

**AMENDED MEMORANDUM OF UNDERSTANDING BETWEEN
THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT
AND THE COUNTY OF CONTRA COSTA
FOR MEETING THE REQUIREMENTS OF THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT OF 1989**

This Amended Memorandum of Understanding ("Amended MOU") is entered into by and between the Kensington Police Protection and Community Services District, a public agency formed pursuant to California Government Code section 61000, et seq. (hereinafter "District") and the County of Contra Costa, a political subdivision of the State of California, (hereinafter "County"). District and County may be referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS

A. The County Board of Supervisors and the District Board of Directors represent, within their respective boundaries, the residents in the unincorporated area of Contra Costa County.

B. District is a community services district providing solid waste management, resource recovery and disposal services to residents and businesses within the unincorporated area of Contra Costa County known as Kensington.

C. The California Legislature has enacted the California Integrated Solid Waste Management Act of 1989, Chapter 1095, Statutes of 1989 (hereinafter "the ACT"). Amendments to the ACT have been adopted and others may be adopted in the future. The ACT is codified in California Public Resources Code section 40000 et seq.

D. The ACT requires that the County prepare and adopt a Source Reduction and Recycling Element (hereinafter "SRRE") and a Household Hazardous Waste Element (hereinafter "HHWE") for the unincorporated areas of Contra Costa County. The County has adopted these elements, which were approved by the State and are included in the Countywide Integrated Waste Management Plan for Contra Costa County. The ACT requires the County to implement diversion programs identified in the SRRE and HHWE. The County may modify and eliminate these programs and add new diversion programs from time to time as circumstances warrant. The SRRE programs and HHWE programs then in effect during the term of this Amended MOU will be referred to, respectively and individually, as the "SRRE Programs" and "HHWE Programs" and collectively as the "SRRE and HHWE Programs."

E. The ACT, as amended, also requires County to implement a commercial solid waste recycling program and a commercial organic waste recycling program (collectively "Commercial Recycling Programs"), and to prepare and submit annual reports to the State on County's progress in implementing these programs.

F. The ACT further requires the diversion of 50 percent of all solid waste through source reduction, recycling and composting activities. County is designated within the ACT as the responsible agency for meeting this waste reduction mandate in the unincorporated areas of Contra Costa County.

G. County and District have statutory powers to contract and enter into agreements.

H. District is authorized and empowered by State of California Community Services District Law, California Government Code section 61000 et seq., to collect and dispose of waste and garbage. On or about September 1, 1997, District entered into a franchise agreement with Bay View Refuse and Recycling Services, Inc. ("Bay View"), to provide solid waste collection and disposal services within District's jurisdictional boundaries.

I. Concurrently with the approval of the above franchise agreement, County and District entered into a Memorandum of Understanding (the "1997 MOU") for the purpose of meeting the mandates of the ACT with regard to the unincorporated territory of Contra Costa County within District's jurisdictional boundaries, and further coordinate with each other to facilitate County's achievement of the countywide goals pursuant to the ACT.

J. District's 1997 franchise agreement with Bay View expired on August 30, 2015. District has entered into a new franchise agreement with Bay View, effective September 1, 2015.

K. The 1997 MOU is scheduled to expire on September 1, 2016. County and District wish to enter into this Amended MOU to replace the 1997 MOU.

NOW, THEREFORE, for good and valuable consideration, including but not limited to the agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, County and District agree as follows:

ARTICLE 1: PURPOSE OF THE AMENDED MOU

1.1 GENERAL. The purpose and Intent of this Amended MOU is to provide a representative, economical and effective means by which the unincorporated areas of Contra Costa County may achieve the waste reduction goals set forth in the ACT and County may satisfy reporting obligations to the State.

ARTICLE 2: FRANCHISE, ACT AND OTHER SOLID WASTE REQUIREMENTS

2.1 FRANCHISE. The current franchise agreement between District and Bay View, the term of which commenced on September 1, 2015, and will expire on August 31, 2023 ("Franchise Agreement"), is attached as Exhibit A to this Amended MOU. County acknowledges that the Franchise Agreement provides for the implementation of recycling and organic waste collection and diversion services that are consistent with

the SRRE. County further acknowledges that the Franchise Agreement authorizes District to modify the scope of services to be provided by Bay View, including mandating additional collection services necessary to meet the goals and mandates of the ACT and other laws regarding solid waste management or recycling, as may be adopted from time to time.

2.2 COUNTY PROGRAMS.

2.2.1 County intends to continue to implement the SRRE and HHWE Programs and the Commercial Recycling Programs, as required by State law, in the unincorporated area, including the Kensington area. District and County shall cooperate in the implementation of such programs as appropriate.

2.2.2 When the County submits its annual report to the State as required under Public Resources Code section 41821, the County shall provide District with a copy of the report to serve as notification of any new, modified or discontinued SRRE or HHWE Programs.

2.3 COORDINATING COMMITTEE. District shall provide staff support to a coordinating committee which consists of five members: one member of the District Board of Directors or the member's alternate, one District staff person, one representative of Bay View, one member of the County Board of Supervisors or the member's alternate, and one County staff person. The purposes of the coordinating committee are to facilitate communications among County, District and Bay View and to assist in developing diversion programs in a cost effective manner.

2.4 DATA COLLECTION.

2.4.1 Pursuant to the ACT, as amended, the County is responsible for reporting specified information to the state periodically regarding solid waste disposal and diversion within the unincorporated areas of Contra Costa County. District agrees to implement monitoring, reporting and data collection methodologies as established by County from time to time in response to State requirements. District shall provide information to County in the computerized or non-computerized form (including format) as requested by County, in a timely manner.

2.4.2 District shall require Bay View to provide complete recycling reports in the form attached as Exhibit B to County on a quarterly and annual basis. The first quarterly report shall be submitted by November 15, 2016, for the prior July/August/September quarter, followed by quarterly reports on the following schedule: February 15 for October/November/ December; May 15 for January/February/March; and August 15 for April/May/June. An annual report is due February 15, 2017, for calendar year 2016 and then each year thereafter on the same schedule. The scheduling and required content of these reports may be modified by County as needed from time to time.

2.4.3 District shall require Bay View to provide the following information for each calendar year to the County in writing no later than February 15 of each year for inclusion in County's annual report to the State:

- a) Evidence of outreach efforts by District and Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling, including a copy of any District web page that contains information pertaining to either of these recycling programs.
- b) Samples of written notices, outreach materials and noncompliance letters sent by District or Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling.
- c) The number of businesses that District deemed to be out of compliance with requirements of the commercial solid waste recycling or commercial organic waste recycling programs during the calendar year.
- d) Descriptions of any other related activities conducted or technical assistance provided by District or Bay View during the calendar year that pertained to commercial solid waste recycling or commercial organic waste recycling.

2.4.4 District shall provide to County the following information in a timely manner or by the applicable deadlines specified below:

- a) notification of any rate application received from contractor (copy of rate application to be made available upon request);
- b) notification of District's notice to contractor of rate decrease;
- c) notification of contractor's written notice of CPI rate change;
- d) notification of any rate change approved by District, including CPI change or rate reduction;
- e) copy of draft customer satisfaction survey, for County review and approval;
- f) copy of final customer satisfaction survey and recycling survey (at the time the surveys are provided to Kensington residents) and results;
- g) copy of draft annual customer information, for County review and approval;
- h) final copy of annual customer information;

- i) copy of draft waste reduction, recycling and HHWE promotional information, for County review and approval;
- j) final copy of waste reduction, recycling and HHWE promotional information, at the time the information is provided to Kensington residents;
- k) notification of the number of Bay View's customers and types of services provided as of December 31 of each year;
- l) notification regarding any requested or planned changes in collection services provided under the Franchise Agreement (including but not limited to types of materials collected for recycling or composting and methods and frequency of collection);
- m) copy of notice from contractor of intent to change disposal site for solid waste and/or intent to change delivery site for recyclables (including green waste) or reusables;
- n) copy of request by contractor for authority not to collect materials for which there is no adequate market, for County review and approval;
- o) copy of any written notice of breach sent by District to the contractor; and
- p) copy of any proposed or approved amendment, modification, notice of termination, request to assign, assignment and consent to assignment of the Franchise Agreement.

