

OPERATING AGREEMENT

BETWEEN

THE WESTERN PLACER WASTE MANAGEMENT AUTHORITY

AND

_____ [Name of Contractor]

FOR OPERATION OF THE

WESTERN PLACER MATERIALS RECOVERY FACILITY

EFFECTIVE DATE OF _____

This "**Agreement**" is made to be effective as of _____
 ("**Effective Date**"), by and between the **WESTERN PLACER WASTE
MANAGEMENT AUTHORITY**, a joint powers authority organized under
California law ("**Authority**") and _____ [name of
Contractor], a _____ [type of business
organization] ("**Contractor**"). The Authority and Contractor are
hereinafter referred to jointly as "**the Parties**" and singularly as
a "**Party**".

RECITALS

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement integrated waste management programs to reduce the amount of material landfilled. The State has, through enactment of the California Integrated Waste Management Act of 1989 (hereinafter referred to as the "**Act**"), directed the responsible state agency, and all local agencies, to promote Recycling and to maximize the use of feasible source reduction, Recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal by fifty percent (50%).

2. The Authority is an agency established under the Joint Exercise of Powers Act, California Government Code Sections 6500 et seq. Its members are the County of Placer and the cities of Lincoln, Rocklin and Roseville ("**Member Agencies**"). It owns a sanitary landfill ("**Landfill**") which receives for disposal Municipal Solid Waste generated within the jurisdiction of the

Member Agencies. In addition, the cities of Auburn, Colfax and Loomis ("**Contributing Cities**") currently dispose, or have the option to dispose, of Municipal Solid Waste generated within their jurisdictions at the Landfill.

3. The Member Agencies and the Contributing Cities (all of which are collectively referred to herein as the "**Participating Agencies**") are charged by the Act with developing source reduction and recycling elements ("**SRREs**") to be incorporated into the integrated waste management plan for Placer County. The Participating Agencies identified several years ago the need for a Materials Recovery Facility (the "**Facility**") in proximity to the Landfill in order to assist them in achieving the goal of diverting Municipal Solid Waste from land disposal.

4. The Facility was designed and constructed, passed system performance tests specified by the Authority, and thereafter and continuously until the Effective Date, was operated by a prior contractor under contract with the Authority to recover and Recycle materials, including glass, metal, wood, cardboard, paper and plastics from Municipal Solid Waste; to generate Alternative Daily Cover from fines collected as a result of Processing Municipal Solid Waste; to produce compost from Yard Waste; to produce landscaping ground cover and biomass fuel from Wood Waste; to purchase and/or receive and process certain Recyclable Materials from Participating Agencies and members of the public at a Buyback/Dropoff Center; and to provide for the safe receipt and disposal of certain Household Hazardous Wastes.

5. The Authority determined that it would be in the best interests of the Authority and the Participating Agencies to

request competitive proposals from a number of qualified companies for continued operation of the Facility after the Authority's contract with the prior contractor expired on June 30, 2005. The Authority also determined that because of the projected increase in delivery of Municipal Solid Waste to the Facility by the Participating Agencies the capacity of the Facility should be increased. Therefore, after an extensive design and competitive procurement process, the Authority selected Contractor to continue the operations of the Facility from and after July 1, 2005, including during the period of expansion and improvement of the Facility, throughout the Term of this Agreement. The Authority also selected Contractor (under a separate agreement) to develop the design of the Facility expansion and provide construction management services during the period of the expansion and improvement of the Facility.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1. ATTACHED DEFINITIONS

Unless the context clearly indicates otherwise, the capitalized terms used in this Agreement will have the meanings set forth in Appendix One attached to this Agreement.

ARTICLE 2. TERM OF AGREEMENT

2.01 Effective Date. The Effective Date of this Agreement is July 1, 2005.

2.02 Term. The Term of this Agreement shall commence on the Effective Date and shall end as of midnight on June 30, 2012, unless extended by the Authority as provided in the following section. If this Agreement is extended by the Authority, the Term of this Agreement shall include any such extension periods.

2.03 Extension of Term. The Authority shall have the right, as its sole option, to extend the Term of this Agreement in one (1) year increments for up to two (2)years. The Authority may exercise the first one year extension option by delivering notice of its exercise of that option to the Contractor at least one hundred and twenty (120) days before the expiration date of this Agreement. The Authority may exercise the second one year extension option by delivering notice of its exercise of that option to the Contractor at least one hundred and twenty (120) days before the expiration of the first extension period.

ARTICLE 3. OPERATION OF THE FACILITY

3.01 General. Contractor recognizes that the Authority and the Participating Agencies are committed to Recycling waste materials which have in the past been disposed of in landfills, including the Landfill. To that end, the Facility has been designed and shall be operated to accomplish materials recovery as required by the provisions of this Agreement.

3.02 Gatehouse Operations. The Facility is equipped with two Commercial Gatehouses for weighing commercial vehicles and one Public Gatehouse for public (self-haul) customers. The Authority has elected to operate the Gatehouses at the Facility, including weighing and recording the weights or volumes of incoming loads, and to perform the Gate Fee collection and accounting activities with its own employees. The Authority retains the right to elect to utilize a separate independent contractor to perform such activities. If the Authority elects to use such independent contractor, it will give Contractor thirty (30) days prior notice of such election.

The Authority shall have complete discretion to establish, change or eliminate the Gate Fees for users of the Facility and may establish different fees for different categories of users.

In order to protect the Facility and to insure that Contractor's compensation is properly calculated, the Authority shall (1) direct vehicles carrying loads of Municipal Solid Waste which do not qualify as Publicly Hauled Waste to the Materials Recovery Facility, 2) direct vehicles carrying loads of Publicly Hauled Waste directly to the Public Hauled Waste Tipping Area (3) direct non-Publicly Hauled Waste vehicles carrying loads of

clean Yard Waste and/or Wood Waste directly to the Green Waste Composting and Wood Waste Processing Area, (4) direct vehicles delivering Recyclable Materials listed in Section 3.13 to the Buyback/Dropoff Center and 5) direct vehicles carrying sewage sludge, dirt, rock and other Inert Materials directly to the Landfill. The Authority and Contractor shall jointly use their best efforts to direct vehicles carrying materials that could damage machinery and equipment at the Facility directly to the Landfill, but the Authority shall have no obligation to compensate Contractor for damage to machinery and equipment at the Facility caused by such materials.

Contractor may at any time station an employee or employees at either or both of the Commercial Gatehouses who may determine which incoming vehicles shall be directed to the Landfill. If Contractor does not assign an employee(s) for this task, the Authority shall use its best efforts to direct to the Landfill categories of loads that Contractor indicates it does not want to Process, however in such event Authority's Gatekeeper's decisions on vehicle direction to any portion of the Facility or to the Landfill shall be final, and Contractor shall not be entitled to any Processing Fees on loads sent to the Landfill.

3.03 Days and Hours of Operation. Contractor shall operate the Facility for receipt of materials every day of the year.

Contractor shall operate the Facility for Processing during the following hours, except for January 1, Memorial Day, July 4, Labor Day, the Fourth Thursday of November, and December 25 (the "Holidays"):

Operation	Weekdays	Saturday	Sunday	Holidays ²
Receipt of Materials ¹	7 a.m. to 7 p.m.	8 a.m. to 5 p.m.	8 a.m. to 5 p.m.	See Note 3
Minimum Hours for Processing of Materials ¹	7 a.m. to 7:30 p.m.	8 a.m. to 3:30 p.m.	Closed	Closed
Additional Hours for Processing of Materials ^{1,4}	6 am to 7 am 7:30 p.m. to 11:30 p.m.	6 am to 7 am 3:30 p.m. to 11:30 p.m.	6 am to 11:30 p.m.	Closed
Buyback Center	7 a.m. to 7 p.m.	8 a.m. to 5 p.m.	8 a.m. to 5 p.m.	Closed

Notes:

1. "Materials" include: Municipal Solid Waste and Recyclable Materials, including Source-Separated Recyclable Materials, Source Separated Green Waste, and Source Separated Wood Waste.
2. Holidays as defined in this section.
3. Hours for the receipt of Materials shall correspond to the day of the week in which the Holiday occurs. For example, if July 4th (one of the Holidays) falls on a Saturday, the hours of receipt shall be from 8 a.m. to 5 p.m.
4. In addition to the minimum hours during which the Facility will be open for Processing of materials, Contractor shall use its best efforts to Process all materials received at the Facility, utilizing these additional Processing hours as necessary, subject to limitations on times of operation which may be imposed through the Solid Waste Facility Permit issued by the California Integrated Waste Management Board, the Conditional Use Permit issued by Placer County or other permits that regulate the operation of the Facility by Contractor. Contractor must operate to achieve the requirements of this Agreement within whatever operating hour limitations are imposed through such permits.

3.04 Receipt of Municipal Solid Waste and Recyclable

Materials. Contractor shall accept (1) all Municipal Solid Waste and Recyclable Materials delivered to the Facility by, or on behalf of, the Participating Agencies and/or their Designated Haulers; (2) Publicly Hauled Waste generated within the jurisdiction of the Participating Agencies; (3) Source-Separated Recyclable Materials delivered by residents of or businesses operating within the Participating Agencies; (4) Household Hazardous Waste delivered by residents of the Participating Agencies; and (5) Out-of-Primary-Service-Area Municipal Solid Waste and/or Recyclable Material (where the Authority has directed Contractor to accept such materials).

Contractor shall Process such materials for either Recycling or disposal in accordance with this Agreement.

Contractor shall ensure that loads delivered to the Facility are capable of being processed at the Facility without damaging the Facility or the machinery or equipment therein, and shall reject any loads that contain materials that would cause such damage.

In recognition of the inherent difficulties in determining the entire composition of a load of Municipal Solid Waste, Source Separated Green Waste and/or Source Separated Wood Waste before it is unloaded from the vehicle, the Authority and Contractor have developed and will continue to update and supplement a mutually agreeable protocol, which is included as "**Exhibit A**", which details the necessary actions that should be taken when Contractor discovers that a load was misidentified by the Authority's Gatekeeper.

3.05 Receipt and Processing of Material from Outside Primary Service Area. The Authority may at any time require Contractor to receive and process Municipal Solid Waste and/or Recyclable Materials which originate from outside of the Primary Service Area. Unless the Authority does so, Contractor shall not receive any Municipal Solid Waste or Recyclable Material from outside the Primary Service Area. The Primary Service Area is shown on "**Exhibit B**".

The Authority may, upon written request of Contractor, allow Contractor to utilize the Facility to process Recyclable Materials that Contractor receives from outside the Primary Service Area. In the event Contractor desires to utilize the Facility for such

purposes, it shall submit a written proposal to the Authority that specifies the area of origin of the Recyclable Materials, the type and forecasted quantity of the Recyclable Materials that are proposed to be Processed, the projected usage of the Facility, the proposed payment to the Authority for the use of the Facility, and such other information the Executive Director of the Authority may require in order to evaluate the proposal.

The Executive Director of the Authority shall evaluate the proposal and may, at his/her discretion, provide written approval to Contractor allowing Contractor to use the Facility on terms that it deems to be in the best interests of the Authority.

Under no circumstances may residual material that is a result of the Processing of Recyclable Materials from outside the Primary Service Area be deposited in the Landfill. Contractor shall be solely responsible for any and all costs to isolate, identify, arrange, transport and dispose of any residual materials that result from the Processing of Recyclable Materials from outside of the Primary Service Area.

3.06 Priority. The primary purpose of the Facility is to process Municipal Solid Waste and Recyclable Materials delivered by the Participating Agencies and/or their Designated Haulers, who shall have first priority in use of the Facility. A secondary purpose is to process Publicly Hauled Waste and Recyclable Materials delivered by residents and/or businesses of the Participating Agencies, who shall have second priority in use of the Facility. If the Authority allows, pursuant to Section 3.05, Municipal Solid Waste or Recyclable Materials generated outside the Participating Agencies to be delivered to and accepted for

processing at the Facility, such material shall be assigned third priority. Contractor shall operate the Facility in order to give effect to the above stated priorities.

Processing of material from outside the Participating Agencies shall, if allowed, never be permitted to interfere with processing of Municipal Solid Waste or Recyclable Materials delivered by or on behalf of the Participating Agencies or their Designated Haulers. To that end, and by way of example and not limitation, the Authority may direct that materials from outside the Participating Agencies not be accepted during the peak hours of 9 a.m. to 3 p.m. or when vehicles of Designated Haulers from any of the Participating Agencies are delayed beyond the times allowed in Section 3.08. Vehicles carrying material from outside the Participating Agencies shall be refused entry during such periods.

