

City of Oakland

Request for Proposals for Zero Waste Services

Disposal Services - Service Group 3



Proposals Due: ~~December 12, 2012~~ January 9, 2013¹ 2:00 PM

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1 **Section 1 GENERAL INTRODUCTION**

2 **1.1 INTRODUCTION**

3 This Request for Proposals ("RFP") for Zero Waste Services is being issued by the City of
4 Oakland, California ("City").

5 The RFP is being issued in two (2) parts. The first part is for solicitation of proposals for the
6 provision of Disposal Services (Service Group 3). The second part, which will be issued in
7 approximately thirty (30) days, will be a solicitation for the provision of Mixed Materials and
8 Organics (MM&O) Collection Services (Service Group 1) and/or Residential Recycling (RR)
9 Collection Services (Service Group 2) As is shown in Table 1-1, once both parts of the Zero
10 Waste Services RFP have been released, the procurement schedule will be consolidated. The
11 City encourages proposers to propose on any and all Service Groups requested through both
12 parts of the RFP.

13 Each of the two (2) parts of the RFP will be released at a Mandatory RFP Release Meeting. In
14 order to receive the RFP and become eligible to participate in the Zero Waste Services
15 procurement, each prospective proposer will be required to submit a deposit of Five Thousand
16 Dollars (\$5,000) in the form of a cashier's check payable to the City of Oakland, and sign the
17 required RFP code of conduct forms. Prospective proposers who become eligible proposers on
18 August 3, 2012 will not be required to submit additional deposits in order to be considered
19 eligible to receive the second part of the RFP, for Service Groups 1 and 2 when it is issued. The
20 deposit will be returned within thirty (30) days of receipt of a valid and complete proposal.

21 This document is divided into six (6) sections, including the accompanying Attachment. The
22 RFP documents have been provided at the mandatory RFP release meeting as follows:

- 23 • Sections one through six (1-6) have been provided in hard copy.
- 24 • Sections one through six (1-6) have been provided electronically in PDF format.
- 25 • Disposal Services Forms one through thirteen (1-13) have been provided electronically
26 in MS Word format.

27 The City's current agreements for Solid Waste, Yard Waste and Recyclable Collection,
28 Processing and Disposal will be expiring on June 30, 2015.

29 **1.2 SERVICE GROUPS**

30 Under the terms of this Disposal Services portion of the Zero Waste Services RFP, the City is
31 requesting proposals for Service Group 3. Under the terms of the Collection Services portion of
32 the Zero Waste Services RFP, to be issued in approximately thirty (30) days, the City will be
33 requesting proposals for Service Groups 1 and 2 as described below. The City wishes to
34 provide the opportunity for qualified companies to propose on one (1) or more Service Groups.
35 Each proposer may propose on any or all of the requested Service Groups. However, proposers
36 who wish to propose on more than one (1) Service Group **must submit** a separate proposal for
37 each Service Group. The Collection Services portion of the Zero Waste Services RFP will
38 include Service Groups 1 and 2.

39 A description of all Service Groups follows.

40 **Service Group 1 – Exclusive Mixed Materials and Organics Collection Services**

- 41 • Single Family

-
- 42 ○ Weekly Mixed Materials collection and processing or transfer (Base Service);
 - 43 ○ Weekly Source Separated Organic Materials collection and processing (Base
 - 44 Service);
 - 45 ○ Annual on-call Bulky Goods collection, processing and transfer, one time per
 - 46 year (Base Service); and
 - 47 ○ On-call Sharps collection, transfer and arrangement for proper disposal (Optional
 - 48 Service for customers for an additional fee).
 - 49 ■ Multi-Family
 - 50 ○ Weekly Mixed Material collection, processing and transfer (Base Service);
 - 51 ○ Weekly Source Separated Organic Materials collection and processing for those
 - 52 MFD Customers requesting service (Base Service, no additional charge).
 - 53 *(Proposers should note that the City is also asking for an alternative cost*
 - 54 *proposal for the provision of Organics Collection for an additional fee);*
 - 55 ○ Annual on-call Bulky Goods collection, processing and transfer (Base Service);
 - 56 and
 - 57 ○ On-call Sharps collection, transfer and arrangement for proper disposal (Optional
 - 58 Service for customers for an additional fee).
 - 59 ■ Commercial
 - 60 ○ Mixed Materials collection and processing or transfer (Base Service);
 - 61 ○ Source Separated Organic Materials collection and processing (Optional at the
 - 62 discretion of the customer); and
 - 63 ○ Non-exclusive single stream Recyclable Materials collection and processing
 - 64 (Optional at the discretion of the customer). *(Proposers should note that the City*
 - 65 *will require either the MM&O Contractor or the RR Contractor to provide this*
 - 66 *service upon request.)*
 - 67 ■ City
 - 68 ○ Mixed Materials collection and processing or transfer;
 - 69 ○ Source Separated Organic Materials collection and processing;
 - 70 ○ Single stream Recyclable Materials collection and processing;
 - 71 ○ Street litter containers purchase, placement, and maintenance;
 - 72 ○ Daily (seven (7) days/week) street litter containers Mixed Materials collection,
 - 73 processing and transfer; and
 - 74 ○ Other various City services as described in the MM&O Collection Services
 - 75 Contract.
 - 76 **Service Group 2 – Exclusive Residential Recyclable Collection Services**
 - 77 ■ Single Family
 - 78 ○ Weekly single stream recyclables collection and processing (Base Service);
 - 79 ○ Weekly used oil and oil filter collection and processing (Base Service); and
 - 80 ○ Weekly dry-cell battery collection and processing (Base Service).
-