County shall have 30 days to review drafts submitted under e), g), and i), and respond to District with any reasonable modifications. If District does not receive a response to within 30 days, it may assume that County has approved a draft as submitted. County shall have 30 days to review and respond to requests submitted under subparagraph n). If District does not receive a response to such a request within 30 days, it may assume that County has approved the request.

2.5 PUBLIC INFORMATION. District shall provide a means for County to disseminate information to individual customers relating to the SRRE and/or HHWE. If dissemination of information will be through customer billings, District shall inform County of applicable deadlines for including information with customer billings. In addition, District will arrange for distribution to individual customers of other materials provided by County related to environmental programs at no cost to County other than direct costs such as incremental postage.

2.6 DISTRICT PROGRAMS.

2.6.1 District will implement the SRRE and HHWE Programs in good faith and in a manner that is reasonably calculated to achieve the County's diversion mandate under the ACT.

2.6.2 District shall design and modify programs and/or rate structures as needed to meet the overall goals and requirements of the ACT, as amended. Specifically, District will implement each of the selected SRRE and HHWE Programs that require implementation by franchisor agencies and/or haulers. District will provide local publicity and generate local interest in solid waste and diversion programs, provide locations for activities such as compost workshops, determine any special needs that the community may have in regards to solid waste pickup services, including recycling and green waste and work with County staff to develop "reduce, reuse and recycle" programs that will be effective in the Kensington community. District shall notify County of the implementation of any "reduce, reuse, recycle" programs required for the implementation of the SRRE or HHWE or overall compliance with the ACT. The SRRE and HHWE Programs and other programs that must be implemented to comply with the ACT shall not be reduced or eliminated by Bay View or District unless agreed upon in advance in writing by County's Conservation and Development Director.

2.6.3 If County considers District's implementation of one or more such programs to be inadequate (as measured against the description of the program and its anticipated impact on waste diversion), County may bring the matter to the attention of the Coordinating Committee. If, thereafter, County continues to consider District's implementation to be inadequate, County may notify District in writing specifying the deficiency and proposing specific changes. If District does not implement the changes in a reasonable time, County may independently arrange for the implementation of such program changes and may require District to pay the costs thereof.

2.7 HOUSEHOLD HAZARDOUS WASTE PROGRAM. District shall be responsible for its pro rata share of costs incurred by County in implementing the HHWE. In order to accomplish this, District will include in Bay View's rates, as a pass through expense, the amount of County's actual or projected HHWE costs for each year. County will bill Bay View directly for the amount invoiced by the operator of the West County Household Hazardous Waste Facility based on the actual number of Kensington users. District shall require Bay View to mail the payment requested on behalf of the operator to the County directly within 30 days of receiving County's billing.

2.8 FRANCHISE FEES. District shall include in the rates charged by Bay View, a Franchise Fee in an amount determined by County, to pay for County expenses and costs incurred in implementing the SRRE and HHWE, the Commercial Recycling Programs and other costs incurred in connection with solid waste management and diversion, including, but not limited to, costs associated with this MOU. Unless otherwise directed by County, the Franchise Fee to be paid to County shall be 3% of Bay View's gross receipts. County shall not increase the Franchise Fee above 3% unless County's costs of administering solid waste and diversion programs, including

but not limited to costs of implementing the SRRE, HHWE, and the Commercial Recycling Programs, exceed the then applicable Franchise Fee. Any increase shall be proportional to District's share of the costs. If County's costs of administering solid waste and diversion programs, including costs of implementing the SRRE, HHWE and the Commercial Recycling Programs, decreases, District may request a decrease in the Franchise Fee. District shall have no duty to defend County in any suit challenging County's Franchise Fee. County shall have no duty to defend District in any suit challenging the rates charged by Bay View.

2.9 FREE SERVICE FOR COUNTY. District shall provide solid waste collection and disposal services at those County buildings within the District's jurisdictional boundaries (currently, the Library) designated by the Director of Conservation and Development from time to time, at no charge to County.

2.10 COUNTY AUTHORITY DISCRETION.

2.10.1 The ACT, other California statutes, and the California Constitution, authorize, and/or require County to undertake a number of activities involving solid waste handling and disposal. The ACT specifically empowers County to undertake certain planning functions including the development of SRRE's, HHWE's and the Countywide Integrated Waste Management Plan.

2.10.2 The Franchise Agreement provides for District control over the location at which solid waste is disposed. District agrees to direct Bay View to transport (or not transport) solid waste to specified landfills or solid waste handling facilities as directed by County in the following circumstances:

a) County determines that the landfill currently being used is unpermitted, is in violation of its permits, or is otherwise out of compliance with federal or state environmental laws, regulations or standards such that the disposal of solid waste from Kensington creates a potential liability for County, and so advises District, and other agencies in the unincorporated area of Contra Costa County using such landfill, in writing;

b) County requires the ability to commit the solid waste from several jurisdictions, including Kensington, to a particular landfill in order to secure volume reductions on tipping fees charged at such landfill, and the tipping fees for the aggregated waste stream are lower than those then paid by the District at the landfill it is using;

c) County determines that the solid waste diversion goal required by the ACT will not be met in the unincorporated area of Contra Costa County, has made a diligent effort to implement the SRRE and HHWE Programs and Commercial Recycling Programs which are the responsibility of County, and has determined that it is necessary for an overall Countywide effort which includes the use by its franchisees and

franchisor agencies in the unincorporated areas of materials recovery facilities to secure the additional recycling needed to comply with the ACT.

2.10.3 If County determines that it is necessary for proper implementation of the SRRE Program or HHWE Program, County may direct District to direct specified recyclable materials, including green waste, collected within the District's boundaries to be delivered to a particular purchaser of such material. County will not exercise its discretion, as described in this paragraph, unless it has or will also direct similarly situated recyclable materials collected in other County franchised areas.

ARTICLE 3: TERM AND TERMINATION

3.1 TERM. The term of this Amended MOU will commence on September 1, 2016, and expire on August 31, 2024, unless terminated sooner in accordance with section 3.3.

3.2. INCORPORATION, ANNEXATION. If any of the territory covered by this Amended MOU is annexed to a municipal corporation or becomes incorporated, this Amended MOU shall be terminated as to said territory upon the effective date of the municipal corporation's determination to franchise or otherwise regulate solid waste and recycling in said territory. District shall promptly notify County of all completed annexations and incorporation.

3.3 TERMINATION OF FRANCHISE AGREEMENT. This Amended MOU shall automatically terminate one year after the termination of the Franchise Agreement unless District enters a new Franchise Agreement that provides for the effective implementation of the SRRE and HHWE no less effectively than as provided in Exhibit A.

ARTICLE 4: INSURANCE INDEMNITY, FINES AND ALLOCATION OF LIABILITY

4.1 INSURANCE AND INDEMNITY. Neither County nor District, as a condition of the execution of this Amended MOU, shall be required to provide direct insurance coverage or protection to the other. Except as provided in section 4.2 (ACT Requirements), neither County nor District is required to contractually indemnify the other against damages to any person or property not a party to this Amended MOU.

4.2 ACT REQUIREMENTS. To the greatest authorized by law, District shall indemnify County for any fines or penalties imposed on County by the State for failure to properly implement County's SRRE or HHWE, or the Commercial Recycling Programs, where the failure is partly or wholly attributable to action or inaction by District. District's share of any fines or penalties imposed on County for failure to properly implement County's SRRE or HHWE shall be proportionate to the District's share of responsibility for failure to implement the SRRE and HHWE, as determined by the County in accordance with Public Resources Code section 41821.2, subdivision (d). District's indemnity obligation under this section 4.2 shall survive the expiration or termination of this Amended MOU.