3.07 Hazardous Waste Exclusion Program. Contractor shall develop a Hazardous Waste Exclusion Program ("**HWEP**") which is acceptable to the Authority and which meets the requirements of the California Integrated Waste Management Board, the Local Enforcement Agency, the Regional Water Quality Control Board, and all other public regulatory agencies, boards and bodies with proper jurisdiction and satisfies all applicable local, state and federal laws. The HWEP shall provide for Contractor's ability and responsibility to reject loads which are discovered to contain Hazardous Waste. Contractor shall implement the approved HWEP in a diligent, reasonable and non-discriminatory manner. Contractor shall provide suitable storage areas at the Facility for the temporary storage of materials prior to their delivery to either

of the Household Hazardous Waste Facilities which are discovered through the HWEP (or otherwise) in conjunction with Contractor's operation of the Facility. The Authority shall provide suitable storage areas and facilities at the Household Hazardous Waste Facilities for the temporary storage, packaging and shipment of materials which are discovered at the Facility through the HWEP (or otherwise) and which cannot legally and safely be processed at the Facility or accepted at the Landfill. Contractor shall use its best efforts to maximize the use of storage space available at the Hazardous Waste Facilities, including arranging for more frequent pickups of materials. Contractor shall arrange for the safe and lawful disposal of such materials through a properly licensed waste hauler engaged on a subcontract basis.

The Parties recognize that the operator of the Landfill may be required or authorized to conduct its own independent HWEP which may entail checking of loads delivered from the Facility by Contractor. If the operator of the Landfill rejects any material delivered by Contractor to the Landfill because it may not legally be disposed of at the Landfill, Contractor shall remove and dispose of it in a safe and lawful manner, as provided above. Any dispute between Contractor and the operator of the Landfill as to whether materials may legally be disposed of at the Landfill shall be between Contractor and such operator, and the Authority shall have no responsibility to Contractor as a result of any such dispute. The Authority may, but need not, decide any question which may arise as to the suitability for disposal of materials at the Landfill and, if it does, any such decision of the Authority

must be final and therefore shall be binding on Contractor and such operator.

The Authority has required that the operator of the Landfill accept, to the full extent that it is legally able to do so, Municipal Solid Waste which Contractor is obligated to accept and Process under this Agreement.

3.08 Turnaround Time of Waste Collection Vehicles. Contractor shall operate the Facility so that:

A. All vehicles of Participating Agencies and their Designated Haulers are able to unload and depart from the Facility in no more than eighteen (18) minutes after their leaving from the scales;

B. All vehicles carrying Publicly Hauled Waste do not wait an unreasonable amount of time for an assigned place to unload.

The Parties acknowledge that consistent, efficient operation of the Facility is of utmost importance, that delays in operations which increase the costs of Participating Agencies' Designated Haulers may affect the payments that Participating Agencies must make to the Designated Hauler, and that the Authority has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if Contractor fails to achieve the performance standards, the Authority, Participating Agencies and their residents will suffer damages and that it is and will be impracticable and extremely

difficult to ascertain and determine the exact amount of damages that they will suffer. Therefore, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date, including the relationship of the sums to the range of harm to the Authority and Participating Agencies that reasonably could be anticipated and in anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor

Authority

Initial Here: _____

Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth below and further agrees that this amount may be deducted by the Authority from payments to

Contractor by the Authority:

For each vehicle of the Participating Agencies or their Designated Haulers which is unable to unload and depart from the Facility within eighteen (18) minutes after its departure from the scales: \$100

The liquidated damages provided for herein are the Authority's sole monetary remedy for the delays for which they are assessed.

The above amount will be adjusted as of July 1, 2006 and annually thereafter in accordance with Article __, Section__.

Neither the time limits nor the liquidated damages set forth in this Section shall apply to vehicles selected for load check procedures pursuant to the HWEF or which are otherwise delayed because of Contractor's investigation of their contents for Hazardous Waste nor to vehicles delayed by mechanical breakdown or by driver negligence.

3.09 Material Recovery Facility Operations.

Contractor shall operate the Materials Recovery Facility in accordance with the following provisions and as specified elsewhere in this Agreement.

A. Obligation to Process and Recover Recyclable Materials. Contractor shall operate the Materials Recovery Facility for the purposes of sorting and Processing Municipal Solid Waste (including Construction and Demolition Debris) delivered by the Participating Agencies and their Designated Haulers and Publicly Hauled Waste to recover Recyclable Materials for Recycling. Contractor shall use all reasonable efforts to divert the maximum feasible amount of such Municipal Solid Waste from land disposal for reuse or Recycling that is commercially feasible.

B. Concrete and Asphalt. Contractor shall deliver concrete and asphalt recovered by it through Processing at the Materials Recovery Facility to the Landfill's operator, separated from other Municipal Solid Waste and at no additional cost to the Authority. Concrete and asphalt so delivered shall be deemed Recycled, and therefore count towards Contractor's achievement of the Guaranteed Minimum Recycling Level, provided that the delivered material does

not contain more than one percent (1%) by volume of contaminants. Contaminants include, but are not limited to, plastic, paper, wood and green waste, and metal. The Gatekeeper shall direct loads containing contaminants to the Landfill for disposal.

C. Alternative Daily Cover. Contractor may produce Alternative Daily Cover from the Municipal Solid Waste Processed at the Materials Recovery Facility. The Authority will determine whether it will receive Alternative Daily Cover at the Landfill and, if so, in what amount. The Contractor shall deliver Alternative Daily Cover to the Landfill when requested by the Authority at no cost to the Authority. Contractor may deliver Alternative Daily Cover to other landfills only if the Contractor produces more Alternative Daily Cover than the Authority will allow to be received at the Landfill.

The Contractor shall receive credit towards the Guaranteed Minimum Recycling Level for materials used as Alternative Daily Cover in accordance with the regulations of the California Integrated Waste Management Board if the Participating Agencies receive diversion credit from the California Integrated Waste Management Board for the use of such Alternative Daily Cover.

D. CFC Containing Devices. Contractor shall remove and arrange for the Recycling or proper disposal of Freon and/or any other chlorofluorocarbon from white goods delivered to the Material Recovery Facility, and will be compensated therefor as provided in Section 4.02.G.

E. Used Tires. Contractor shall arrange for the Recycling of used tires recovered from Municipal Solid Waste and/or

delivered to the Facility, by any Person, source separated from other materials.

F. Rated Capacity of Materials Recovery Facility. The Authority intends to expand and improve the Materials Recovery Facility during the Term of this Agreement, consistent with a design to be prepared by Contractor, as approved and modified by the Authority. Before and after the completion of this expansion, the Materials Recovery Facility shall have a "Rated Capacity" expressed in terms of the total number of Tons that the Materials Recovery Facility can process in any given Operating Day. The current Rated Capacity and the projected post-expansion Rated Capacity of the Materials Recovery Facility is set forth in Exhibit C.

Should Contractor reasonably believe, after taking into consideration its ability to store and Process materials at a later date, that the amount of Municipal Solid Waste and Recyclable Materials being received at the Materials Recovery Facility during any Operating Day will exceed the Rated Capacity of the Material Recovery Facility, Contractor shall notify the Authority of this fact within a reasonable period of time, and the Parties will confer on appropriate measures to address such circumstances, including the amount and types of materials that may be diverted from the Materials Recovery Facility to the Landfill. The Authority shall not cause the Material Recovery Facility to exceed its Rated Capacity upon receipt of notice from the Contractor as described above. However, the Contractor may request that material continue to be delivered to the Material Recovery Facility should the Contractor decide to carry over

material for future processing. The Authority shall not be liable to the Contractor for any damages or loss of revenues or Incentive Payments suffered by Contractor when materials are diverted from the Material Recovery Facility by the Authority in accordance with this Section. The diversion of materials from the Material Recovery Facility pursuant to this Section shall not relieve the Contractor from fulfilling its obligations under this Agreement, save and except for Contractor's obligation to receive and process the diverted materials. Rated Capacity is defined for purposes of this Agreement in _____.

3.10 Green Waste Composting and Wood Waste Processing Area.

Contractor shall operate the Green Waste Composting and Wood Waste Processing Area to produce compost and wood chips.

The Authority's Gatekeeper shall direct to this portion of the Facility for unloading all incoming Source Separated Green Waste and Source Separated Wood Waste. Contractor shall deliver to this area all Yard Waste and Wood Waste recovered from Municipal Solid Waste at the Materials Recovery Facility.

Compost produced at the Facility by Contractor shall be suitable for use as landscaping soil amendments or for different types of applications for compost of a horticultural, agricultural or other nature.

Contractor shall Process wood for soil amendments, compost, feedstock for "waferboard"-type products or for Transformation. No Transformation of any material other than wood is permitted. Both compost and wood chips produced by Contractor must qualify for Creditable Recovery and meet any applicable quality

requirements specified by the California Integrated Waste Management Board.

Contractor shall have no obligation to process Source Separated Green Waste over Forty Five Thousand (45,000) Tons per Operating Year if Contractor can demonstrate to Authority that there is insufficient capacity at the Facility to compost Source Separated Green Waste in excess of this amount.

Contractor shall be responsible for marketing or arranging for the beneficial reuse of the compost and wood chips.

No more than five percent (5%) of the material delivered to the Green Waste Composting and Wood Waste Processing Area may be landfilled as residue.

Contractor shall provide the equipment necessary to Process and compost Green Waste and Process Wood Waste. Contractor shall purchase from the Authority the Authority-owned Green and Wood Waste processing equipment identified on Exhibit D which Contractor can either use, relocate or sell.

If Contractor desires to add amendments to the compost stock, Contractor shall present a written plan to the Authority describing Contractor's proposal in detail, including any technical aspects of the proposal requested by the Authority. Contractor shall not add amendments to the compost until each of the following conditions is satisfied: (1) receipt of the Authority's advance written approval of Contractor's plan, which may be withheld in the Authority's sole and absolute discretion, (2) the completion of any required CEQA analysis and review, and (3) the obtaining of any required permit modifications

3.11 Publicly Hauled Waste Tipping Area. Contractor shall operate and maintain the Publicly Hauled Waste Tipping Area. The Authority Gatekeeper shall direct Publicly Hauled Waste to this area for unloading. Contractor shall place all materials received in this area in bins, depending on the final destination of each bin load (e.g., Materials Recovery Facility, Green Waste Composting and Wood Waste Processing Area or Landfill). Contractor shall haul the filled bins to the Gatehouse to be weighed and shall then transport the materials to the Material Recovery Facility, Green Waste Composting and Wood Waste Processing Area or Landfill for further Processing or disposal.

3.12 Household Hazardous Waste Program.

Contractor shall operate the Household Hazardous Waste facilities located near the Materials Recovery Facility and at the Publicly Hauled Waste Tipping Area in compliance with all applicable laws, regulations and permits, including:

- all applicable provisions of California law, including but not limited to, Article 10.8 of the California Health & Safety Code, commencing with Section 25218;

- all applicable regulations issued under the Health & Safety Code, including but not limited to, the regulations of the California Department of Toxic Substances Control ("**DTSC**") codified at 22 CCR Section 67450.25 (Requirements Applicable to Permanent Household Hazardous Waste Collection Facilities Deemed to Have a Permit by Rule);

- the authorization to operate issued by the DTSC on March 15, 1996, including the information contained in Part B of the application for standardized permit submitted to the DTSC and

referred to in the Notification to the DTSC submitted in February 1996.

In addition to the foregoing, Contractor shall operate the Household Hazardous Waste facilities in accordance with the following provisions:

- Contractor shall accept Household Hazardous Waste only from current residents of Placer County who deliver the materials in quantities below the statutory and regulatory limits on the transportation of Household Hazardous Waste (currently 50 pounds/5 gallons), and who provide evidence that the materials are only Household Hazardous Waste (i.e., are of only residential origin). Contractor shall accept larger quantities/volumes if the Authority elects to increase these amounts pursuant to Health & Safety Code Section 25218.5.1.

- Contractor shall accept Hazardous Waste from Conditionally Exempt Small Quantity Generators ("**CESQGs**"), which was generated within Placer County within the limits specified by law, currently 100 kilograms from any one CESQG in a calendar month. Contractor shall not accept any extremely Hazardous Waste from a CESQG.

- The Household Hazardous Waste Facility near the Materials Recovery Facility shall be open for collection of Household Hazardous Waste, by appointment, delivered by CESQGs. The Household Hazardous Waste Facility at the Publicly Hauled Waste Tipping Area shall be open for the collection of Household Hazardous Wastes every Monday, Wednesday and Saturday from 8 a.m. to 4 p.m.

- Although devices containing Cathode Ray Tubes ("CRT") shall be Processed as a Hazardous Waste by Contractor, Contractor acknowledges that the Authority charges a separate Gate Fee for CRT containing devices and that Contractor shall be responsible for accepting CRT containing devices during the hours the Facility is open for the receipt of materials as identified in Section 3.03.

