	
	Proposal No:
A.	Updated financial information The Proposer must provide the corporate and financial information identified in <u>Section 2.0</u> of <u>Exhibit C</u> , for the Proposer and Equity Participants
A1	Audited Fiscal Financial Statements for all periods subsequent to SOQ and unaudited interim financial statements (<u>Exhibit C, Section 2.0</u>)
A2	Guarantor letters of support (as required) (<u>Exhibit C, Section 2.0</u>)

A3	For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the SOQs (<u>Exhibit C, Section 2.0</u>)
A4	Credit Ratings (<u>Exhibit C, Section 2.0</u>)
A5	Letter regarding material change in financial condition since submission of the SOQ and for next reporting period (<u>Exhibit C, Section 2.0</u>)
A6	Letter disclosing all material off balance sheet liabilities (<u>Exhibit C, Section 2.0</u>)
<u>CB</u>	<u>Financial Offer/Initial Purchase Price and System Royalty Submission Form (Form D) (Exhibit C, Section 3.0)</u>
<u>DC</u>	<u>Tip Fee Schedules Form (Form G) (Exhibit C, Section 4.0)</u>
<u>ED</u>	<u>Minimum Flow Commitment (Form H) (Exhibit C, Section 5.0)</u>

Contract Comments

<u>A.</u>	<u>Contract Comments Executive Summary (Exhibit D, Section 3.0)</u>
<u>B</u>	<u>Contract Comments Diversion and Climate Protection Experience and Narrative (Exhibit D, Section 3.0)</u>
<u>C</u>	<u>Contract Comments (Exhibit D, Section 3.0)</u>