5.5.2 The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

5.6 WAIVER. The waiver by either Party of any breach or violation of any of the provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

5.7 ATTORNEY'S FEES. In the event of litigation between the Parties arising hereunder, each Party shall be responsible for and shall pay its own litigation expenses, including attorney's fees.


5.8 NO THIRD PARTY RIGHTS. This Amended MOU is not intended to and does not benefit any third party. No third party shall have the right to bring suit to enforce any of the provisions hereof.

**Kensington Police Protection and
Community Services District**

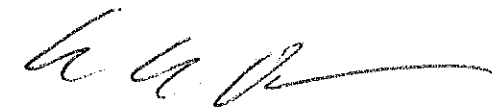
By: 
President, Board of Directors

Date: March 8, 2018

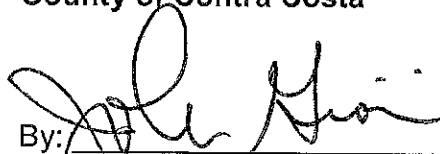
Attest:

By: 
Secretary

Approved as to Form:


By: 
Legal Counsel

County of Contra Costa

By: 
Vice Chair, Board of Supervisors

Date: June 12, 2018

Attest: David Twa, Clerk of the Board of
Supervisors and County Administrator

By: 
Deputy

Approved as to Form:

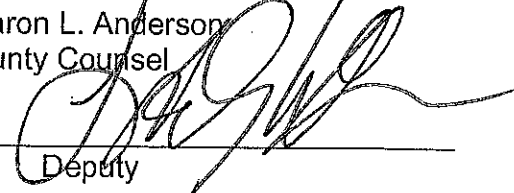
Sharon L. Anderson
County Counsel
By: 
Deputy

Exhibit A

FRANCHISE AGREEMENT
FOR SOLID WASTE, RECYCLABLE MATERIALS, AND
ORGANIC MATERIALS COLLECTION SERVICES
BETWEEN
THE KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICE DISTRICT
AND
BAY VIEW REFUSE AND RECYCLING SERVICES, INC.

October 23, 2014

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- A. Definitions
- B. Rate Adjustment Methodology
- C. Approved Subcontractors
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1 **FRANCHISE AGREEMENT FOR SOLID WASTE,**
2 **RECYCLABLE MATERIALS, AND ORGANIC MATERIALS**
3 **COLLECTION SERVICES**

4 This Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Materials Collection
5 Services (the "Agreement") is entered into on the _____ day of _____ 2014, by and
6 between the Kensington Police Protection and Community Service District, a political subdivision of the
7 State of California (hereinafter, "District"), and Bay View Refuse and Recycling, Inc. a California
8 corporation, (hereinafter, the "Contractor") (together, the "Parties").

9 **RECITALS**

10 WHEREAS, the Legislature of the State of California, by enactment of the California Integrated
11 Waste Management Act of 1989 ("AB 939") and subsequent modifications thereto, established a Solid
12 Waste management process which requires cities and other local jurisdictions to implement source
13 reduction, reuse and Recycling programs as integrated waste management practices; and

14 WHEREAS, AB 939 authorizes and requires local agencies to make adequate provisions for Solid
15 Waste handling within their jurisdictions; and

16 WHEREAS, Section 40059 of the State Public Resources Code provides that the District may
17 determine aspects of Solid Waste handling which are of local concern, including, but not limited to,
18 frequency of Collection, means of Collection and Transportation, level of services, charges and fees and
19 nature, location, and extent of providing Solid Waste handling services and whether the services are to
20 be provided by means of partially exclusive or wholly exclusive Agreements, contracts, licenses, permits
21 or otherwise; and

22 WHEREAS, the District is obligated to protect the public health and safety of the residents of the
23 District and arrangements by waste haulers for the Collection of Solid Waste should be made in a manner
24 consistent with the protection of public health and safety; and

25 WHEREAS, the District and the Contractor are mindful of the provisions of the laws governing the
26 safe Collection, Transport, Recycling, and Disposal of Solid Waste, including AB 939, AB 341, and the
27 Resource Conservation and Recovery Act 42 U.S.C. 9601 et seq.; and

28 WHEREAS, the District's Board of Directors determines and finds that the public interest, health,
29 safety and well being would be served if the Contractor performs these services for Residential and
30 Commercial Customers; and

31 WHEREAS, in accordance with Section 40059 of the State Public Resources Code, the District's
32 Board of Directors is empowered to enter into agreements with any Person or corporation and to
33 prescribe the terms and conditions of such agreements; and

34 WHEREAS, the District's Board of Directors has selected Contractor based on its past provision of
35 Collection services to the District and has authorized the execution of this Agreement; and

36 WHEREAS, neither the District nor Contractor could anticipate all of the possible needs,
37 considerations, or eventualities that may arise during the Term of this Agreement and the Parties agree
38 that they will work together in a spirit of mutual cooperation to resolve any such issues as and when they
39 arise;

40 NOW THEREFORE, in consideration of the respective and mutual covenants and promises herein,
41 and subject to all the terms and conditions hereof, the Parties agree as follows:

42 **ARTICLE 1: GRANT AND ACCEPTANCE OF FRANCHISE**

43 **1.1 Grant and Limitations of Exclusive Franchise**

44 By the signing of this Agreement, the District grants to Contractor, and Contractor accepts, an exclusive
45 Franchise within the Franchise Area of the District. Subject to the limitations described in this Agreement
46 and Applicable Law, the Franchise granted to Contractor shall be the exclusive right to Collect, Transport,
47 handle, Process, Recycle, and, Dispose of all Solid Waste, Recyclable Materials, and Organic Materials
48 generated by Residential Premises and Commercial Premises in the District, as more particularly set out
49 in the scope of services described in Article 4 of this Agreement and subject to the limitations described
50 below in Section 1.1.A and except where otherwise precluded by federal, State, and local laws and
51 regulations.

52 A. **Limitations to Exclusivity.** The award of this Agreement shall not preclude the categories of Solid
53 Waste, Recyclable Materials, and Organic Materials listed below from being delivered, Collected,
54 and Transported by others provided that nothing in this Agreement is intended to, or shall be
55 construed to, excuse any Person from obtaining any authorization from the District which is
56 otherwise required by law:

57 1. Recyclable Materials. Other Persons shall maintain the right to accept donated Recyclable
58 Materials and to compensate the service recipient for Recyclable Materials so long as there is
59 no net payment made by the service recipient to such other Person;

60 2. Self-Hauled Materials. A Commercial business Owner or resident may Dispose of or arrange
61 for Processing of Solid Waste, Recyclable Materials, Organic Materials, and C&D generated in
62 or on their own Premises using their own vehicles and equipment, and, with respect to a
63 Commercial business, its own employees in conformance with all Applicable Laws and
64 regulations, including the County's mandatory subscription ordinance;

65 3. Donated Materials. Any items which are donated by the Generator to youth, civic, or
66 charitable organizations;

67 4. Beverage Containers. Containers delivered for Recycling under the California Beverage
68 Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public
69 Resources Code;

70 5. Materials Removed by Customer's Contractor as Incidental Part of Services. Solid Waste,
71 Recyclable Materials, Green Waste, and/or C&D removed from a Premises by a contractor
72 (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-

73 out service), using its own employees, vehicles and equipment as an incidental part of the
74 service being performed and such contractor is providing a service which is not included in
75 the scope of this Agreement;

76 6. Animal, Grease Waste, and Used Cooking Oil. Animal waste and remains from slaughterhouse
77 or butcher shops, grease, or used cooking oil;

78 7. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge
79 ash, grit, and screenings;

80 8. Excluded Waste. Excluded Waste regardless of its source;

81 9. Materials Generated by Cemetery and School. Materials generated by Sunset Cemetery or
82 the Kensington Elementary School.