- Contractor shall arrange for the off-site Recycling of all Household Hazardous Waste which must be Recycled under Health & Safety Code Section 25175 and 22 CCR Section 66266. Contractor shall dispose of, or arrange for the disposal of, all non-recyclable Household Hazardous Waste in compliance with all applicable laws and regulations. Specifically, all non-recyclable Household Hazardous Waste which is required to be incinerated by Health & Safety Code Section 25155.5, and all other Household Hazardous Waste which may feasibly be incinerated, shall be incinerated. Remaining Household Hazardous Waste shall be (1) neutralized, or (2) disposed of at a permitted Class I Hazardous Waste disposal site, in that order of priority.

- All Household Hazardous Waste which is transported from the Household Hazardous Waste Facilities shall be transported by Department of Health Services registered hazardous waste haulers which have been determined by Contractor to meet the training, financial responsibility and other requirements of the Health & Safety Code. Contractor shall solicit competitive bids for this service at least once every two (2) years.

Contractor shall complete, provide to the hauler, and maintain copies of applicable Hazardous Waste manifests for all

Household Hazardous Waste transported from the Household Hazardous Waste Facilities. The Authority may be identified as the generator of the Household Hazardous Waste for manifest purposes.

- Contractor shall furnish a monthly report showing the amount of each type of Household Hazardous Waste delivered by residents of each of the Participating Agencies, separately by city, the amount Recycled, the amount incinerated, and the amount disposed, including the name and address of the Disposal Site.

- A Reuse Program will be operated as shown on Exhibit E-1. A waiver of liability, substantially in the form of Exhibit E-2, will be obtained from all persons taking reusable Household Hazardous Waste materials.

C. The Aerosol Recovery Unit shall be operated in compliance with all manufacturer's recommendations and all applicable provisions of California law, including but not limited to the applicable sections of the Health & Safety Code and Title 22 of the California Code of Regulations. Contractor shall keep record of, and in the monthly report required by this section shall furnish to the Authority: (1) the number of aerosol cans received at the **Household Hazardous Waste** Facilities; (2) the number of aerosol cans processed by using the Aerosol Recovery Unit, and (3) the quantity of residual liquids collected as a result of the operation of the Aerosol Recovery Unit. All aerosol cans processed using the Aerosol Recovery Unit shall be crushed and Recycled by Contractor. Aerosol cans not suitable for use in the Aerosol Recovery Unit shall be processed as **Household Hazardous Waste**.

3.13. Buyback/Dropoff Center. Contractor shall operate the Buyback/Dropoff Center. The purpose of the Buyback/Dropoff Center is to receive, Process and then market (1) Recyclable Materials delivered to the Facility by members of the public which have been separated prior to entering the Facility, (2) Recyclable Materials collected through Recycling programs operated by the Participating Agencies and their Designated Haulers, (3) Recyclable Materials delivered by commercial recyclers, and (4) Recyclable Materials received from outside of the Primary Service Area pursuant to Section 3.05.

The following materials will be accepted at the Buyback/Dropoff Center:

- Newsprint
- Glass bottles, jars and other beverage containers
- Aluminum, Tin and other metals
- Corrugated cardboard
- High grade office paper, mixed paper and paper board
- Plastics

Contractor shall pay prices comparable to market prices for these materials delivered in comparable quantity and quality within Placer County, or if no such comparison exists in Placer County, within Sacramento County. If any such material has no market value, Contractor need not pay for such material, but shall nonetheless accept it and may not charge a fee for so doing.

Contractor may refuse to accept any such materials delivered by commercial Recyclers and/or may charge a fee for accepting them.

3.14 Guaranteed Minimum Recycling Level.

Contractor shall Recycle for Creditable Recovery a minimum percentage [see RFP for percentage information] of Municipal Solid

Waste delivered to the Facility which is referred to as the Guaranteed Minimum Recycling Level ("GMRL"). Contractor's achievement of the GMRL will be calculated each "**Operating Year**" (July 1 - June 30.) The calculation will be as shown on "**Exhibit F**".

Contractor warrants and represents that Contractor believes that Contractor will be able to satisfy its obligations under this Agreement, including achieving the recovery of sufficient quantities of Recyclable Materials for Creditable Recovery to satisfy the Guaranteed Minimum Recycling Level requirements hereof, based on the perceived current character of the Municipal Solid Waste stream on the Effective Date.

Contractor further represents and warrants that it has performed an independent analysis of the present Municipal Solid Waste stream received at the Facility, and based on such independent investigation believes it can achieve the Guaranteed Minimum Recycling Level by recovering from each material category comprising the current Municipal Solid Waste stream the estimated percentage quantities shown in Exhibit G.

The Guaranteed Minimum Recycling Level may be adjusted only where a new waste characterization study is conducted which shows that the Municipal Solid Waste stream being delivered to the Facility has materially changed and that as a result thereof a different Guaranteed Minimum Recycling Level should be imposed on Contractor.

Contractor may only request new waste characterization studies if the Authority or one of the Participating Agencies proposes to implement a new Recycling program which may cause the

composition of the Municipal Solid Waste being delivered to the Facility to materially vary. If the Authority or one the Participating Agencies does, after the execution by all parties of this Agreement, propose to implement a new Recycling program, then the Authority shall notify the Contractor of the proposed new Recycling program and confer with the Contractor over whether such new Recycling program may materially vary the composition of the Municipal Solid Waste being delivered to the Facility. If Contractor agrees that the new Recycling Program should not cause a material variance in the composition of the Municipal Solid Waste being delivered to the Facility, then no waste characterization study shall be necessary and Contractor may not subsequently request any adjustment in the Guaranteed Minimum Recycling Level, Processing Fees or other compensation based on the perceived effects of this Recycling Program. However, if Contractor believes that the new Recycling program may cause a material variance in the waste stream composition, the Contractor may, but only within sixty (60) days of receiving notice of the new Recycling program from the Authority, request that new waste characterization studies be conducted both before and after the new Recycling program is implemented. Unless Contractor requests new waste characterization studies as provided herein, the Contractor shall thereafter waive its right to seek an adjustment in the Guaranteed Minimum Recycling Level, Processing Fees or other compensation based on the Recycling program referred to in the Authority's notice to Contractor.

A waste characterization study, if requested by either Party in accordance with this section, shall be performed by a firm

experienced in the field of Municipal Solid Waste collection and Recycling ("Firm") which is acceptable to both parties, shall be conducted in accordance with the protocols described in **"Exhibit H"**. The costs of the studies shall be shared by Authority and Contractor. Authority shall pay for the costs related to hiring and compensating the Firm. Contractor shall be responsible for all other costs related to conducting the studies including, but not limited to, providing the labor and equipment necessary to conduct the studies. In addition, Contractor may not submit a claim and/or request for compensation of any form, including Processing Fees, for Municipal Solid Waste that would normally be directed to the Materials Recovery Facility for Processing but was instead sent directly to the Landfill as stipulated in the protocols described in Exhibit H.

After the waste characterization studies described in this section have been completed, the Authority shall deliver copies thereof to Contractor. The Parties shall meet to discuss whether the composition of the Municipal Solid Waste stream has materially changed, whether that change has materially increased or decreased the difficulty of and/or cost to Contractor in conjunction with its efforts to achieve the Guaranteed Minimum Recycling Level and, if so, whether the Guaranteed Minimum Recycling Level should be increased or decreased (or, alternatively, the Processing Fees increased or decreased) to accommodate the change.

If the Parties are unable to agree on one or more of the matters that are required to be discussed between them by reason of the provisions of the immediately preceding paragraph of this Section, then they may (with the consent of both Parties) submit

the dispute to arbitration in accordance with the procedures in "**Exhibit I**", and the Parties may at that time decide whether such arbitration will be binding or non-binding. If the Parties do not elect to use arbitration to resolve such dispute, it may be resolved judicially.

3.15 Overnight Storage of Residue. On or before the commencement of the Term, Contractor shall purchase from the Authority the storage trailers identified on Exhibit J hereto. If the Landfill is not available to Contractor to dispose of the Facility's residue that is produced during the Facility's hours of operation, Contractor may use these trailers for the temporary storage of such residue. If so used, the trailers shall be transported to, and unloaded at, the Landfill by the Contractor the following Operating Day and/or as stipulated by Section 3.16.

3.16 Transportation. Contractor shall transport and deliver to the Landfill all Municipal Solid Waste that is not Recycled, Transformed or composted. Contractor shall transport and deliver to the appropriate location consistent with the terms and conditions of this Agreement (or arrange for the transportation and delivery of) all Recyclable Materials, all Municipal Solid Waste that is Recycled, all compost and wood chips produced at the Facility, all Alternative Daily Cover, and any other materials that Contractor is required to remove from the Facility pursuant to this Agreement. Contractor shall transport and deliver (or arrange for the transportation and delivery of) Hazardous Waste (including Household Hazardous Waste) and other materials which cannot legally be accepted at the Landfill to an appropriately permitted disposal facility or otherwise cause such materials to

be disposed lawfully. Routes over which vehicles travel to effect this transport and delivery shall be selected to minimize inconvenience and disturbance to the public and shall be subject to the approval of the Authority.

Contractor shall use due care to prevent Municipal Solid Waste, Recyclable Materials and Hazardous Waste (including Household Hazardous Waste) from being spilled or scattered during transport. All vehicles hauling materials from the Facility shall be enclosed or have other appropriate covering as approved by the Authority. If any Municipal Solid Waste, Recyclable Materials or Hazardous Waste (including Household Hazardous Waste) is spilled, Contractor shall immediately clean up all spilled materials, whether on private or public property.

No materials which have been recovered at the Facility for Recycling, no Recyclable Materials delivered to the Facility, and no compost or wood chips produced at the Facility may be disposed of on land, in the water, or in the atmosphere without the prior written consent of the Authority. The sale or delivery of processed wood for use as a boiler fuel, the lawful use of compost as a soil amendment or soil supplement, or the lawful use of Alternative Daily Cover at the Landfill or any other landfill shall not be considered "disposed of on land" for purposes of this Section.

Except if specifically permitted to the contrary by any other provision of this Agreement, no materials of any kind, except Hazardous Waste, may be disposed of on land at any location other than in the Landfill.

If due to an event of Force Majeure as defined in Section 9.20, the Landfill is not operating or otherwise is not capable of accepting Municipal Solid Waste during its normal hours of operation that is required by this Agreement to be disposed of thereat, and if there is then inadequate storage at the Facility and in trailers therefor, the Authority shall direct Contractor to transport and deliver all Municipal Solid Waste that is not Recycled, Transformed or composted to such other location at which it can be disposed lawfully as directed by the Authority. Contractor will be entitled to reimbursement for the additional costs of such transportation, except any compensation to which Contractor is so entitled from the Authority shall be offset by all compensation, if any, that may be received by Contractor for such materials from one or more third Persons.

3.17 Operations During Improvement and Expansion of the Facility. The Contractor has been engaged under separate agreement with the Authority to provide design, engineering and construction management services for the Facility Expansion. Under this separate agreement Contractor and its team members will be designing the Facility Expansion. Contractor acknowledges that (1) the construction of the Facility Expansion will have significant adverse effects on Contractor's ability to perform the services required by this Agreement during the course of construction and will decrease Contractor's efficiency in operating, and that some of these impacts may not be foreseeable; and (2) that the Processing Fees to be paid Contractor under this Agreement reflect all such foreseen and unforeseen adverse impacts on Contractor's operations and performance, whether caused by the

alleged negligence or fault of the Authority or the company engaged by the Authority (and to be supervised by Contractor) and its subcontractors to construct the Facility Expansion. Contractor shall not be entitled to any increase in its Processing Fees, or to any damages from the Authority or its other contractors or their subcontractors, for any adverse effects on Contractor's operations or performance caused by or relating to the construction of the Facility Expansion, regardless of the nature of the fault, cause or source.

Contractor shall cooperate with the company or companies engaged by the Authority and its subcontractors during the construction of the Facility Expansion.

3.18 Systems Performance Test. Since Contractor shall be responsible for the design of the Facility Expansion and for providing construction management services during the Facility Expansion, Contractor shall be responsible for assuring the Authority that the Facility Expansion shall perform as represented by passing a Systems Performance Test. The Systems Performance Test criteria are set forth in Exhibit K. Contractor shall cause the Facility Expansion to pass the Systems Performance Test within sixty (60) days of the Facility Expansion Completion Date (the "Systems Performance Test Deadline"). For each thirty (30) day period after the Systems Performance Test Deadline that the Facility does not pass the Systems Performance Test, the Processing Fees paid to Contractor shall be reduced by Sixty Thousand Dollars (\$60,000.) per thirty (30) day period. This reduction in Contractor's Processing Fees shall be pro-rated

should the Facility Expansion pass the Systems Performance Tests during any given thirty (30) day period.