- 81 ▪ Multi-family
- 82 ○ Weekly single stream recyclables collection and processing (Base Service);
- 83 ○ Weekly used oil and oil filter collection and processing (Base Service); and
- 84 ○ Weekly dry-cell battery collection and processing (Base Service).
- 85 ▪ Commercial
- 86 ○ Non-exclusive single stream Recyclable Materials collection and processing
- 87 (Optional at the discretion of the customer). *(Proposers should note that the City*
- 88 *will require either the MM&O Contractor or the RR Contractor to provide this*
- 89 *service upon request.)*

90 **Service Group 3 - Disposal Services**

- 91 ▪ Landfill disposal
- 92 ○ Disposal capacity to accept unprocessed Mixed Materials, Garbage and Residue
- 93 collected by the City and the City's MM&O Collection Contractor and delivered
- 94 by, or on behalf of, the City, the City's MM&O Collection Contractor, or successor
- 95 for thirty (30) years from July 1, 2015.
- 96 ○ At the discretion of the proposer, the Disposal Tipping Fee proposed on Disposal
- 97 Services Form 2 may include the cost of providing a "delivery" site where
- 98 materials may be delivered by the City or the City's MM&O Contractor for
- 99 transport by the Disposal Services Contractor to the Disposal Facility. In the
- 100 event these services are included in Disposal Tipping Fee, delivery of materials
- 101 by the City or the MM&O Contractor to the "delivery" site instead of to the
- 102 Disposal Facility will be solely at the discretion of the City and the MM&O
- 103 Contractor.
- 104 ▪ If offered, the cost of providing the "delivery" site and transportation service
- 105 as part of Disposal Services shall be the sole responsibility of the Disposal
- 106 proposer and the proposer shall only be allowed to propose one (1)
- 107 Disposal Tipping Fee on Disposal Services Form 2. The Disposal Tipping
- 108 Fee proposed on Disposal Services Form 2 shall be the amount to be
- 109 charged for the provision of Disposal Services regardless of where the
- 110 materials are delivered.

111 Sealed proposals will be received by the City of Oakland **Office of the Public Works Agency,**

112 **250 Frank H. Ogawa Plaza, Suite 4314, Oakland, CA 94612,** no later than **2:00 p.m. PDT on**

113 **Wednesday, ~~December 12, 2012~~ January 9, 2013**¹ for the provision of Disposal Services.

114 The specific Disposal Services requirements are contained in the definitions and body of the

115 Disposal Services Contract provided in Section 5 of this RFP document. Prospective proposers

116 are strongly encouraged to examine the Disposal Services Contract in its entirety to ensure an

117 understanding of the services being requested herein.

118 In accordance with the Americans with Disabilities Act, persons needing assistance to

119 participate in this proceeding should contact Garrett Fitzgerald by phone at (510) 238-6179, at

120 least seventy-two (72) hours prior to any meetings.