83 10. Materials Generated by State, County, and Federal Facilities. Materials generated by State,
84 County, and federal facilities located in the District.

85 Contractor acknowledges and agrees that the District may permit other Persons besides the Contractor
86 to Collect any and all types of materials excluded from the scope of this Franchise, as set forth above,
87 without seeking or obtaining approval of Contractor. Contractor shall be responsible for enforcing the
88 exclusive nature of this Franchise. District shall cooperate with Contractor in such efforts but shall not be
89 required to initiate or participate in litigation at its expense to do so. From and after September 1, 2015,
90 Contractor shall reimburse District for litigation expenses incurred by District in defending the exclusive
91 nature of the Franchise granted by this Agreement.

92 This Agreement and scope of this Franchise shall be interpreted to be consistent with Applicable Law, now
93 and during the Term of the Agreement. If future judicial interpretations of current law or new laws,
94 regulations, or judicial interpretations limit the ability of the District to lawfully contract for the scope of
95 services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees
96 that the scope of the Agreement will be limited to those services and materials which may be lawfully
97 included herein and that the District shall not be responsible for any lost profits or losses claimed by
98 Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such
99 an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial
100 interpretations or new laws and the Contractor may meet and confer with the District and may petition
101 for a Rate adjustment pursuant to Section 9.3.

102 **ARTICLE 2: REPRESENTATIONS AND WARRANTIES** 103 **OF THE PARTIES**

104 2.1 **Representations and Warranties**

105 The Parties, by acceptance of this Agreement, represent and warrant that:

106 A. **Existence and Powers.** The Parties are duly organized and validly existing under the laws of the
107 State of California, with full legal right, power, and authority to enter into and perform their
108 obligations under this Agreement.

- 109 B. **Due Authorization and Binding Obligation.** The Parties have duly authorized the execution and
110 delivery of this Agreement. This Agreement has been duly executed and delivered and constitutes
111 the legal, valid, and binding obligation of the Parties, enforceable against the Parties in accordance
112 with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency,
113 moratorium, and other laws affecting creditors' rights generally.
- 114 C. **No Conflict.** Neither the execution, nor the performance by the Parties of their obligations under
115 this Agreement: (1) conflicts with, violates, or results in a breach of any law or governmental
116 regulations applicable to either Party; or, (2) conflicts with, violates, or results in a breach of any
117 term or condition of any judgment, decree, franchise, agreement (including, without limitation, the
118 certificate of incorporation of the Contractor), or instrument to which the Contractor or any Affiliate
119 is a party or by which the Contractor or any Affiliate or any of their properties or assets are bound,
120 or constitutes a default under any such judgment, decree, agreement, or instrument. The Parties
121 have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the
122 California Government Code relating to conflicts of interest for public officers and employees.
123 Contractor represents it is unaware of any financial or economic interest of any public officer or
124 employee of the District relating to this Agreement.
- 125 D. **No Litigation.** There is no action, suit, or other proceeding as of the Agreement Date, at law or in
126 equity, before or by any court or governmental authority, pending, or to the Parties' best
127 knowledge, threatened against either Party which is likely to result in an unfavorable decision,
128 ruling, or finding which would materially and adversely affect the validity or enforceability of this
129 Agreement or any such agreement or instrument entered into by either Party in connection with
130 the transactions contemplated hereby, or which would materially and adversely affect the
131 performance by that Party of its obligations hereunder or by the Contractor under any such other
132 agreement or instrument.
- 133 E. **No Legal Prohibition.** The Parties have no knowledge of any Applicable Law in effect on the
134 Agreement Date which would prohibit the performance by either Party of this Agreement and the
135 transactions contemplated hereby.
- 136 F. **Contractor's Statements.** The Contractor's proposal and any other supplementary information
137 submitted to the District, which the District has relied on in awarding and entering this Agreement,
138 do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that
139 is necessary in order to make the statements made, in light of the circumstances in which they were
140 made, not misleading.
- 141 G. **Contractor's Investigation.** Contractor has made an independent investigation (satisfactory to it)
142 of the conditions and circumstances surrounding the Agreement and the work to be performed
143 hereunder. Contractor has taken such matters into consideration in entering this Agreement to
144 provide services in exchange for the compensation provided for under the terms of this Agreement.
- 145 H. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
146 manage, Collect, Transport, Transfer, and Dispose of the Solid Waste and to manage, Collect,
147 Transport, Transfer (if applicable), Process Recyclable Materials and Organic Materials; and
148 Contractor possesses the equipment, facility, and employee resources required to perform this
149 Agreement.

150 I. **Voluntary Use of Approved Facilities.** The Contractor, without constraint and as a free-market
151 business decision in accepting this Agreement, agrees to use Approved Disposal Facilities for the
152 purposes of Disposing of all Solid Waste Collected in the District. In the same arrangement, the
153 Contractor agrees to use an Approved Recyclable Materials Processing Facility and an Approved
154 Organics Materials Processing Facility for Processing of all Recyclable Materials and Organics
155 Materials, respectively, Collected in the District and to use an Approved Transfer Facility (if needed)
156 for the purpose of Transferring Solid Waste, Recyclable Materials, and/or Organic Materials. Such
157 decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law
158 regarding flow control limitations or any definition thereof.

159 **ARTICLE 3: TERM OF AGREEMENT**

160 **3.1 Term of Agreement**

161 The Term of this Agreement is from the Commencement Date of September 1, 2015 through August 31,
162 2023 and shall continue in full force during that period, unless terminated earlier pursuant to this
163 Agreement.

164 **ARTICLE 4: COLLECTION SERVICES**

165 Contractor shall perform the services described in this Article 4. This Article 4 describes the requirements
166 for the services to be provided including the types and sizes of Containers to be serviced by Contractor,
167 available Service Levels and frequencies, acceptable and prohibited materials, and any additional services
168 to be provided by Contractor to Customers who subscribe to that program. Failure to specifically require
169 an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

170 **4.1 Residential Services**

171 Contractor shall provide the services described in this Section 4.1 to any Residential Customer within the
172 District who subscribes with Contractor for such service.

173 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Customer-provided containers one
174 (1) time per week from Residential Customers and Transport all Solid Waste to an Approved
175 Disposal Facility for Disposal.

176	Containers:	20-, 32-, 40-, 45- gallon (or similar sizes) Containers to be provided by
177		Customer.
178	Service Frequency:	One (1) time per week
179	Service Location:	Back-yard or Curbside service at Customer's option
180	Acceptable Materials:	Solid Waste
181	Additional Service:	On Customer's regularly scheduled Collection day, Contractor shall
182		Collect additional Solid Waste Containers (beyond the Customer's regular
183		Service Level) and shall charge Customer for the extra pick-up at the
184		District-approved Rate.

226 A. **Solid Waste Collection.** Contractor shall Collect Solid Waste in Contractor-provided or Customer-
227 provided Containers not less than one (1) time per week from Commercial Customers and Transport
228 all Solid Waste to an Approved Disposal Facility for Disposal.

229 **Container Sizes:** 32- and 45-gallon Containers provided by Customers
230 1- and 2-cubic-yard Bins to be provided by Customer or Contractor upon
231 Customer's request. If Contractor provides Bin upon Customer request,
232 Contractor may charge Customer a District-approved Rate for Bin rental.
233 Drop Boxes provided by Contractor upon Customer request
234 **Service Frequency:** Up to five (5) times per week but not less than one (1) time per week, as
235 requested by Customer
236 **Service Location:** Curbside or other Customer-selected service location mutually agreed to
237 between Customer and Contractor.
238 **Acceptable Materials:** Solid Waste
239 **Additional Service:** Contractor shall provide a Bin exchange to any Commercial Customer for
240 cleaning and maintenance one (1) time each year, upon Customer
241 request.
242 **Other Requirements:** Contractor shall establish a minimum Service Level of thirty (35) gallons
243 per dwelling unit per week for Multi-Family Customers.