3.19 Procurement and Ownership of Vehicles, Machinery and Equipment. Contractor shall provide and maintain all vehicles, machinery and equipment necessary for performing its obligations in this Agreement, except that Contractor need not provide, but shall maintain, the existing Authority-owned equipment and machinery which Contractor is not required to purchase from the Authority but may use in operating the Facility (hereinafter "Authority Equipment"). Contractor shall perform routine and emergency maintenance on the scale system of the Authority at the Facility which is operated by the Authority. Contractor shall also provide back-up equipment as necessary to insure complete and uninterrupted operations of the Facility. All machinery and equipment provided by Contractor must be suitable in design and construction for arduous heavy-duty service at a solid waste transfer station operation. All such machinery and equipment shall be either in new or in "like new" condition when originally purchased, leased or otherwise procured by Contractor. All such machinery and equipment shall comply with all applicable laws and regulations.

Prior to entering into this Agreement Contractor has conducted an independent review of all Authority Equipment and has satisfied itself, and also warrants to the Authority, that such Authority Equipment is operable. Contractor has specified the remaining estimated useful life of each item of Authority Equipment on Exhibit L, which indicates if and when any individual piece of equipment will need to be replaced prior to July 1, 2014.

If an item of equipment which Contractor has indicated will need to be replaced by a certain date is replaced on or after that date, the Authority will be responsible for the costs of replacement or refurbishment. However, if an item of equipment needs to be replaced for which the Contractor did not indicate it would need to be replaced, Contractor will be responsible for ten percent (10%) of the cost of replacement or refurbishment of that item of equipment for each year (or portion thereof) between the date of replacement and July 1, 2014. If Contractor identifies the need to replace an item of Authority Equipment by a certain date but the equipment requires replacement before that date ("**Date Shortfall**"), the cost of replacement or refurbishment shall be pro-rated between Contractor and the Authority, in that Contractor shall pay ten percent (10%) of the cost of replacement or refurbishment of the equipment for each year (or portion thereof) of the Date Shortfall. The Authority shall pay the remaining costs. For example, if an item of Authority Equipment is estimated by Contractor to be replaced in the fifth year of the Term, but the piece of equipment requires replacement or refurbishment in the second year of the Term, Contractor shall pay thirty percent (30%) and the Authority shall pay seventy percent (70%) of the cost or replacement or refurbishment of the piece of equipment.

The Authority shall have the right, but not the duty, to purchase all vehicles, machinery and equipment ("**Contractor's Equipment**") that are owned by Contractor at the expiration or earlier termination of this Agreement ("**Authority's Option**"). The Authority's Option may be exercised by the Authority's delivery to

Contractor of an appropriate written notice which is received by Contractor on or before the end of the Term or up to the date of any earlier termination, as may be applicable.

Within fourteen (14) days following any such exercise of the Authority's Option, the Authority and Contractor shall attempt, diligently and in good faith, to mutually agree on the fair market value of Contractor's Equipment. If, however, the Authority and Contractor are unable to reach such mutual agreement on the fair market value of Contractor's Equipment, then such fair market value shall be determined by a qualified and experienced appraiser of commercial and industrial vehicles, machinery and equipment who is from the greater metropolitan areas of Sacramento or San Francisco, California and is designated jointly by the Authority and Contractor or, in the absence of any such designation, by the Presiding Judge of the Superior Court of Placer County, California. Contractor and the Authority shall share equally the fee and other costs that are payable to any such appraiser. In conjunction with any such purchase of Contractor's Equipment by the Authority from Contractor, the Authority shall pay all sales and use tax and other transfer taxes, if any, which may be owed by reason of such purchase. The Authority shall have the right to rescind its exercise of its Option to purchase any or all of Contractor's Equipment after the purchase price is finally determined pursuant to this Agreement; provided, however, that if the Authority elects to rescind its Option to purchase any such Contractor's Equipment, then the Authority shall reimburse Contractor for the Contractor's portion of the cost of hiring the accounting firm or appraiser to determine the price of the

Contractor's Equipment as to which the Authority has rescinded its option to purchase.

Upon the proper exercise of the Authority's Option and its payment of all required associated monetary obligations, Contractor will sign and deliver bills of sale or other documents reasonably requested by the Authority to evidence the transfer of title to the Authority of all such Contractor's Equipment that is so purchased by it. **3.20 Personnel**. Contractor shall furnish qualified competent drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and maintenance of the Facility and the transfer of Municipal Solid Waste to the Landfill and Recyclable Materials to market) in a safe and efficient manner. Contractor will at all times have a minimum complement of seventy-five (75) workers at the Facility and have at least seventy percent (70%) of the picking stations staffed with pickers. As used in the preceding sentence, a "**picker**" is an individual located at a picking station designated on the Materials Recovery Facility's plans and whose primary working responsibility is to recover Recyclable Materials from Municipal Solid Waste moving along the material sorting lines.

3.21 Operating and Maintenance Manuals. Contractor shall prepare one Operating and Maintenance Manual that covers (1) the Materials Recovery Facility, (2) the Green Waste Composting and Wood Waste Processing Area, (3) the Publicly Hauled Waste Receiving Area (4) the Buy Back Center, and (5) the Household Hazardous Waste Facilities. The manual shall cover all phases of

normal operation and also include procedures for operation at start-up, shut-down, peak capacity periods, and during emergencies and shall include detailed descriptions related to:

- information on operation of all machinery and equipment in sufficient detail so that all such machinery and equipment can be operated in a safe and efficient manner;
- detailed description of procedures to be followed in emergencies which can be anticipated to be encountered in conjunction with the Facility's operations;
- machinery and equipment maintenance procedures and schedules for each piece of machinery and equipment in accordance with the applicable manufacturer's recommendations, if any.

The manual shall be reviewed annually by Contractor and revised, as necessary, to reflect current operating procedures as of July 1, the beginning of each new Operating Year.

Contractor shall operate and maintain the Facility, machinery and equipment in accordance with its current manual. In the event of any inconsistency between the manual and this Agreement, this Agreement shall control.

The Authority may, but need not, comment on any updates or interim revisions to the manual.

Notwithstanding any such review and comment by the Authority, the operation and maintenance of the Facility shall remain the responsibility of Contractor. Neither the review nor comment upon, nor the failure of the Authority to comment upon, the manual shall relieve Contractor of any of its responsibilities under this Agreement, nor shall any Authority review or comment or failure to comment be deemed to be a representation by the

Authority that operating the Facility pursuant to the manual will cause the Facility to be in compliance with all provisions of this Agreement or applicable law, or impose any liability upon the Authority.

3.22 Reporting. Contractor shall submit complete and accurate monthly reports in the form attached as Exhibit M.

3.23 Marketing of Recyclable Materials.

A. Marketing Effort. Contractor shall use its best efforts to market and promote the sale of Recyclable Materials recovered at or delivered to the Facility, shall employ a marketing strategy in effecting disposition of these Recyclable Materials, and shall use its best efforts to obtain prices for Recyclable Materials consistent with prevailing conditions in the market, whether foreign or domestic. Contractor will exert at least the same effort in marketing the Recyclable Materials from the Facility as it does in marketing materials which it markets for its own account as a principal or as an agent/broker for any third Person.

B. Marketing Plan. Contractor shall submit to the Authority on or before August 1 of each year, a plan for marketing of Recyclable Materials for the forthcoming Operating Year. Each such marketing plan shall include the following:

1. Quantities: estimated quantities of Recyclable Materials in each of the following categories which Contractor expects to process for marketing during the pertinent Operating Year:

- Newsprint
- Glass
- Aluminum
- Ferrous Metals
- Corrugated Cardboard
- High Grade Office Papers

- Mixed Papers
- PET Plastics
- HDPE Plastics
- Compost
- Alternative Daily Cover
- Products derived from Wood Waste

2. **Prices:** estimated unit sales prices and total sales revenue for each category.

3. **Marketing:** advertising and sales promotion strategy and budget.

4. **Summary of Prior Year Results:** quantities of materials in each of the foregoing categories Recycled during the prior Operating Year and the total sales revenue for each category.

C. **Marketing Duties.** Contractor shall perform all of the following:

1. **Storage.** Contractor shall suitably store all Recyclable Materials to protect against theft, deterioration, contamination or other damage.

2. **Delivery.** Contractor will be responsible for effecting delivery to purchasers of Recyclable Materials, unless the terms of sale require one or more of such purchasers to arrange for delivery.

3. **Warranties.** Contractor shall be solely responsible for any warranties, express or implied, which attach to its sale of Recyclable Materials to third Persons. Contractor acknowledges that neither the Authority nor any of the Participating Agencies have, by virtue of entering into this Agreement or otherwise, made any representations or warranties to Contractor as to the merchantability or fitness for purpose of any of the materials,

including Source-Separated Recyclable Materials, to be delivered to the Facility and expressly disclaim any such warranties. The Contractor shall defend and indemnify the Authority against any claims associated with the marketing and sale of Recyclable Materials, including claims for personal injury or property damage brought by consumers, purchasers or users of such materials. This obligation shall survive termination of the Agreement.

4. Evidence of Purchase/Recycled End Use. Contractor shall obtain a certificate of end use from each purchaser of Recyclable Materials and from Persons to whom the Recyclable Materials have been transferred without payment, establishing that the materials have in fact been Recycled. Contractor will furnish copies of all such certificates to the Authority. The Authority may direct Contractor to discontinue use of a recipient of Recyclable Materials (e.g., Recycler, Recycling facility, materials broker, or end user) if the Authority determines that such Person is disposing of the Recyclable Materials or otherwise improperly processing them or has been found to be violating a law or regulation in its operations.

5. Recording Keeping and Reporting. On the fifteenth (15th) day of each month, concurrently with submitting the Application for Payment, Contractor shall submit a report showing:

a. the quantity in Tons of Recyclable Materials delivered to the Buyback/Dropoff Facility during the previous month by (1) the Participating Agencies, and by (2) their respective Designated Haulers, with amounts from each jurisdiction shown separately;

b. the quantity in Tons of Recyclable Materials delivered to the Buyback/Dropoff Center during the previous month by residents of each of the Participating Agencies, with amounts from each jurisdiction shown separately;

c. the quantity in Tons of Recyclable Materials delivered to the Buyback/Dropoff Center by other Persons,

d. the quantity in Tons of Recyclable Materials recovered by Contractor from Municipal Solid Waste delivered to the tipping floor of the Materials Recovery Facility;

e. the quantity in Tons of Recyclable Materials sold during the previous month by type and grade and the total revenue received from the sale thereof; and

f. the amount in Tons of Recyclable Materials given away without charge to third Persons for reuse, or for which a disposition cost was paid, and the total amount (if any) paid out.

Contractor shall, if so directed by the Authority, utilize reporting forms provided by the Authority.

6. Disposition Costs When No Markets Exist. When market conditions are such that some or all of the Recyclable Materials cannot be sold, Contractor shall pay all transportation costs of delivering such materials to users willing to accept them. In addition, if users are willing to accept them only on condition of payment, Contractor shall be responsible for paying such disposition costs.

D. Relationship of Parties. Nothing contained herein shall be construed to create any employment, partnership, joint venture or co-ownership relationship between the Parties, and Contractor

shall not by any action allow any presumption to arise that a relationship of partnership exists between the Parties.

Contractor also acknowledges that the Participating Agencies are not required by this Agreement to deliver Recyclable Materials to the Facility and are free to market them directly and independently of the Authority.

3.24 Permits. All Facility operating permits shall be obtained and held by the Authority in the Authority's name. Contractor shall assist the Authority in a timely manner in obtaining all permits and approvals from federal, state, regional and local governmental agencies necessary for the operation by Contractor of the Facility in the manner that is required, permitted and/or contemplated by the other terms, provisions and conditions of this Agreement.

Contractor shall reimburse the Authority for its reasonable expenses, including Authority staff time, the Authority's out of pocket expenses, and the cost to the Authority of experts, consultants and attorneys, in obtaining any permits and approvals required by changes in the method of operation of the Facility or in the scope of Contractor's required performance hereunder if such changes are requested by Contractor and approved by the Authority.

Contractor shall not operate the Facility in any manner which requires a permit or other prior approval, unless and until it has obtained all such permits and approvals that are necessary to conduct such operations. Contractor shall also be responsible for complying with all permits and approvals necessary for operation of the Household Hazardous Waste facilities.

The Authority will use its best efforts to provide, at its cost, any and all environmental assessments and evaluations under CEQA which may be necessary to support the applications for any and all such permits and approvals.

The Parties acknowledge that the time to undertake and prepare studies, investigations and reports under CEQA, and to obtain permits and approvals, may be dependent on a variety of factors beyond the control of the Parties, and in all events the Authority shall not be deemed in breach of this Agreement, nor shall it be liable to Contractor for any costs, expenses or damages resulting from any delays in performing the Authority's obligations under this section. Similarly, the Authority shall not be obligated to defend Contractor in any challenges to the Authority's CEQA evaluations, and shall not be deemed in breach of this Agreement, nor shall it be liable to Contractor for any costs, expenses or damages resulting from any challenges to the Authority's CEQA evaluations or any delays resulting therefrom.