121 An RFP response will be deemed non-responsive if not accompanied by a proposal surety in

122 the amount of One Hundred Thousand Dollars (\$100,000) as described in Section 4.15 of this

123 RFP.

124

1.3 MANDATORY PRE-PROPOSAL MEETING

125 A MANDATORY pre-proposal meeting for those proposers intending to submit proposals to
126 provide Disposal Services is scheduled to be held on Wednesday, September 26, 2012
127 beginning at 1:00 p.m. PDT at **Oakland City Hall, Sgt. Ervin Romans Hearing Room 2, 1**
128 **Frank H. Ogawa Plaza, Oakland, CA 94612.**

129 ***FAILURE OF A PROPOSER TO ATTEND the mandatory pre-proposal meeting shall render***
130 ***any response submitted by that proposer to be deemed non-responsive and their***
131 ***proposal shall not be considered for award. Decisions on this matter by the City shall be***
132 ***final.***

133 ***All persons attending the mandatory pre-proposal meeting will be required to identify***
134 ***themselves and the eligible proposer they represent, or identify that they seek to partner***
135 ***with an eligible proposer, and to sign an attendance form, giving their name, address,***
136 ***telephone number and e-mail address, or attaching a business card with the same or***
137 ***more information.***

138

1.4 PROCUREMENT SCHEDULE

139 The City plans to adhere to the following procurement schedule to the extent possible.
140 Changes to the procurement schedule shall be at the sole option of the City.

| TABLE 1-1 PROCUREMENT SCHEDULE (FOR ALL SERVICE GROUPS) | |
|--|---|
| Activity | Date |
| Mandatory RFP Release Meeting for Disposal Services | August 3, 2012 |
| Last Day to Receive Disposal Site Information | August 17 ³ , 2012 |
| Mandatory RFP Release Meeting for Collection Services | September 5, 2012 |
| Mandatory Pre-Proposal Meeting for Disposal Services and Collection Services | September 26, 2012 |
| Last Day for Proposers to Submit Questions | October 10, 2012 |
| Last Day to Receive Partnership/Joint Venture Disclosure Notification | October 31, 2012 |
| Disposal and Collection Services Proposals Due | December 12, 2012 <u>January 9, 2013</u> ¹ |
| Interviews and Site Visits | March 2013 |
| Memo Notification of Top-Ranked Proposals Released | April 2013 |
| Recommendations to City Council of Top Ranked Proposals | May 2013 |
| Begin Operations | July 1, 2015 |

141

142 For information regarding this RFP, please contact in writing, or by email :

143 Garrett Fitzgerald, Zero Waste Services RFP Process Coordinator
144 250 Frank H Ogawa Plaza, Ste. 5301
145 Oakland, CA 94612-2034
146 zerowasterfp@oaklandnet.com

147 **1.5 DISPOSAL SITE INFORMATION AND DUE DATE**

148 Proposers intending to submit a proposal to provide Disposal Services must provide the
149 following information no later than 4:00 p.m. PDT on Friday, August ~~15~~17⁴, 2012.

- 150 ▪ Name of Disposal Facility;
- 151 ▪ Address of Disposal Facility;
- 152 ▪ Name of facility where materials may be delivered if different from the Disposal Facility;
153 and
- 154 ▪ Address of facility where materials may be delivered if different from the Disposal
155 Facility.

156 This information will be included in the Collection Services portion of the Zero Waste Services
157 RFP and will be kept confidential until September 5, 2012 when part 2 of the Zero Waste
158 Services RFP will be released.

159 The information shall be provided in writing or by email to:

160 Ric Hutchinson
161 R3 Consulting Group, Inc.
162 1512 Eureka Road, Suite 220
163 Roseville, CA 95661
164 rhutchinson@r3cgi.com

165 **Failure to provide this information in the time and manner set forth above will result in**
166 **the disqualification of a proposer and their proposal to provide Disposal Services will not**
167 **be accepted.**

168 **1.6 JOINT PROPOSAL NOTIFICATION**

169 If two (2) or more proposers intend to submit a proposal as part of a joint venture or partnership,
170 that information must be provided in writing, either by email or US Postal Service, by the parties
171 no later than 2:00 p.m. PDT on Wednesday, October 31, 2012 to:

172 Ric Hutchinson
173 R3 Consulting Group, Inc.
174 1512 Eureka Road, Suite 220
175 Roseville, CA 95661
176 rhutchinson@r3cgi.com

177 This notification will be kept confidential until after submission of the proposals.

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179 Section 2 BACKGROUND INFORMATION

180 2.1 INTRODUCTION

181 The purpose of this Section of the RFP documents is to familiarize prospective proposers with
182 the City and its current services, and to provide information not included in other Sections of this
183 document.