244 B. **Recyclable Materials Collection.** Contractor shall Collect Single Stream Recyclable Materials in
245 Customer-provided or Contractor-provided Containers not less than one (1) time every week from
246 Commercial Customers and Transport all Single Stream Recyclable Materials to an Approved
247 Recyclable Materials Processing Facility for Processing. Contractor shall provide service up to five
248 (5) times per week upon Customer's request, at no charge to Customers subscribing to Solid Waste
249 Collection service.

250 **Containers:** Containers, Carts, Drop Boxes
251 **Container Sizes:** 32- and 65-/68-gallon Carts (or similar size) provided by Contractor; or
252 Customer-provided Container
253 Drop Boxes provided by Contractor upon Customer request
254 **Service Frequency:** Up to five (5) times per week but not less than one (1) time every week,
255 as requested by Customer
256 **Service Location:** Curbside or other Customer-selected service location mutually agreed to
257 between Customer and Contractor
258 **Acceptable Materials:** Single Stream Recyclable Materials
259 **Additional Service:** None
260

261 C. **Green Waste Collection.** Contractor shall Collect Green Waste two times every month from
262 Commercial Customers that subscribe to service and shall Transport all Green Waste to an Approved
263 Organics Processing Facility for Processing. Contractor shall Collect Green Waste that is bundled,
264 tied, or placed in boxes or Containers. Contractor shall

265 **Containers:** Customer-provided boxes or Containers (or no Container if Customer
266 bundles or ties materials)
267 **Service Frequency:** Two (2) times every month
268 **Service Location:** Curbside or other Customer-selected service location mutually agreed
269 to between Customer and Contractor

309 C. **Noise Levels.** The Contractor shall perform Collection services in a manner that minimizes the noise
310 resulting from its equipment and personnel and shall ensure that it is in compliance with Applicable
311 Law.

312 D. **Holidays.** Collection of Solid Waste, Recyclable Materials, and Green Waste shall not be required on
313 the following legal holidays: New Year's Day, Independence Day, Thanksgiving Day and Christmas
314 Day, except in case of emergency or as otherwise required by the District General Manager.
315 Whenever a regular Collection falls on such a holiday, the Collection shall be made on the following
316 working day, and Collections throughout the District Franchise Area shall become current within
317 one (1) week thereafter. Written notice of this policy (via bills, emails, or through other means
318 approved by the District General Manager) shall be provided to Customers preferably no more than
319 thirty (30) days prior to such alternative service day. Collection shall not be rescheduled when the
320 holiday falls on a Saturday or Sunday, unless otherwise agreed to by the District and the Contractor.

321 E. **Preservation of Public Health and Safety.** The Contractor shall at all times operate in such a manner
322 as to protect the public health and safety. The Contractor agrees to establish procedures and
323 educate its employees as to such procedures regarding proper methods for the protection of the
324 general public, including, but not limited to, arranging for the proper and legal Disposal of hazardous
325 substances encountered during its performance under this Agreement.

326 F. **Litter Prevention.** Contractor shall, at all times, take reasonable measures to keep the roads and
327 streets in the District free from litter from the operations of its Operating Assets.

328 G. **Collection Day Changes.** If Contractor desires to modify Residential Customer(s)' regularly schedule
329 day(s) of Collection, Contractor shall present a request for such change to the District General
330 Manager for review and approval. Such request shall identify the reason for such change, the
331 number of impacted Customers, and the addresses of impacted Customers. Following District
332 General Manager approval, Contractor shall provide each Customer with notice of the change in its
333 regularly scheduled Collection day, and such notice shall be provided one to two weeks prior to the
334 effective date of the change.

335 **4.4 Other Services**

336 A. **General Pick-Up Collection Services.** Contractor shall provide one "general pick-up" Collection
337 service to Residential Customers including Multi-Family Customers who are otherwise served as
338 Commercial Customers, once per year in September. Customers may set out up to one and a half
339 (1.5) cubic yards of excess Solid Waste and Recyclable Materials that is bundled, tied, or bagged.
340 Contractor shall Collect such materials and Transport the materials to an Approved Disposal Facility
341 or Approved Recyclable Materials Processing Facility.

342	Containers:	Not applicable
343	Service Level:	Up to one and a half (1.5) cubic yards of Solid Waste and/or Recyclable
344		Materials
345	Service Frequency:	Once (1) per year per Customer in September
346	Service Location:	Curbside
347	Acceptable Materials:	Solid Waste, Recyclable Materials provided that any single item is less
348		than two hundred (200) pounds in weight

391 Contractor shall not be obligated to Collect more than three (3) cubic yards per event of non-
392 Hazardous Waste. Contractor shall perform such Collections when observed by Contractor's
393 personnel or within one (1) Business Day of request by District.

394 Contractor shall deliver such illegally dumped waste to an Approved Disposal Facility at no
395 additional charge to the District.

396 4.5 Standard of Performance

397 Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to
398 the public and the Contractor's employees. Except to the extent that a higher performance standard is
399 specified in this Agreement, Contractor shall perform services in accordance with Solid Waste, Recyclable
400 Materials, and Organic Materials management practices common to California.

401 A. **Clean Up and Avoiding Damage to Property.** The Contractor shall use due care to prevent littering,
402 spills, or leaks of material placed for Collection. If any materials are littered, spilled, or leaked during
403 Collection or Transportation, the Contractor shall clean up all material before leaving the site. The
404 Contractor shall close all gates after making Collections and shall not do damage to or trespass upon
405 private or public property.

406 B. **Hazardous Waste.** The Contractor acknowledges its obligation to arrange for the Disposal of
407 Hazardous Waste that inadvertently comes into its possession or control. The Contractor agrees to
408 establish all reasonable practices for the screening and elimination of Hazardous Waste from the
409 waste stream including, but not limited to, the training of personnel and the revision of such
410 practices as necessary to reflect prudent waste screening considered to be good practice in the Solid
411 Waste Collection and Disposal industry at the time.

412 If the Contractor finds what reasonably appears to be discarded Hazardous Waste or Household
413 Hazardous Waste at a Designated Collection Location, the Contractor, in addition to the procedure
414 outlined in the previous paragraph, shall either:

415 1. Notify the Owner or Generator, if such can be determined, that the Contractor may not
416 lawfully Collect such material and leave a tag specifying the nearest location available for
417 appropriate Disposal or Processing of such material; or,

418 2. Follow such other procedure as the District General Manager shall approve.

419 In the event of a threat to the public health and safety, the Contractor shall immediately contact
420 the local fire department. The Contractor shall notify the District General Manager of such incident
421 within one (1) day.

422 C. Employees

423 1. **Conduct and Uniform.** The Contractor shall take all steps necessary to ensure that its
424 employees performing Collection services conduct themselves in a safe, proper, and
425 workmanlike manner, and that they work as quietly as possible. All such employees shall at
426 all times of employment be dressed in uniforms with suitable identification.