Contractor shall be solely responsible for paying any fines or penalties imposed by governmental agencies for Contractor's noncompliance with permit or approval terms or its failure to operate with any necessary permits and approvals.

3.25 Mitigation Measures. Contractor shall perform all existing mitigation measures required by CEQA, which are identified in Exhibit N. Mitigation measures required by CEQA or the Authority for future projects affecting the Contractor's scope shall be performed by Contractor at the Authority's request; provided that, unless the parties agree otherwise, the financial

responsibility for such measures shall be borne by the party requesting the future project.

3.26 Other Operating Procedures and Standards. In addition to the foregoing, Contractor shall conduct its operations in accordance with the requirements of the California Integrated Waste Management Board (currently codified at 14 California Code of Regulations Sections 17401-17564) and as they may be amended or superseded.

3.27 Authority Use of Offices/Visitor Education Center.

A. Offices. The Materials Recovery Facility includes a portion of the administrative area dedicated to the exclusive use by the Authority. In addition, ten (10) parking spaces will be provided for Authority staff and visitors. Contractor will provide at no charge, utilities to this portion of the Facility and to the Gatehouses, including water, sewer, electric power, heat and light. The Authority will furnish its own telephones and other communications at no cost to Contractor.

B. Board Room. The Materials Recovery Facility includes a Board of Directors meeting room. The Authority shall have priority at all times in the use of the Board room; Contractor shall not use it without prior approval of the Authority. However, Contractor's requests for use of the Board room for purposes directly related to the operation of the Facility and at times which do not conflict with the Authority's use will not be unreasonably refused and will be so granted or refused promptly.

3.28 Contractor's Use of Facility. Contractor shall have the use of the remainder of the Facility only for purposes directly and exclusively related to providing services to the Authority

under this Agreement. Employees of Contractor, while working at the Facility, shall devote their time solely to work required under this Agreement. Contractor shall not perform or engage in any other business or operations at the Facility except for the activities related to performing services to the Authority under this Agreement.

ARTICLE 4. COMPENSATION TO CONTRACTOR

4.01 General. The payments provided for in this Article 4 are the full, entire and complete compensation due to Contractor from the Authority for furnishing all labor, equipment, materials and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement, including but not limited to the operation of the Facility (including the transportation of Municipal Solid Waste and marketing and transportation of Recyclable Materials) and the improvement of the Facility to the extent required specifically by other provisions of this Agreement, as well as the acquisition of specified additional machinery and equipment in the manner that is provided elsewhere in this Agreement. Unless otherwise provided specifically to the contrary elsewhere in this Agreement, such payments shall include all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate for Contractor to perform its required services in accordance with this Agreement, as well as adequate compensation for all risks that are being taken by Contractor by reason of its execution and delivery of this Agreement. Possessory interest taxes, if any, levied pursuant to Revenue and Taxation Code Section 107 on Contractor for use of the Facility are included in the payments provided for in this Article 4 and no separate reimbursement of such taxes, if any, will be made.

4.02 Compensation For Contractor's Operating the Facility Under Article 3. Contractor shall be paid the amounts described in

this Section 4.02 for performing all work required by this Agreement, including Article 3, in accordance with all requirements of this Agreement, subject to an offsetting adjustment for the potential assessment by the Authority of liquidated damages pursuant to Sections 3.15. and 3.26.

A. Processing Fees on Municipal Solid Waste.

Contractor will receive a "**Base Processing Fee**" for the first 230,000 Tons of Municipal Solid Waste per Operating Year ("Tonnage Threshold") delivered by any Person to the Material Recovery Facility and accepted by Contractor for processing. For each Ton of Municipal Solid Waste delivered and accepted for processing at the Material Recovery Facility over the Tonnage Threshold, Contractor will only receive an "**Incremental Processing Fee.**" Effective July 1, 2005 the Base Processing Fee will be _____ Dollars (\$_____) [To be submitted by Proposer]. The Incremental Processing Fee shall be eighty percent (80%) of the Base Processing Fee. The Base Processing Fee will be adjusted as of July 1, 2006 and each following July 1st as specified in Section 4.06.

B. Processing Fee for Source Separated Green Waste.

For Source Separated Green Waste received and Processed at the Green Waste Composting and Wood Waste Processing Area, Contractor will receive a Green Waste Processing Fee of \$_____ Dollars (\$_____) [To be submitted by Proposer] per Ton. This fee shall be adjusted each July 1st pursuant to Section 4.06. Green Waste recovered as a result of Processing Municipal Solid Waste at the Material Recovery Facility which is then processed at the Green Waste Composting and Wood Waste Processing Area will not

qualify for the Green Waste Processing Fee, as Contractor will have been paid the Municipal Solid Waste Processing Fee for such materials.

C. Processing Fee for Source Separated Wood Waste.

For Source Separated Wood Waste received and Processed at the Green Waste Composting and Wood Waste Processing Area, Contractor will receive a Wood Waste Processing Fee of \$_____ Dollars (\$_____) [To be submitted by Proposer] per Ton. This fee shall be adjusted each July 1st pursuant to Section 4.06. Wood Waste recovered as a result of Processing Municipal Solid Waste at the Material Recovery Facility which is then processed at the Green Waste Composting and Wood Waste Processing Area will not qualify for the Wood Waste Processing Fee, as Contractor will have been paid the Municipal Solid Waste Processing Fee for such materials.

D. Processing Fees on Publicly Hauled Municipal Solid Waste. Contractor shall not receive a separate fee for operating the Publicly Hauled Waste Tipping Area but shall instead receive the applicable Processing Fees (i.e.; Municipal Solid Waste, Processing Fee, Source Separated Green Waste Processing Fee or Source Separated Wood Waste Processing Fee) for materials received at the Publicly Hauled Waste Tipping Area, transported by Contractor to the Commercial Gatehouse to be weighed by Authority and delivered by Contractor to either the Materials Recovery Facility or Green Waste Composting and Wood Waste Processing Area for additional Processing.

E. Processing Fees on Materials from Outside Primary Service Area. If the Authority directs that Contractor accept

Municipal Solid Waste (including Publicly Hauled Waste) from outside the Primary Service Area, Contractor will be paid as if such material had been received from the Primary Service Area. These materials will be counted as having been received at the Gate in the Guaranteed Minimum Recycling Level, Guaranteed Minimum Annual Tonnage (as stipulated in Section 4.05), Tonnage Shortfall and Tonnage Threshold calculations.

If Contractor requests the Authority to allow Contractor to accept Recyclable Materials from outside the Primary Service Area, and the Authority agrees to such request pursuant to Section 3.05, then no compensation shall be earned by Contractor from the Authority on such Recyclable Materials collected from outside the Primary Service Area.

F. Disposal Fee for Waste Tires. Contractor shall be paid Fifty Dollars (\$50) per Ton for Waste Tires transported off site by Contractor for Recycling or disposal in accordance with the requirements of Section 3.09.E. This fee is inclusive of all off-site transportation and disposal costs. Contractor shall transport Waste Tires to a licensed facility and in compliance with all applicable laws and regulations. This fee shall be adjusted each July 1st pursuant to Section 4.06.

G. Processing Fees Do Not Cover Freon Removal. The Processing Fees do not cover the cost of removal of Freon or other chlorofluorocarbons from white goods delivered to the Facility. Authority will pay Contractor Twenty Five Dollars (\$25), per appliance, for removal of Freon and/or other chlorofluorocarbons from refrigerators, freezers and other appliances. This fee will be adjusted each July 1st pursuant to Section 4.06.

H. Processing Fees Do Not Cover Hazardous Waste

Disposal. The Processing Fees do not cover the cost of the transport off-site by licensed third party haulers and disposal of Household Hazardous Wastes or Hazardous Wastes, which shall be compensated in accordance with Section 4.02.K, below. Contractor shall keep complete records of all such off-site third party transport and disposal costs and shall be reimbursed by the Authority for actual and reasonable expenses incurred.

I. No Processing Fees on Source-Separated Recyclable

Materials. There will be no Processing Fees paid for Source Separated Recyclable Materials, except as provided in this Agreement for Source Separated Green Waste and Source Separated Wood Waste.

J. Fee for Operation of Household Hazardous Waste

Facilities. Contractor shall receive an annual fee of Two Hundred and Twenty Five Thousand Dollars (\$225,000) for operating the Household Hazardous Waste Facilities. This fee shall be adjusted each July 1st pursuant to Section 4.06. In addition, the Authority will reimburse Contractor for its costs, plus five percent (5%), actually and reasonably incurred for the transport of Household Hazardous Waste off site for Recycling or disposal and for such Recycling and disposal.

4.03 Revenue from Sale of Recycled Materials. Contractor shall pay the Authority fifty percent (50%) of the gross revenues Contractor receives from the sale of Recyclable Materials, excluding revenues Contractor receives from the sale of Source

Separated Recyclable Materials delivered by the Participating Agencies or their Designated Haulers or from products derived from Yard Wastes or Wood Wastes ("**Excluded Materials**"). Contractor shall be entitled to retain one hundred percent 100% of the revenues Contractor receives from the sale of Excluded Materials. [Authority may elect to allow Contractor to retain 100% of sales revenues and shall make the decision based on the cost structures submitted by Proposers.]

4.04 Changes in Circumstances. In the event any change in circumstances (including, without limitation, any change in Applicable Law or Environmental Law that requires Contractor to materially change its method of operations) occurs and results in a material increase or decrease in Contractor's costs of performing this Agreement, Contractor may apply to the Authority Board for an adjustment in Processing Fees to reflect such change, or in such event the Board itself may initiate proceedings to adjust Processing Fees.

4.05 Guaranteed Minimum Annual Tonnage ("GMAT"). Since the Contractor has the ability under Section 3.02. to determine which loads shall be sent directly to the Landfill versus the Facility, the Authority's waste stream commitment to the Contractor is expressed herein as a Guaranteed Minimum Annual Tonnage ("GMAT") of Municipal Solid Waste to be received at the Gate, rather than at the Facility. If the amount of Municipal Solid Waste received at the Gate, which includes all Tons of Municipal Solid Waste directed to the Landfill and all Tons directed to the Facility, is

less than 220,000 Tons in an Operating Year, the Authority shall pay the Contractor the product of the difference between the GMAT and the actual total tonnage of Municipal Solid Waste received at the Gate ("Tonnage Shortfall") and fifty percent (50%) of the Base Processing Fee. This payment may be made at the Authority's option in one lump sum or twelve monthly installments. An example of the calculation of the Tonnage Shortfall and subsequent payment from Authority to Contractor is provided in Exhibit O.

4.06 Cost of Living Adjustment. Contractor's Processing and other Fees subject to a Cost of Living Adjustment where expressly indicated in this Agreement, shall be adjusted using the following formula:

$$\text{New Fee} = \text{Operating Year 05/06 Fee} \times \text{COLA}$$

Where:

$$\text{COLA} = 0.10 + 0.45 \times (\text{ECI}_i / \text{ECI}_0) + 0.45 \times (\text{PPI}_i / \text{PPI}_0)$$

ECI_i = Employment Cost Index, Wages and Salaries, Private Industry, Blue-Collar Occupations, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the first quarter of the prior Operating Year to the year the adjustment is to be made (e.g., adjustment for Operating Year 06/07 will utilize statistics from the first quarter of 2006).

ECI_0 = Employment Cost Index, Wages and Salaries, Private Industry, Blue-Collar Occupations, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the first quarter of 2005.

PPI_i = The Producer Price Index, All Commodities, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of March of the prior Operating Year to the year the adjustment is to be made (e.g., adjustment for Operating Year 06/07 will utilize statistics from March, 2006).

PPI₀ = The Producer Price Index, All Commodities, Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of March, 2005.

4.07 Recycling Incentive Payments and Disincentive

Adjustments.

A. Incentive Payments. The Authority will pay Contractor Eighteen Dollars (\$18) per Ton of Municipal Solid Waste which is delivered to the Facility and diverted from land disposal in excess of the Guaranteed Minimum Recycling Level and which qualifies as Creditable Recovery. Contractor's entitlement to an incentive payment will be calculated at the end of each Operating Year. The calculation of incentive payments is illustrated in Exhibit P.

B. Disincentive Adjustments. If Contractor fails to achieve the Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced by five percent (5%) (or portion thereof) for each percentage by which Contractor's recovery falls below the Guaranteed Minimum Recycling Level. This disincentive adjustment will be calculated at the end of each

Operating Year. The calculation of a disincentive adjustment is illustrated in Exhibit P.

4.08 Billing and Payment.

A. Monthly Applications for Payment. On or before the fifteenth (15th) day of each month Contractor shall submit to the Authority an Application for Payment in a format and level of detail reasonably required by the Authority and consistent with this Agreement. The Application for Payment shall show at least the following information:

1. Processing Fees for Municipal Solid Waste.

The Application for Payment shall show the amount of Municipal Solid Waste delivered to and Processed at the Materials Recovery Facility during the previous calendar month.