184 Terms that are capitalized in this RFP are specifically defined in the Disposal Services Contract
185 located in Section 5 of this RFP, and the meaning of such terms are solely as defined therein.
186 **Each proposer is strongly encouraged to fully review this Contract.**

187 ***The data contained in this Section is for informational purposes only. The City makes no***
188 ***warranty as to the accuracy of this information and disclaims any responsibility for any***
189 ***such information that may subsequently be determined to be incomplete or inaccurate.***

190 2.2 GEOGRAPHY AND DEMOGRAPHICS

191 Oakland is situated at the geographical center of the San Francisco Bay Area, and is the
192 commercial, cultural, population, and transportation center of the East Bay. It has a diverse
193 population of 390,000 residents, 26,000 businesses, and 60,000 daytime workers in the
194 downtown alone. Oakland is a vibrant hub of economic activity, which includes business and
195 financial organizations, regional medical centers, and the 3rd largest deep-water maritime port
196 on the U.S. west coast. As a built-out city with little undeveloped land, future development
197 largely will be in the form of reconstruction, reuse, or transformation of existing properties.

198 Nationally recognized as one of America's greenest cities, Oakland's award-winning leadership
199 demonstrates Oakland's pledge to build an ecologically sustainable, economically dynamic and
200 socially equitable future for our community.

201 2.3 DISPOSAL SERVICES

202 The City is requesting proposals for Disposal Services for a period of twenty (20) years, with up
203 to two (2) 5-year extensions at the sole discretion of the City. Disposal Services will begin on or
204 about July 1, 2015. The terms and conditions for the provision of Disposal Services are set forth
205 in the Disposal Services Contract located in Section 5 of this RFP. The City will require that all
206 unprocessed Mixed Materials Collected under the terms of the Mixed Materials and Organics
207 Collection Services Contract be delivered to the Disposal Facility, as defined in the Disposal
208 Services Contract. In addition, all Residue from the Processing of Mixed Materials Collected
209 under the terms of the Mixed Materials and Organics Collection Services Contract (or an
210 equivalent amount) must also be delivered to the Disposal Facility, as defined in the Disposal
211 Services Contract.

212 Disposal Facilities may be located outside of Alameda County, although two (2) preference
213 points will be awarded to Disposal Services proposals with Disposal Facilities located in
214 Alameda County. In addition, the City will require Disposal Facilities located outside of Alameda
215 County to collect and remit all fees for Alameda County and StopWaste.Org which is the
216 Alameda County Waste Management Authority ("ACWMA") and the Alameda County Source
217 Reduction and Recycling Board ("Board"), operating as one public agency.

218 Disposal Services proposals will be evaluated separately from Collection Services proposals,
219 although proposers with the ability to provide both types of services are encouraged to propose
220 on both types of services. Accordingly, separate Contracts will be executed for MM&O

221 Collection Services, RR Collection Services and Disposal Services. Proposals for Disposal
 222 Services must guarantee capacity for thirty (30) years for the Disposal of all unprocessed Mixed
 223 Materials Collected by the City and the City's MM&O Collection Services Contractor and an
 224 equivalent amount of Residue from Processed Mixed Materials Collected by the City and the
 225 City's MM&O Collection Services Contractor that is delivered to the Disposal Facility beginning
 226 on or about July 1, 2015 .

227 The following table shows specific program information for the City of Oakland, regarding
 228 Tonnage by program type. Additional information can be found in Attachment 1 of the electronic
 229 copy of this Disposal Services portion of the RFP.

230 ***Please note that City has tried to provide as much information as possible to all***
 231 ***prospective proposers in order to allow them to prepare a fair and reasonable proposal.***
 232 ***However, the City acknowledges that this information may be incomplete or inaccurate;***
 233 ***therefore, it is the sole responsibility of the proposer to conduct their own due diligence***
 234 ***and calculate and be responsible for the costs and other information quoted in the***
 235 ***Disposal Tipping Fee Proposal Forms in Section 4.***