- 427 2. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
428 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
429 California Department of Motor Vehicles employer "Pull Notice Program" to monitor its
430 drivers for safety.
- 431 3. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its
432 employees who operate Collection Vehicles or equipment. Contractor shall train its
433 employees involved in Collection to identify, and not to Collect, Excluded Waste. Upon the
434 District General Manager's request, Contractor shall provide a copy of its safety policy and
435 safety training program, the name of its safety officer, and the frequency of its trainings.
- 436 D. **Improper Loading of Containers.** The Contractor may decline to Collect any Solid Waste, Recyclable
437 Materials, and/or Organic Materials that have been left for Collection in any manner which would
438 prohibit its safe Collection.
- 439 E. **Record of Non-Collection.** When any Solid Waste, Recyclable Materials, and/or Organic Materials
440 placed for Collection are not Collected by the Contractor, the Contractor shall leave a tag listing the
441 reasons for such non-Collection and a telephone number where the Customer may contact the
442 Contractor. This information shall either be in writing or by means of a checked box on a form. The
443 Contractor shall maintain, at its place of business, a log book listing all such circumstances in which
444 Collection is denied. The log book shall contain the names and/or addresses of the Collection
445 Premises involved, the date of such tagging, the reason for non-Collection, and the date and manner
446 of disposition of each case. The log book shall be kept so that it may be conveniently inspected by
447 the District General Manager upon request. The log relating to any particular tagging shall be
448 retained for a period of one (1) year following such tagging. As an alternative to non-Collection,
449 where the basis for the non-Collection notice is not resolved by the Customer and where
450 photographic evidence is provided by the Contractor, Contractor may complete the Collection and
451 charge the Customer at the District-approved Rate for an "extra can or bag of Solid Waste,"
452 equivalent to the Customer's Container size to compensate it for the costs of extra pickups and/or
453 sorting of materials.
- 454 F. **Fees and Gratuities.** The Contractor shall not, nor shall it permit any agent, employee, or
455 Subcontractor employed by it, to accept, request, solicit, or demand, either directly or indirectly,
456 any compensation for the Collection of Solid Waste, Recyclable Materials, and/or Organic Materials
457 or other Franchise Services, except such compensation as is specifically provided for herein as
458 approved by the District.
- 459 G. **Compliance with Applicable Law.** The Contractor shall comply with all Applicable Law relating to
460 any aspect of the Collection Services or this Agreement, shall obtain and maintain all legal
461 entitlements required for the Operating Assets and the Collection Services, shall comply with all
462 valid acts, rules, regulations, orders, and directions of any Governmental Body applicable to the
463 Operating Assets and the Franchise Services provided hereunder, and shall pay all taxes in
464 connection therewith.
- 465 H. **Taxes and Utility Charges.** The Contractor shall pay all taxes lawfully levied or assessed upon or in
466 respect of the Operating Assets or the Franchise Services, or upon any part thereof or upon any
467 revenues of the Contractor there from, and shall provide and pay the cost of all utilities necessary

468 for the operation of the Operating Assets and the provision of the Franchise Services, when the
469 same shall become due.

470 **4.6 Collection Locations**

471 A. **General.** The Contractor shall be responsible for the Collection of all Solid Waste, Recyclable
472 Materials, and/or Organic Materials placed for Collection in a legal manner. The Contractor shall
473 immediately notify the District General Manager of any condition at or near any Designated
474 Collection Location which creates a safety hazard or accessibility problem. Upon authorization by
475 the District General Manager, the Contractor shall discontinue Collection for any such location until
476 the safety hazard or accessibility problem is corrected. Contractor may charge for the "Extra Pick-
477 up" at District-approved Rate(s) for such service in the event that its Collection vehicle is required
478 to return to the service location to complete Collection due to a safety hazard or access restriction
479 caused by the Customer and documented with photographic evidence.

480 B. **Enclosures.** Where the Collection Location is within an enclosure constructed pursuant to the
481 requirements of any public agency having jurisdiction over the design, construction, and location of
482 such enclosures, the Contractor shall be responsible for the removal and replacement of all
483 Containers placed therein. The Contractor shall use sufficient care in the handling of such Containers
484 so as to prevent any damage to the enclosure, the enclosure doors, and adjacent facilities or
485 improvements. The Contractor shall promptly repair at its own expense any such enclosure or
486 adjacent facilities or improvements damaged by the Contractor. The District General Manager shall
487 resolve any disputes relating to such damage, and the Contractor agrees to abide by such decision.

488 **4.7 Other Wastes**

489 The Parties acknowledge that this Agreement is granted only with respect to the Franchise Services
490 described herein and does not include the Collection, Transportation, Processing, or Disposal of Hazardous
491 Waste, Medical Waste, and Liquid Waste. If the Contractor elects to provide any such services with respect
492 to Hazardous Waste, Infectious Waste, or any other waste regulated by the Department of Toxic
493 Substances Control, such services shall be performed by a separate legal entity separately insured and
494 liable, and according to Applicable Law. The Parties further acknowledge that the provision by the
495 Contractor of any services not specifically included within the Agreement are excluded from the
496 protection of this Agreement and may be the subject of competition among any and all legally authorized
497 haulers.

498 **4.8 Changes in Scope of Franchise Services**

499 The District may modify the scope of services performed by the Contractor pursuant to this Agreement.

500 The District shall provide written notice of any requested modification to the scope of services provided
501 by Contractor pursuant to this Agreement, and the Contractor shall provide the District with any
502 information requested by the District in connection with the proposed changes. The Contractor shall,
503 within sixty (60) days after receipt of such notice by the District, respond to the District's order. The
504 Contractor may seek additional compensation in the event the scope of services is modified in accordance
505 with this Section 4.8. The need for and amount of additional compensation shall be calculated following
506 a change in scope Rate review pursuant to Section 9.3.

507 4.9 Billing

508 Contractor shall bill all Customers and be solely responsible for collecting billings at Rates set in
509 accordance with Article 9. Billing shall be performed on the basis of services rendered and this Agreement
510 shall create no obligation on the part of any Person on the sole basis of the ownership of property.
511 Contractor shall bill Customers three (3) times per year scheduled (In September, January, and May) in
512 such a manner that Customers' receive a bill every four (4) months. The format and content of the bills
513 shall be subject to District General Manager review and approval.

514 A. **Payment Methods and Location.** Contractor shall prepare and mail bills to, and collect payment
515 from Customers who decline to use such internet-based billing system. Contractor shall allow for
516 Customers to pay by check or money order.

517 B. **Billing Records.** Contractor shall maintain copies of all billings and receipts, each in chronological
518 order, for the Term of this Agreement, for inspection and verification by the District General
519 Manager at any reasonable time but in no case more than thirty (30) calendar days after receiving
520 a request to do so.

521 C. **Responsible Parties.** For the purposes of determining the parties ultimately responsible for the
522 purposes of billing, the Customer shall be determined to be the Owner of the property. The only
523 exceptions shall be for Single-Unit Dwellings or single businesses on a tax parcel where the tenant
524 or occupant of that property, rather than the Owner, subscribes to service.

525 D. **Bad Debt & Collections Procedures.** Contractor shall be responsible for collection of payment from
526 Customers with past due accounts ("bad debt"). Contractor shall make reasonable efforts to obtain
527 payment from delinquent accounts through issuance of late payment notices, telephone requests
528 for payments, and assistance from collection agencies.

529 Bills shall become due and payable three and one-half (3.5 months) after mailing (e.g., bills mailed
530 on September 1 shall be due and payable on December 15). In the event that any account becomes
531 more than forty-five (45) calendar days past due, Contractor shall notify such Customer of the
532 delinquency via written correspondence and telephone contact.

533 4.10 Public Awareness

534 The Contractor agrees, at its own expense, to prepare and send or deliver to Customers an annual service
535 information brochure providing a description of Collection service offering, including, but not limited to,
536 Rates, Collection service options, set-out requirements, payment options, discounts (if any), days of
537 Collection, service level and inquiry/complaint procedures, including the name, address and local
538 telephone number of Contractor and the name, address and telephone number of the District General
539 Manager. In addition, Contractor shall provide additional information to Customers at least twice annually
540 on such topics as proper Household Hazardous Waste Disposal, Solid Waste reduction and Recycling, or
541 such other relevant topics. All public education and outreach materials are subject to review and approval
542 of the District General Manager prior to release or distribution to Customer and/or the public.