2. Processing Fees for Source Separated Green

Waste. The Application for Payment shall show the amount of Source Separated Green Waste delivered to and Processed at the Green Waste Composting and Wood Waste Processing Area during the previous calendar month.

3. Processing Fees for Source Separated Wood

Waste. The Application for Payment shall show the amount of Source Separated Wood Waste delivered to and processed at the Green Waste Composting and Wood Waste Processing Area during the previous calendar month.

4. Household Hazardous Waste Facilities

Operations Fee The Application for Payment shall request one-twelfth of the applicable annual fees due under Section 4.02.K in relation to the Household Hazardous Waste Facilities.

5. Household Hazardous Waste Disposal Fees. The Application for Payment shall request reimbursement for costs related to disposal of Household Hazardous Wastes as stipulated in Section 4.02.K.

6. Waste Tire Disposal Fees. The Application for Payment shall show the amount of Tons of Waste Tires disposed of by Contractor during the previous calendar month.

7. Revenues from Recycled Materials. The Application for Payment shall show, for the previous calendar month, the gross revenues received by Contractor (or any of Contractor's Affiliates) from the total sale of Recycled Materials and from the sale of Recycled Materials that qualify for revenue sharing with the Authority pursuant to Section 4.03. The Application for Payment shall include a credit to the Authority for fifty percent (50%) of the gross revenues from the sale of Recycled Materials that qualify for revenue sharing as defined in Section 4.03.

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

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

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

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

ARTICLE 5. FACILITY EXPANSION AND CONSTRUCTION MANAGEMENT

The Authority has selected Contractor to provide design and construction management services for the Facility Expansion during the Term. Contractor and the Authority have executed concurrently a "Design and Construction Management Services Agreement" covering such services.

Contractor acknowledges that (1) the construction of the Facility Expansion will have significant adverse effects on Contractor's ability to perform the services required under this Agreement during the course of construction and will decrease Contractor's efficiency in operating, and that some of these impacts may not be foreseeable; and (2) that the Processing Fees to be paid Contractor under this Agreement reflect all such foreseen and unforeseen adverse impacts on Contractor's operations and performance, whether caused by the alleged negligence or fault of the Authority or the company engaged by the Authority (and to be supervised by Contractor) and its subcontractors to construct the Facility Expansion. Contractor shall not be entitled to any increase in its Processing Fees, or to any damages from the Authority or its other contractors or their subcontractors, for any adverse effects on Contractor's operations or performance caused by or relating to the construction of the Facility Expansion, regardless of the nature of the fault, cause or source.

Contractor shall cooperate with the company engaged by the Authority and its subcontractors during the construction of the Facility Expansion.

ARTICLE 6. INDEMNITY, INSURANCE, BOND

6.01 Indemnification. Contractor shall indemnify, defend and hold harmless the Authority, its officers, employees, agents and/or contractors ("the Authority Indemnitees"), from and against any and all loss, liability, penalty, fine, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "**Claims**"), arising out of or occasioned in any way by, directly or indirectly, (1) the negligence or willful misconduct of Contractor, its officers, managers, employees, agents and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws) and regulations, and/or applicable permits and licenses; (3) any Recycled Materials Processed or sold by Contractor; and/or (4) the acts of Contractor, its officers, managers, employees, agents and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by the negligence of others, including that of any of the Authority Indemnitees; provided, however, that this indemnity does not extend to Claims to the

extent that they are caused by the sole active negligence of any of the Authority Indemnitees, or are caused by the intentional misconduct of or breach of contract by any of the Authority Indemnitees, or where strict liability is imposed by law upon the Authority in the absence of any material fault of Contractor. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend each and all of the Authority Indemnitees, provided, however, that in the event the named parties to any such Claim (including any impleaded parties) include both the Contractor and the Authority, and if the Authority Indemnitees shall have one or more legal defenses available to any of them which are in direct conflict with the best interests of Contractor and which therefor preclude the same counsel from representing the Authority Indemnitees and Contractor jointly after taking into account the obligations of Contractor herein for the benefit of the Authority, then the Authority Indemnitees shall have the right to select separate counsel, with the consent of Contractor which will not be withheld unreasonably, at the sole cost and expense of Contractor to pursue such legal defenses and to otherwise participate in the defense of such action on behalf of the Authority Indemnitees to the extent that joint representation of the Authority Indemnitees and Contractor is not permissible because of conflicts of interest between the Authority Indemnitees and Contractor. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement, so long as the event upon which such Claim is predicated occurred prior to such expiration or termination.

6.02 Insurance

A. Types and Amounts of Coverage. Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and shall maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability. Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain Employer's Liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per accident or disease.

2. General Liability and Automobile Liability. Contractor shall maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this subsection shall include:

- a. Premises Operations (including X, C and U coverages;

- b. Independent Contractor's Protective;
- c. Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another person;
- d. Personal Injury Liability with Employment Exclusion deleted;
- e. Broad Form Blanket Contractual, with no exclusions for bodily injury, personal injury or property damage; and
- f. Broad Form Property Damage, including Completed Operations.

Contractor shall also maintain Automobile Liability Insurance for each of Contractor's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of Ten Million Dollars (\$10,000,000) combined single limit per occurrence.

The Commercial General Liability and Automobile Liability insurance required by Section 6.02.A.2 shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, if such coverage is readily obtainable for a commercially reasonable premium. If it is not so obtainable, Contractor must arrange for an extended reporting period ("tail coverage") to protect the Authority from claims filed within one (1) year after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. Any excess or umbrella policies shall be on a "following form" basis. The policy may not contain a deductible or self-insured retention of more than Ten Thousand Dollars (\$10,000.00) per occurrence or more than Fifty Thousand Dollars (\$50,000) annual

aggregate without prior written approval of the Authority. The policy limit and the self-insured retention shall be adjusted as of each such five (5) year anniversary of July 1, 2005 utilizing the same indices and procedures provided in Section 4.06, rounded to the nearest \$100,000 in relation to policy limits and to the nearest \$1,000 in relation to self-insured retentions. The existence of a self-insured retention or deductible shall not affect Contractor's duty to defend and indemnify the Authority under Section 6.01 as to Claims below the self-insured retention or deductible level.

3. Pollution Liability. Contractor shall purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of Two Million Dollars (\$2,000,000) covering liability arising from the sudden and accidental release of pollution on the Facility Site. "Tail coverage" shall be provided to extend coverage for one (1) year past the expiration or termination of this Agreement if the policy is not written on an occurrence basis.

4. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that is owned by Contractor and used in providing service to the Authority under this Agreement, with a deductible or self-insured retention of not greater than Fifty Thousand Dollars (\$50,000).

All insurance policies required by Section 6.02.A.1-4 shall be issued by an insurance company or companies admitted to do business in the State of California, subject to regulation by the

California Insurance Commissioner and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger, and a rating classification of A or better, except that the Pollution Liability policy may be issued by a company rated A-IX.

B. Required Endorsements

1. The Worker's Compensation policy shall contain endorsements in substantially the following form:

- (a) "Thirty (30) days prior written notice shall be given to the Authority in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Western Placer Waste Management Authority
c/o Director, Department of Facility Services
c/o Risk Manager
Risk Management Division
11491 B Avenue
Auburn, CA 95603

- (b) "Insurer waives all right of subrogation against the Authority and its officers and employees for losses arising from work performed for the Authority."

2. The Comprehensive General Liability policy shall contain endorsements in substantially the following form:

- (a) "Thirty (30) days prior written notice shall be given to the Authority in the event of cancellation, reduction of coverage, or non-renewal of this policy. Such notice shall be sent to:

Western Placer Waste Management Authority
c/o Director, Department of Facility Services
c/o Risk Manager
Risk Management Division
11491 B Avenue

Auburn, CA 95603

- (b) "The Authority, its officers, employees, and agents are additional insureds on this policy."
- (c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Authority, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (d) "Inclusion of the Authority as an insured shall not affect the Authority's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and the Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. The Physical Damage policy shall contain the following endorsements:

- (a) Notice of cancellation, reduction in coverage or non-renewal, as provided in subsection B.2(a).
- (b) Cross liability endorsement, as provided in subsection B.2(d).
- (c) Waiver of subrogation against the Authority.

C. Delivery of Proof of Coverage. No later than five (5) days after the execution of this Agreement by the Parties, Contractor shall furnish the Authority a certificate for each policy of insurance required under Sections 6.02.A.1, 6.02.A.2, 6.02.A.3 and 6.03.A.4 in form and substance satisfactory to the

Authority. Each such certificate shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the Authority requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the Authority.

Contractor shall furnish renewal certificates to the Authority to demonstrate maintenance of the required coverages throughout the Term.

Furnishing of evidence of required insurance being in force is a condition to Contractor's entitlement to payment.

D. Other Insurance Requirements

1. In the event any services are delegated to a subcontractor, Contractor shall require all such subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 6.02.A.2 shall cover Contractor's liability for acts of its subcontractors or each subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 6.02.

2. Contractor shall comply with all requirements of the insurers issuing policies and shall require its subcontractors to do so. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 6.01. If any Claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor, shall promptly report the facts in writing to the insurance

carrier and to the Authority. If Contractor fails to procure and maintain any insurance required by this Agreement, the Authority may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

3. If requested by the Authority, the Comprehensive General Liability policy shall be promptly, and at no cost to the Authority, amended by endorsement to add the trustee of any bonds, which were issued by the Authority to finance the original construction of the Facility, as an additional insured.

6.03 Faithful Performance Bond. Contractor shall furnish the Authority, and maintain at all times during the Term, a performance bond securing the Contractor's faithful performance of its obligations under this Agreement in the amount of Five Million Dollars (\$5,000,000.). Not less than ninety (90) days before the expiration of each such current performance bond, Contractor shall furnish either the replacement bond or a continuation certificate satisfactory to the Authority, executed by the surety.

6.04 Bond Trustee as Additional Obligee. If requested by the Authority, Contractor will arrange for the bond described in Section 6.03 to be amended by endorsement, at no cost to the Authority, to add the trustee of any bonds issued by the Authority to finance the original construction of the Facility as a co-obligee.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

7.01 Legal Status. Contractor is _____ which is duly organized, validly existing and in good standing in the State of _____, and is authorized to do business in California. Such _____ has the lawful power to own its properties and to carry on its business as required by this Agreement.

7.02 Authorization. Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor has taken all actions required by law, its Articles of Incorporation/Organization, its Bylaws/Operating Agreement, or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Contractor have the authority to do so.

7.03 Legal Authority. Contractor has the authority to enter into and perform its obligations under this Agreement. To the best of Contractor's knowledge, after reasonable investigation, there is no applicable law in effect on the date Contractor signed this Agreement that would prohibit the performance by the Contractor of its obligations under this Agreement and the transactions contemplated hereby.

7.04 No Conflicts or Litigation. To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order, or decree of any court, administrative agency or

other governmental authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder. To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

7.05 Financial Resources; Expertise and Capability.

Contractor possesses the business, professional, and technical expertise, and the financial, equipment, and employee resources required to perform the services specified in this Agreement.

7.06 Accuracy of Proposal. The information supplied by Contractor in all written submittals made in connection with Contractor's proposal, including Contractor's, and the negotiation and execution of this Agreement, and all written representations and warranties made by Contractor throughout this Agreement are true, accurate, correct, and complete in all material respects on and as of the effective date of this Agreement. Contractor

acknowledges that if the Authority at any time discovers a material inaccuracy in the information in Contractor's proposal or representations or warranties, such inaccuracy shall be grounds for termination of this Agreement, as provided in see Section 8.01 F.

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

ARTICLE 8. DEFAULT AND REMEDIES

8.01 Events of Default. Each of the following shall constitute an event of default ("Contractor Default") hereunder:

A. Contractor fails to perform its obligations under this Agreement, or any present or future supplement to this Agreement, and fails to cure such breach (1) within thirty (30) days of receiving notice from the Authority specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Contractor shall not be in default so long as Contractor promptly commences the cure and diligently proceeds to completion of the cure; or (2) immediately, if the breach is such that the health, welfare or safety of the public is meaningfully endangered thereby.

B. There is a lawful seizure or attachment of, or levy on, the operating equipment of Contractor used at the Facility which is not released or discharged within thirty (30) days or which is not replaced by comparable equipment at Contractor's sole cost within such period of thirty (30) days.

C. There is any termination or suspension from any cause, including without limit, labor unrest including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action which results in (a) Contractor's inability to accept Municipal Solid Waste at the Facility for more than five (5) consecutive days, or (b) its inability to carry on Recycling operations for more than fourteen (14) consecutive days.

D. Contractor files a voluntary case for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to

the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, or sequestrator (or similar official) of Contractor for any substantial part of Contractor's operating assets or property or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

E. A court having jurisdiction enters a decree or order for relief in respect of this Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor.

F. A representation and warranty made by Contractor in Article 8 proves to be materially false and misleading.

G. Contractor fails to furnish reasonable assurances of performance in response to a demand under Section 9.17.

H. Contractor fails to achieve eighty five percent (85%) of the GMRL.

I. The "Design and Construction Management Services Agreement" with the Authority is terminated due to a default of Contractor.

8.02 Right to Suspend or Terminate Upon Default

A. Upon any Contractor Default, the Authority shall have the right to suspend or terminate this Agreement, in whole or in part. Such suspension or termination shall be effective thirty (30) days after the Authority has given notice of suspension or termination to Contractor, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Notice may be given orally, in person or by telephone, to the representative of Contractor designated in or under Section 9.12.B (or, if he/she is unavailable, to a responsible employee of Contractor) and shall be effective immediately. Written confirmation of such oral notice of suspension or termination shall be sent by personal delivery, facsimile, or other expedited means of delivery to Contractor within twenty-four (24) hours of the oral notification. Contractor shall continue to perform the portion of this Agreement not suspended, in full conformity with its terms.

B. The Authority will also have the right to suspend or terminate this Agreement, upon the same notice provisions, if Contractor's ability to perform is prevented or materially interfered with by a change in permit or law with which Contractor must comply, or by a cause which excuses nonperformance under Section 9.20, despite the fact that nonperformance in any of such cases is neither a breach nor default by Contractor. If this Agreement is terminated pursuant to this Subsection B, the Authority will reimburse Contractor for its reasonable costs directly related to termination, and approved by the Authority, up to Two Hundred Fifty Thousand Dollars (\$250,000.00).

8.03 Equitable Remedies and Rights. By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by the Authority to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and the Authority shall be entitled to any and all forms of equitable relief, including specific performance and injunctive relief.

8.04 Right to Perform. If this Agreement is suspended and/or terminated due to a Contractor Default, the Authority shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work, including, but not limited to, the transportation of Municipal Solid Waste to the Landfill. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to the Authority.

8.05 The Authority's Remedies Cumulative. The Authority's right to cure breaches, to suspend or terminate this Agreement, to obtain specific performance, and to perform service under this Agreement are not exclusive, and the Authority's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the Authority may have, including a legal action for damages. No delay or omission to exercise any right occurring upon a Contractor Default shall impair such right nor

shall it be construed as a waiver of any Contractor Default and every such right may be exercised from time to time and as often as may be deemed expedient.

8.06 Relationship of Liquidated Damages to Right to Terminate. The Authority's right to recover liquidated damages under Section 3.15 for Contractor's failure to meet the service performance standards shall not preclude the Authority from obtaining equitable relief for persistent failures to meet such standards nor from terminating this Agreement for such persistent failures in accordance with the foregoing provisions of this Article.

ARTICLE 9. OTHER AGREEMENTS OF THE PARTIES

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

9.02 Compliance with Law. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California, Placer County, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term, including but not limited to the Environmental Laws and regulations adopted by the Authority.

9.03 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.04 Jurisdiction. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Placer County.

9.05 Assignment.

A. No Assignment Without Consent of the Authority.

Contractor shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any Person without the prior written consent of the Authority. Any such assignment made without the consent of the Authority shall be void and the attempted assignment shall constitute a breach of this Agreement.

B. Assignment Defined. For the purpose of this Section, an "**assignment**" shall include, but not be limited to, (1) a sale, exchange or other transfer to a third Person of substantially all of Contractor's assets dedicated to service under this Agreement; (ii) the issuance of new stock or membership interests to or the sale, exchange or other transfer of more than one third (1/3rd) of the then outstanding stock or membership interests to a Person, other than to the existing shareholders, members and/or affiliates of existing shareholders/members of Contractor who own shares/membership interests on the Effective Commencement Date, who are identified by name on "**Exhibit Q**".

C. Consent Requirements. If Contractor requests the Authority's consideration of and consent to an assignment, the Authority may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by the Authority unless and until Contractor has met the following requirements:

a. Contractor shall undertake to pay the Authority its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

b. Contractor shall furnish the Authority with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) fiscal years of such proposed assignee;

c. Contractor shall furnish the Authority with satisfactory proof: (i) that the proposed assignee has at least two (2) years of Municipal Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws and that the assignee has provided the Authority with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and

conscientious fashion; (iv) that the proposed assignee conducts its Municipal Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations; and (v) of any other information reasonably required by the Authority to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

9.07 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns, with the express exception of the Participating Agencies, which are third party beneficiaries of the Authority's rights hereunder.

9.08 Waiver. The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

9.09 Contractor's Investigation; No Warranties By Authority. Contractor has made an independent investigation

(satisfactory to it) of the conditions and circumstances surrounding this Agreement and the work to be performed by it, including the nature and amount of the Municipal Solid Waste generated currently within the Participating Agencies and the Recycling and source reduction programs now in effect in the Participating Agencies.

Except for any express warranties that are set forth herein, The Authority makes no warranties in connection with this Agreement, including but not limited to the current characterization of the Municipal Solid Waste that is delivered or is deliverable to the Facility on the Effective Commencement Date or at any other time thereafter during the Term. The Authority expressly disclaims any such warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Municipal Solid Waste or Source-Separated Recyclable Materials delivered to the Facility.

9.10 Notice. All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall, except as provided in Section 8.02, be in writing and shall either be personally delivered to a representative of the Parties, at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to the Authority: All matters relating to Risk Management/Legal should be sent to:

Attn: Director of Risk Management
Division

Western Placer Waste Management
Authority
11491 B Avenue
Auburn, CA 95603

All other matters, operations,
contracts, etc.:

Western Placer Waste Management
Authority
c/o Mr. Thomas Miller, Executive
Director
Placer County Department of Facility
Services
11476 C Avenue
Auburn, CA 95603

If to Contractor:

Copies shall be sent to the other Participating Agencies, upon their respective request therefor, at such address or addresses as may be furnished by them in the future from time to time. The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

9.11 Guaranty of Contractor's Performance. Pursuant to a guaranty, in substantially the form attached as "**Exhibit R**", _____, has agreed to guaranty Contractor's performance of this Agreement.

9.12 Representatives of the Parties

A. Representatives of the Authority. References in this Agreement to "the Authority" shall mean the Board of Directors of Authority and all actions to be taken by the Authority shall be taken by the Board, except as provided below. The Board may delegate, in writing, authority to an official of

the Authority and may permit such official, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

B. Representative of Contractor. Contractor shall, by the Effective Commencement Date, designate in writing a responsible Person who shall serve as the representative of Contractor in all matters related to this Agreement and shall inform the Authority in writing of such designation and of any limitations upon his or her authority to bind Contractor. The Authority may rely upon action taken by such designated representative as actions of Contractor, unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to the Authority.

9.13 Duty of Contractor Not To Discriminate; Accessibility.

Contractor shall not discriminate in the employment of Persons engaged in the performance of this Agreement or in the operation of the Facility on account of race, color, national origin, ancestry, religion, sex, physical handicap, or medical condition, in violation of any applicable federal or state law. The Facility shall be designed in compliance with the accessibility requirements of the Americans with Disabilities Act.

9.14 Right to Enter and Inspect Facility. The Authority shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Agreement. In connection therewith, the Authority shall have the right to enter the Facility during operating hours, speak to any of Contractor's employees and receive cooperation from such employees

in response to inquiries. If the Authority so requests, Contractor shall make specified personnel available to accompany the Authority's employees on inspections.

In addition, upon reasonable notice and without interference with Contractor's operations, the Authority may review and copy (at its expense) any of Contractor's operational records related to this Agreement. The Authority may designate third parties to audit Contractor's records, and Contractor shall cooperate with all such designated auditors.

9.15 Recycling Programs Not Restricted. Nothing in this Agreement shall restrict the Authority or one or more of the Participating Agencies, or any of them, as to their participation or nonparticipation, or the nature or extent of their participation in, any Recycling program, developed or operated by the Authority, the Participating Agencies, or by one or more residents, businesses, commercial, industrial or retail operators, or other Persons, within their respective jurisdictions.

This Section 9.15 is not, however, intended to modify the provisions of Section 3.06.B pertaining to the Guaranteed Minimum Recycling Level.

9.16 Maintenance and Review of Records. Contractor shall compile, on a daily basis, accurate records of its operations at the Facility in sufficient detail to allow for (1) accurate determinations of all matters that require periodic determination under this Agreement, including, but not limited to, Articles 3, 4 and 5 hereof, (2) the compilation of reports to CIWMB by the Authority and by each of the Participating Agencies, and (3) the allocation of credit for Recycling among the Participating

Agencies. The Authority shall have the right during regular business hours and upon reasonable notice to review and make copies (at the Authority's expense) of any documents relevant to this Agreement, including, but not limited to, Contractor's cash register records, scale records, videotape and other recordings of transactions at the scale house, and sales invoices (but only to the extent such sales invoices are needed to respond to a formal inquiry by CIWMB), whether such records are maintained in electronic, magnetic and other media. Advance notice of at least twenty-four (24) hours shall be deemed reasonable.

9.17 Right to Demand Assurances of Performance. If Contractor (1) persistently suffers the imposition of liquidated damages under Section 3.15; (2) is the subject of any labor unrest, including work stoppage or slowdown, sickout, picketing or other concerted job action, which materially and adversely affects its ability to operate the Facility in the ordinary course; (3) appears in the reasonable judgment of the Authority to be unable to regularly pay its bills as they become due; (4) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law; or (5) is not Recycling at a rate sufficient to make it probable that it will achieve the Guaranteed Minimum Recycling Level on an annual basis, the Authority may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the Authority may require.

9.18 Right of the Authority to Make Changes. The Authority may, without amending this Agreement, direct Contractor to cease

performing one or more service described in Article 3, may direct Contractor to modify the scope of one or more such types of service, may direct Contractor to perform additional solid waste processing services, or may otherwise direct Contractor to modify its performance under any other section of this Agreement. Contractor shall promptly and cooperatively comply with such direction.

If such changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in the compensation due Contractor shall be made. If such changes cause an increase or decrease in the amount of time necessary to perform the service, Contractor will continue to perform the new or changed service while the appropriate adjustment in compensation and/or time is being determined.

If the Authority has directed a change in the scope of work under this Section and either party believes that such change will increase or decrease the costs of providing service, the party which believes Contractor's compensation should be adjusted shall, within thirty (30) calendar days, submit to the other party a proposed adjustment and the Parties shall thereafter meet and discuss the matter. Contractor shall promptly provide all relevant schedules, supporting documentation and other financial information requested by the Authority to evaluate the necessity for an adjustment and the amount thereof. Within ninety (90) days of the submission of the proposed adjustment, the Authority will determine the amount of the adjustment, if any, and shall thereafter, adjust Contractor's compensation accordingly. Any

adjustments will be made effective as of the date the change in service is implemented.

If Contractor is dissatisfied with the decision of the Authority, any dispute may be referred to arbitration that is conducted pursuant to the procedures set forth in "**Exhibit I**", or may be the subject of an appropriate judicial proceeding.

9.19 Provisions Applicable During Final Year of Term.

During the final Operating Year of the Term (i.e., the Operating Year to commence on July 1, 2011 and to end on June 30, 2012), the Authority shall have the right to construct or have third parties construct additions to and expansions/modifications of the Facility, provided that such construction is carried out in a way that does not interfere materially with Contractor's operations. Contractor will allow the Authority and its agents full access to the Facility to design and carry out such construction.

In addition, Contractor will cooperate with the Authority in preparing for operations of the Facility after expiration of the Term, including but not limited to, providing full access to the Facility to other potential operators so that they may observe operations of Contractor during such final Operating Year.

9.20. Force Majeure. Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, labor unrest of other than the party's employees (including strike, work stoppage, slowdown, sick out,

picketing, or other concerted job action), or other cause not the fault of, and beyond the reasonable control of, the party claiming excuse. A party claiming excuse under this Section 9.20 must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming excuse under this Section 9.20 shall use its best efforts to remedy its inability to perform as quickly as possible.

If performance by a date specified in this Agreement is excused under this Section 9.20, the date by which performance is to be required will be postponed for an amount of time equivalent to the excused delay. The preceding sentence shall not operate, however, to extend the term beyond June 30, 2012.

ARTICLE 10. MISCELLANEOUS AGREEMENTS

10.01 Exhibits. Each of the Exhibits, identified as Exhibits "A" through "R," and Appendix One (Definitions) is attached hereto and incorporated herein and made a part hereof by this reference.

10.02 Entire Agreement. This Agreement, including the referenced Appendix and Exhibits, represents the full and entire agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral, other than the representations of Contractor referred to in Article 8.

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

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

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

10.06 Severability. If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein.

10.07 Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of

this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

10.08 References to Laws. All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified. In addition, references to specific governmental agencies, boards and/or other bodies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

10.09 Arbitration. The Parties may, in their discretion, but need not, submit disputes which arise under any sections of this Agreement to arbitration in accordance with the procedure set out in "***Exhibit I***" and may at that time agree as to whether such arbitration shall be binding or non-binding.