543 To the extent reasonably possible, the Contractor shall accommodate the inclusion of any District-directed
544 information on its regular billing statements upon the request of the District General Manager without
545 cost to the District. If the District requests the distribution of information on a topic in a form that cannot

546 be printed or included with the Contractor's regular bill, the District and Contractor will share in the cost
547 of printing and distribution.

548 **4.11 Transition to Next Contractor at End of Agreement**

549 Contractor will take direction from the District and cooperate with the subsequent contractor to assist in
550 a timely and orderly transition of services from Contractor to subsequent contractor. In response to the
551 District's direction, Contractor shall provide then-current route lists in an electronic format, which identify
552 each Customer on the route, its service level (number of Containers, Container sizes, frequency of
553 Collection, scheduled Collection day), and any special Collection notes, and detailed then-current
554 Customer account and billing information. Contractor may, but shall not be obliged to, sell Collection
555 vehicles, equipment, or facilities to the next contractor.

556 **4.12 Ownership of Materials**

557 Once Solid Waste, Recyclable Materials, and Organic Materials are placed in Containers and at the
558 Collection location, ownership and the right to possession of such materials shall transfer directly from
559 the Generator to Contractor. Once Solid Waste, Recyclable Materials, and Organic Materials are
560 deposited by Contractor at an Approved Facility, such materials shall become the property of the owner
561 or operator of the facility.

562 **4.13 Annexation and Change of Franchise Area Boundaries**

563 Contractor realizes that the public agency boundaries may be altered by virtue of actions taken by the
564 Contra Costa County Local Agency Formation Commission (LAFCO). Contractor agrees that should a
565 municipal corporation lawfully annex territory which is within the Franchise Area, District may make such
566 alternations to the Franchise Area as the annexation necessitates. Should the Franchise Area boundaries
567 be amended, Contractor agrees that it will abide by any changes resulting from the Franchise Area change.
568 Contractor agrees that the District Board may make such alterations to the Franchise Area as are
569 necessitated by such Local Agency Formation Commission actions and that it shall have no right or claim
570 to damages or other relief against the District or County for such alterations to the Franchise Area.
571 However, nothing herein is intended to abrogate Contractor's rights under Public Resources Code Section
572 49520 or any successor or similar statute.

573 **ARTICLE 5: TRANSFER, PROCESSING, AND DISPOSAL**

574 **5.1 Approved Facilities**

575 A. **General.** The Contractor shall provide or arrange for Transfer (if appropriate) and Processing of
576 Recyclable Materials and Organic Materials Collected in the Franchise Area and for Transfer (if
577 appropriate) and Disposal of Solid Waste Collected in the Franchise Area, so long as such
578 arrangements are in full compliance with this Agreement and Applicable Law. Contractor may
579 engage a Subcontractor to provide Transfer, Processing, and/or Disposal services provided that the
580 Subcontractor is approved by the District pursuant to Section 7.6.D. Contractor shall only deliver
581 Collected materials to facilities approved by the District and such Collected materials shall only be
582 Transferred, Processed, and Disposed of at facilities approved by the District. Contractor shall pay

583 all costs associated with Transport, Transfer, Processing, and Disposal including per-Ton Tipping
584 Fees or gate fees charged for Transfer, Processing, and/or Disposal at Approved Facilities.
585 Contractor, or its Subcontractor, shall keep all existing permits and approvals necessary for use of
586 Approved Facilities in full regulatory compliance.

587 B. **Recyclables Processing.** The Contractor shall be responsible for Transfer (if appropriate) and
588 Processing of Recyclable Materials Collected in the Franchise Area. Contractor shall Transport
589 Collected Recyclable Materials to an Approved Recyclable Materials Processing Facility for
590 Processing.

591 C. **Organic Materials Processing.** The Contractor shall be responsible for Processing of Organic
592 Materials Collected in the Franchise Area. Contractor shall Transport Collected Organic Materials
593 to an Approved Organic Materials Processing Facility for Processing. Contractor shall arrange for
594 composting of the Organic Materials at an Approved Organic Materials Processing Facility. It shall
595 not use or allow for Organic Materials to be used at a landfill for alternative daily cover, alternative
596 intermediate cover, or other "beneficial reuse purposes" at a landfill.

597 D. **Solid Waste Disposal.** The Contractor shall Transport Solid Waste Collected in the Franchise Area
598 to an Approved Transfer Facility and shall arrange for Transfer and Disposal of all Solid Waste at an
599 Approved Disposal Facility. Contractor may directly Transport to and Dispose of Solid Waste at
600 Potrero Hills Landfill in Suisun, CA (an Approved Disposal Facility) in lieu of Transporting Solid Waste
601 to an Approved Transfer Facility. Residue Materials from the Recyclable Materials and Organic
602 Materials Processing shall be Disposed of by Contractor, or owner/operator of Approved Recyclable
603 Materials Processing Facility and Approved Organic Materials Processing Facility, at a Disposal
604 Facility selected by Contractor or the owner/operator of Approved Recyclable Materials Processing
605 Facility or Approved Organic Materials Processing Facility.

606 E. **Facility Records.** The Contractor shall keep and maintain such logs, records, manifest, bills of lading
607 or other documents as the District may deem to be necessary or appropriate to confirm compliance
608 with requirements of this Article and shall retain all weight slips or other call information provided
609 to the Contractor or Contractor's drivers by the owner or operator of Approved Facilities.

610 F. **Failure to Transport to Approved Facilities.** The Contractor's failure to properly Transport, or cause
611 to be Transported, Solid Waste, Recyclable Materials, and Organic Materials to Approved Facilities
612 as described herein is an Event of Default as described in Section 11.1.A of this Agreement, unless
613 the failure is the result of an Uncontrollable Circumstance or such material has been diverted by
614 means of alternative technology allowing AB 939 diversion credit to the District.

615 G. **Guaranteed Capacity.** Contractor shall be solely responsible for selecting Approved Facilities with
616 sufficient capacity at such Facilities to Transfer, Process, and/or Disposal of all Solid Waste,
617 Recyclable Materials, and Organic Materials Collected by Contractor under this Agreement
618 throughout the Term of the Agreement. Contractor shall provide the District, upon request, with
619 documentation demonstrating the availability of such sufficient capacity at Approved Facilities for
620 all materials Collected by Contractor in the District throughout the Term of this Agreement.

621 5.2 Marketing of Recovered Materials

622 Contractor shall be responsible for Processing or causing Processing of Recyclable Materials and Organic
623 Materials to recovery and market such materials. For all contracts with Subcontractors entered into or

624 renewed on or after the Agreement Date, Contractor agrees to require Subcontractors to guarantee that
625 Processing will result in significant diversion of Recyclable Materials Collected from Disposal so that
626 Residual Waste from the Recyclable Materials that is less than ten percent (10%) by weight of the
627 Recyclable Materials Collected measured on an average monthly basis. For all contracts with
628 Subcontractors entered into or renewed on or after the Agreement Date, Contractor agrees to require
629 Subcontractors to guarantee that Processing will result in significant diversion of Organic Materials
630 Collected from Disposal so that Residual Waste from the Organic Materials that is less than one percent
631 (1%) by weight of the Green Waste Collected measured on an average monthly basis. The residual level
632 shall be calculated as the monthly Tonnage of Processing Residual Waste divided by the total monthly
633 Tonnage of Recyclable Materials Collected or Organic Materials Collected as appropriate.

634 Contractor shall market or arrange for marketing of all Recovered Materials from the Recyclable Materials
635 and Organic Materials Collected in the District. Contractor's marketing strategy shall make reasonable
636 business efforts to promote the highest and best use of materials presented in the waste management
637 hierarchy established by AB 939. Where practical and cost-effective, the marketing strategy should
638 include use of local, regional, and domestic markets for Recyclable Materials and Organic Materials. With
639 the exception of the small quantities of Residual Waste, Contractor shall not Dispose of Recyclable
640 Materials or Organic Materials. Contractor shall make available to the District General Manager any and
641 all documentation of the final disposition of marketed Recyclable Materials and Organic Materials as well
642 as certification that such materials have not been Disposed or incinerated.