IN WITNESS WHEREOF, the Authority and Contractor have executed
this Agreement as of the day and year first above written.

_____[NAME OF WESTERN PLACER WASTE MANAGEMENT
CONTRACTOR], a AUTHORITY
_____[TYPE OF
ORGANIZATION]

By: _____

By: _____
Name: _____
Title: _____

By: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Attorney for Contractor

Attorney for Authority

M:\NOWLC\Amended Agt 10-3-01 Clean.wpd

APPENDIX ONE

Unless the context clearly indicates otherwise, the capitalized terms set forth below will have the following meanings when used in this Agreement.

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

B. **Aerosol Recovery Unit.** "Aerosol Recovery Unity" is defined as an Aerosolv® Aerosol Can Recycling System Model 6000, or equivalent unit certified by the State of California, Department of Toxic Substances Control for the puncturing, draining, crushing and Recycling of spent waste aerosol cans.

C. **Agreement.** "Agreement" means this Operating Agreement between the Authority and Contractor dated to be effective as of July 1, 2005, including all exhibits and attachments, and any amendments hereto.

D. **Alternative Daily Cover.** "Alternative Daily Cover" means Recycled materials which are used as alternative daily cover at, and in conjunction with the operation of, solid waste landfills if approved for use as alternative daily cover by all applicable regulatory agencies having jurisdiction over the use of alternative daily cover.

E. **Ash.** "Ash" means the material remaining after incineration of municipal Solid Waste, including bottom ash and fly ash. "Ash" does not include ashes from residential burning, such as fireplaces, barbecues, etc.

F. **Authority.** "Authority" means the Western Placer Waste Management Authority, a public agency created under the Joint Exercise of Powers Act.

G. **Biomedical Waste.** "Biomedical Waste" means waste which may be reasonably considered infectious, pathological or bio-hazardous, originating from hospitals, public or private medical clinics, dental offices, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto) sharps (hypodermic needles, syringes, etc.),

dialysis unit waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, including all wastes which constitute "Infectious Waste" as defined in Health and Safety Code Section 25117.5.

H. **Buyback/Dropoff Center.** "Buyback/Dropoff Center" means the portion of the Facility at which members of the public, the Participating Agencies and their Designated Haulers may deliver certain Recyclable Materials for Processing by Contractor.

I. **Contractor.** "Contractor" means _____,
_____.

J. **Construction and Demolition Debris.** "Construction and Demolition Debris" means and includes solid wastes, such as building materials; packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings, and other structures. Construction refers to SIC Codes 152 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795. (Reference: Title 14 CCR Section 18720(a)(14).)

K. **Contributing Cities.** "Contributing Cities" means the cities of Auburn, Colfax and Loomis.

L. **Creditable Recovery.** "Creditable Recovery" means the Recycling of materials such that their disposition may be credited by the Participating Agencies toward the diversion goal in Public Resources Code Section 41780, as that section reads as of the Effective Date of this Agreement. To obtain "Creditable Recovery" for any given materials recovered at the Facility, Contractor must produce to the Authority upon its request satisfactory evidence and documentation showing that such materials have been Recycled or re-used in such a manner as to be eligible for diversion credits from the California Integrated Waste Management Board.

M. **Designated Hauler.** "Designated Hauler" means the company or companies which from time to time are granted the exclusive right or franchise to collect Municipal Solid Waste within the Participating Agencies.

N. **Designated Waste.** "Designated Waste" means those substances classified as designated waste by the State of California, presently in 23 California Code of Regulations Section 2522.

O. **Effective Date.** "Effective Date" has the meaning set forth in Section 2.01 of this Agreement, which will be July 1, 2005.

P. **Environmental Laws.** "Environmental Laws" means all federal and state statutes, county and city ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Federal Clean Water Act, 33 U.S.C. Section 151, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 1101, et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the California Toxic Substances Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5, et seq.; the California Clean Air Act, Health and Safety Code Sections 39000, et seq.; and Bay Area Air Quality Management District Regulation 8, Rule 34; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

Q. **Facility.** "Facility" means the Western Regional Materials Recovery Facility. The term "Facility" includes the Materials Recovery Facility, the Green Waste Composting and Wood Waste Processing Area, the Publicly Hauled Waste Tipping Area, the Buy Back Center, the Household Hazardous Waste Facilities, and any improvements and expansions to the Facility during the Term, unless the context clearly requires otherwise.

R. **Facility Expansion.** "Facility Expansion" means the improvement and expansion of the Facility as described in the plans, drawings and specifications prepared pursuant to the "Design and Construction Management Services Agreement" between Contractor and the Authority.

S. **Facility Site.** "Facility Site" means the approximately 25-acre site which is a portion of the 360-acre parcel also containing the Landfill, on which the Facility is constructed.

T. **Garbage.** "Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any product thereof,

resulting from the preparation, storage, handling or consumption of such substances.

U. **Gate**. "Gate" means the Gatehouse at the entrance to the Facility, from which incoming loads of refuse may be directed to the Landfill or to a portion of the Facility for Processing.

V. **Gate Fees**. "Gate Fees" means amounts charged by the Authority to any Person using the Facility and/or delivering any waste (including Recyclable Materials) to the Facility. These Gate Fees will be established by and modified from time to time by the Authority in its sole discretion and shall be collected by the Authority, and Contractor has no interest in or right to them.

W. **Guaranteed Minimum Recycling Level**. "Guaranteed Minimum Recycling Level" means the percentage by weight of Municipal Solid Waste which Contractor is to recover for Recycling, as set forth in Section 3.14, as adjusted, from time to time, as provided and required by the applicable provisions of this Agreement. All material recovered must be Recycled such that the Participating Agencies may receive credit for it under the Act (i.e., Creditable Recovery).

X. **Hazardous Waste**. "Hazardous Waste" means:

(a) Wastes, materials or substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act, as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.) as amended from time to time, or regulations promulgated thereunder;

(b) Waste, materials or substances defined or characterized from time to time as hazardous waste by the principal agencies of the State of California (including, without limitation, the Department of Health Services, the Department of Toxic Substances Control, the California Water Resources Control Board, and the California Integrated Waste Management Board) having jurisdiction over hazardous waste generated by facilities within the State, and pursuant to any other applicable governmental regulations;

(c) Wastes, materials or substances, the storage, treatment, transportation or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §2601-2654, as amended from time to time, or regulations promulgated thereunder;

(d) Radioactive wastes, materials, substances or items, the storage, treatment, transportation or disposal of which is subject to governmental regulations.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste," for purposes of processing and disposal to land, the broader, more restrictive definition shall be employed for purposes of this Agreement.

Y. **Household Hazardous Waste.** "Household Hazardous Waste" means waste which meets the definition of Hazardous Waste, but which is of residential origin and exempt from the Resource Conservation and Recovery Act as it reads as of the date of this Agreement. Household Hazardous Waste includes "Universal Waste" as that phrase is defined in the California Code of Regulations, Division 4.5, Chapter 23.

Z. **Inert Materials.** "Inert Materials" means a non-liquid waste, including but not limited to, soil and concrete, that does not contain hazardous waste or soluble pollutants at concentrations in excess of water quality objectives established by the Regional Water Quality Control Board pursuant to Section 13000, et seq. of the Water Code and does not contain significant quantities of decomposable waste.

AA. **Landfill.** "Landfill" means the Western Regional Sanitary Landfill owned by the Authority and located at the intersection of Fiddyment and Athens Roads, Placer County.

BB. **Member Agencies.** "Member Agencies" means the County of Placer and the cities of Lincoln, Rocklin and Roseville.

CC. **Municipal Solid Waste.** "Municipal Solid Waste" means all substances or materials, exclusive of Source Separated Green Waste and Source Separated Wood Waste, that are discarded or rejected as being spent, useless, worthless or in excess of the owner's needs at the time of discard or rejection including, without limitation, all putrescible and non-putrescible solid and semi-solid waste including Garbage, Rubbish, Maintenance Waste, Yard Waste, Wood Waste, used tires, bulky wastes, industrial wastes, demolition and construction wastes, grit and sweepings from a Water Pollution Control Plant, which are generated by residential, commercial, industrial, institutional, municipal, agricultural and other activities and which are not otherwise restricted in a Class 3 landfill by State or Federal regulations and which are delivered to the Facility.

Municipal Solid Waste does not include: (i) Hazardous Waste; (ii) Biomedical Waste; (iii) Ash; (iv) materials which are not set out or otherwise offered for collection by waste generators; (v) Source-Separated Recyclable Materials, including Source Separated: Green Waste, Wood Waste, Food Wastes and Inerts; or (vi) materials segregated for processing and Recycling at the Facility, once they have been so segregated and processed.

DD. **Operating Year.** "Operating Year" means each successive period of twelve (12) months during the Term commencing on July 1 and ending on June 30. The initial Operating Year under this Agreement begins on July 1, 2005, and ends on June 30, 2006.

EE. **Participating Agencies.** "Participating Agencies" means the Member Agencies and the Contributing Cities, or any of them, as the context requires.

FF. **Person.** "Person" means any individual or organization, including any firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Placer, municipality or special purpose district.

GG. **Primary Service Area.** "Primary Service Area" means the geographical area within the jurisdiction of the Participating Agencies and any immediately contiguous area which is served by the Designated Hauler(s) of one of the Participating Agencies while acting under its contract with that Participating Agency, but excluding any areas occupied by recognized Indian tribal reservations and lands, including Indian casinos. .

HH. **Processing.** "Processing" or to "Process" means the reduction, separation, recovery, conversion or Recycling of solid waste. If a load of materials is received at the Facility and is then transported directly to the Landfill for disposal, it shall not be deemed to have been "Processed."

II. **Publicly Hauled Waste.** "Publicly Hauled Waste" and "Publicly Hauled Municipal Solid Waste" mean Municipal Solid Waste delivered to the Facility by Persons other than the Participating Agencies, their Designated Haulers and by Contractors using large self hauled vehicles which are weighed at a Commercial Gatehouse.

JJ. **Recyclable Materials.** "Recyclable Materials" means any materials pulled out of the waste stream, including domestic, commercial or industrial by-products of some potential value which are set aside, handled, packaged or offered for collection in a

manner different from Garbage, Rubbish or other forms of Municipal Solid Waste.

KK. **Recycle; Recycling.** "Recycle" or "Recycling" means the process of collecting, sorting, cleaning, treating and reconstructing materials and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace. "Recycle" or "Recycling" does not include Transformation (except for Transformation to the extent that the materials Transformed qualify for Creditable Recovery.)

LL. **Recycling Level.** "Recycling Level" means the percentage by weight of the Municipal Solid Waste (including Publically Hauled Waste) entering the Facility which is actually diverted from land disposal by Contractor's operations and thereafter Recycled, calculated as shown on "***Exhibit F***".

MM. **Rubbish.** "Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes from residential burning, floor sweepings, glass, and other waste materials not included in the definition of Garbage, Hazardous Waste, or Yard Waste.

NN. **Source Separated Green Waste.** "Source Separated Green Waste" means Yard Waste that (1) consists of at least fifty (50) percent by volume grass clippings or leaves, (2) contains no shrubbery/tree limbs exceeding one (1) inch in diameter, and (3) is not contaminated with more than five (5) percent by weight of other materials.

OO. **Source-Separated Recyclable Materials.** "Source-Separated Recyclable Materials" means Recyclable Materials which have been segregated into separate containers by the Waste Generator, the Designated Hauler or other Persons prior to their delivery to the Facility. Materials delivered to the Buyback/Dropoff Center and materials collected by the Participating Agencies' Designated Haulers as part of "curbside" recycling programs are included in Source-Separated Recyclable Materials.

PP. **Source Separated Wood Waste.** "Source-Separated Wood Waste" is defined as Source-Separated Recyclable Materials consisting of lumber, plywood, particle board, tree trunks less than twenty-four (24) inches in diameter and tree limbs greater than one (1) inch in diameter, provided that such wood does not contain more than one percent (1%) by volume of contaminants.

Contaminants are materials which could hinder Contractor's ability to process or market Source-Separated Wood Waste; potential contaminants include treated lumber, painted lumber, PVC pipe, metal, rock, sheet rock, dirt, plastic and other non-wood Rubbish and Garbage.

QQ. **Term**. "Term" has the meaning set forth in Section 2.02 of this Agreement.

RR. **Ton**. "Ton" means a short ton of 2,000 pounds avoirdupois.

SS. **Transformation**. "Transformation" means the incineration, pyrolysis, distillation, gasification, or biological conversion. Transformation does not include composting.

TT. **Yard Waste**. "Yard Waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, and similar organic materials.

Such definitions shall also apply to derivations of the above terms when capitalized herein.