643 Contractor shall not Dispose of Recyclable Materials, Organic Materials, and C&D Collected in the District.
644 However, if market conditions are such that there are no purchasers and no users willing to accept such
645 Recovered Materials for reuse, Recycling, or Processing without payment by Contractor, Contractor may
646 submit a written request to the District General Manager for authority not to Collect such materials while
647 such market conditions persist. If the District General Manager can make the findings specified in Article
648 418-10.8 in the County Ordinance Code, and unless County otherwise directs, the District General
649 Manager shall exempt such material(s) from Recycling on conditions he/she specifies.

650 5.3 Weighing and Record Requirements

651 Contractor shall ensure that all Solid Waste, Recyclable Materials, and Organic Materials are weighed
652 upon delivery to Approved Facilities, and all weight and related delivery information (including date, time,
653 material type, route and truck number) ("Delivery Data") is recorded. Contractor shall provide District
654 with copies of the Delivery Data upon request. If Contractor, or its Subcontractor, record vehicle receiving
655 and unloading operations on video at Approved Facilities, Contractor shall make those videos available
656 for District review during the facility's operating hours, upon request of the District.

657 5.4 District Right to Modify Facility Arrangements

658 The District may order the Contractor to modify or terminate its Transfer, Processing and/or Disposal
659 arrangements if:

- 660 A. The District determines that such arrangements threaten public health or safety, or
- 661 B. The District determines that the District is not adequately protected from liability for the activities
662 of the Transfer, Processing, or Disposal facility operations and entities, or

663 C. The District determines that the diversion levels of the particular facility causes the District to be
664 out of compliance with AB 939, AB 341, or any other regulations regarding Solid Waste, Recyclable
665 Materials, and Organic Materials management, or the Contractor is Disposing of Recovered
666 Materials in a manner or volume which does not result in significant diversion credit to the District.

667 In the event the District directs the Contractor to modify or terminate Transfer, Processing, or Disposal
668 arrangements, the District acknowledges that the Contractor shall nonetheless be entitled to recover,
669 through the Rates to be charged and authorized to be imposed hereunder, the reasonable costs of the
670 Contractor incurred in implementing such Transfer, Processing, or Disposal arrangements (determined in
671 accordance with generally accepted accounting principles).

672 5.5 Title to Recovered Materials

673 As between the Parties, the Contractor has title to and liability for all Recovered Materials, and shall
674 indemnify, defend, and hold harmless the District from any property damage, personal injury, or
675 consequential damages suffered by any Person from exposure to or as a result of Processing any
676 Recovered Materials or subsequent product made from Recovered Materials based on any theory of
677 liability. The Contractor shall promptly notify the District of any claim by any Person arising out of the
678 marketing, Disposal, or reuse of Recovered Materials.

679 **ARTICLE 6: OPERATING ASSETS**

680 6.1 Operating Assets

681 A. **Obligation to Provide.** The Contractor shall acquire and maintain at its own cost and expense,
682 Operating Assets which in number, nature, and capacity shall be sufficient to enable the Contractor
683 to provide the Franchise Services in accordance with the terms hereof and such assets shall be
684 subject to inspection by the District at any time.

685 B. **Vehicle and Equipment Identification.** The Contractor's name, phone number, and Vehicle or
686 equipment number shall be visibly displayed in letters not less than three (3) inches in height on
687 both sides of its Vehicles or other Collection equipment used by the Contractor.

688 C. **Vehicle Specifications, Maintenance, and Appearance.** All Vehicles shall be properly registered
689 with the Department of Motor Vehicles of the State of California, shall be properly insured, shall be
690 of a type approved by the District, shall be kept clean and in good repair, and shall be continuously
691 maintained in a watertight condition. Vehicles used to Collect or Transport Solid Waste, Recyclable
692 Materials, and Organic Materials shall be kept covered at all times except when such material is
693 actually being loaded or unloaded, or when the Vehicles are moving along a Collection route in the
694 course of Collection. All Vehicles shall carry a broom, shovel, and operable fire extinguisher.
695 Collection Vehicles shall be washed at least once every seven (7) days and cleaned and painted as
696 required to maintain a clean appearance. All Vehicles must be made available for inspection upon
697 reasonable notice by the District General Manager.

698 D. **Spillage.** Any cover or screen shall be so constructed and used that Solid Waste shall not blow, fall,
699 or leak out of the Vehicle onto the street. In the event of a spill, leak, or loss of payload during
700 transit, the Contractor shall immediately arrange for the clean-up and Transportation of the payload

701 to the appropriate facility at the Contractor's sole cost and expense, shall pay any resulting fines,
702 assessments, penalties, or damages resulting therefrom, and shall indemnify and hold harmless the
703 District in accordance with the procedures provided in Section 10.1 hereof from all loss-and-
704 expense resulting therefrom. Failure to clean-up may result in Liquidated Damages (Section 11.2).

705 E. **Computer System Compatibility.** The Contractor shall maintain records and data in an electronic
706 format compatible with the versions of Microsoft Word and Excel currently in use by the District at
707 any given time during the Term of this Agreement. The Contractor will, at its cost and expense, if
708 requested by the District General Manager, provide any reports or data required by this Agreement
709 via email, on computer disc, or through other electronic format. Raw or printed data may not be
710 submitted as a substitute to the Contractor's obligation to provide various reports under this
711 Agreement.

712 6.2 Operation and Maintenance of the Operating Assets

713 The Contractor, at its cost and expense, shall at all times: 1) operate the Operating Assets properly and in
714 a safe, sound, and economical manner; 2) maintain, preserve, and keep the Operating Assets in good
715 repair, working order, and condition; 3) staff the Operating Assets with the appropriate number of
716 licensed employees consistent with good management practice; and, 4) make all necessary and proper
717 repairs, replacements, and renewals, so that at all times the operation of the Operating Assets may be
718 properly and advantageously conducted. The Contractor shall maintain the safety of the Operating Assets
719 at a level consistent with Applicable Law, the Insurance Requirements, and prudent Solid Waste and
720 Recycling management practices.

721 6.3 Containers

722 A. **District Regulations.** The District shall approve the number, type, size, and other specific physical
723 requirements for Containers.

724 B. **Containers for Residential Customers.** Residential Customers will supply and maintain all Solid
725 Waste, Recyclable Materials, and Green Waste Containers required for the services provided under
726 this Agreement.

727 C. **Containers for Commercial Customers.** The Contractor shall provide Commercial Customers with
728 Carts, Bins, or Drop Boxes for Solid Waste, Recyclable Materials, and Green Waste Collection as
729 needed for the Customer's Service Level. Such Containers shall be provided as an Operating Asset
730 at its own cost and expense. Each Contractor-provided Container shall be watertight, identified with
731 the Contractor's name and phone number, equipped with heavy-duty casters, and equipped with
732 closeable and lockable lids. Pursuant to Section 4.2.E, upon Customer's request, Contractor shall
733 provide lock and unlock service to each Bin at no additional cost.

734 D. **Collection Requirements.** After emptying any Container, the Contractor shall replace the Container
735 in an upright position at the place where such Container was placed by Customer for Collection. The
736 Contractor shall handle Containers in a manner so as to prevent damage or spillage, and shall not
737 throw, drop, or otherwise mishandle Containers during or after emptying them.

738 E. **Maintenance and Repair.** The Contractor shall be responsible for the general maintenance and
739 repair of Contractor-provided Containers, and shall provide an equivalent Container as replacement
740 during repairs and maintenance. If repairing, maintenance, steam cleaning, and/or repainting is