| TABLE 2-1 CALENDAR YEAR REPORTS OF SUMMARY OF FRANCHISED TONNAGE BY PROGRAM TYPE (2010-2011) | | |
|--|----------------|----------------|
| Franchised Tons Collected | 2010 | 2011 |
| Tons Collected - Garbage | | |
| Single Family | 65,085 | 61,406 |
| Multi-Family | 34,022 | 32,165 |
| Commercial | 48,814 | 52,634 |
| Roll Off | 27,689 | 27,362 |
| City-Generated and Hauled | 6,878 | 8,210 |
| Landfilled from Mixed Material Processing | 3,327 | 3,114 |
| Total | 185,815 | 184,891 |
| Tons Collected – Organic Material | | |
| Single Family / Multi-Family | 37,063 | 35,824 |
| Commercial | 0 | 0 |
| Total | 37,063 | 35,824 |
| Tons Collected – Recyclable Material | | |
| Single Family / Multi-Family/Small Business | 37,090 | 35,676 |
| Total | 37,090 | 35,676 |
| Tons Collected – Bulky Goods | | |
| Recovered from Mixed Material Processing | 1,639 | 1,534 |
| Recycled (items separated at setout) | 51 | 73 |
| Landfilled from Mixed Material Processing (Included above in Tons Collected – Garbage) | | |
| Total | 1,690 | 1,607 |

236 **2.3.1 Current Diversion Information**

237 The City's overall diversion rate, as calculated by the City based on disposal and generation
238 data reported to CalRecycle, was 66% in 2008, 67% in 2009, 66% in 2010 and 65% in 2011.

239 **2.3.2 Alameda County Waste Management Programs**

240 The City of is a member agency of StopWaste.Org, which is the Alameda County Waste
241 Management Authority ("ACWMA") and the Alameda County Source Reduction and Recycling
242 Board ("Board"), operating as one public agency. The ACWMA is responsible for preparation of
243 the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous
244 Waste Management Plan. It manages a long-range program of development of garbage and
245 diversion facilities, and offers a wide variety of other programs and technical assistance to its
246 member agencies.

247 The Board was created in 1990, when the voters of Alameda County approved Measure D.
248 Measure D specified certain actions with respect to conformance with AB 939, including the
249 following provisions:

- 250 ▪ Required the development of the Alameda County Source Reduction and Recycling Plan
251 (Recycling Plan);
- 252 ▪ Set a long-term goal of 75% reduction and beyond in garbage disposal for Alameda
253 County;
- 254 ▪ Funded the Recycling Plan by imposing a per-Ton surcharge on materials disposed of in
255 Alameda County landfills and mandated that the surcharge be passed through to
256 Alameda County garbage ratepayers;
- 257 ▪ Created the Board in order to coordinate the Recycling Plan; and
- 258 ▪ Prohibited the incineration of garbage within the unincorporated areas of Alameda
259 County.

260 Proposers should note that on December 17, 1997, the ACWMA adopted a resolution that
261 established the collection of a Countywide Waste Disposal Facility Fee and a Household
262 Hazardous Waste Management Fee at transfer stations. Subsequently, on September 26,
263 2001, the ACWMA adopted an ordinance establishing procedures and reporting requirements
264 for the collection of the Countywide Waste Disposal Facility Fee and the Household Hazardous
265 Waste Management Fee for waste transferred out of Alameda County without first being
266 processed at a transfer station in Alameda County.

267 **2.3.3 Intent**

268 The City's intent and the requirements of this RFP document are to provide its residents and
269 businesses with the appropriate level of service, at the best price and with the highest quality of
270 service.

271 The specifications contained within this RFP document are designed to establish an effective,
272 efficient, uniform and safe system of Disposal Services that provides for the following intended
273 purposes:

- 274 ▪ Establish and maintain a continuous and uniform level of Disposal Services in order to
275 assure protection of the health, safety and welfare of the community;

- 276 ▪ Maximize Diversion and reduce Landfill Disposal through the use of innovation and
277 ingenuity;
- 278 ▪ Support the City's Zero Waste Goal by 2020; and
- 279 ▪ Minimize impacts to service rates.

280 To this end, the City has tried to provide as much information as possible to all prospective
281 proposers in order to allow them to prepare fair and reasonable proposals. However, the City
282 acknowledges that this information may be incomplete or inaccurate; therefore, it is the sole
283 responsibility of the proposer to conduct their own due diligence and calculate and be
284 responsible for the costs and other information quoted in the Disposal Tipping Fee Proposal
285 Forms in Section 4 of this RFP.

286 **Section 3 SERVICE REQUIREMENTS, PROPOSAL PREPARATION**
 287 **INSTRUCTIONS, AND PROPOSAL FORMS FOR DISPOSAL**
 288 **SERVICES**

289 **3.1 SERVICE REQUIREMENTS**

290 **3.1.1 Proposer To Make Examination**

291 Each proposer shall make its own examination, investigation and research regarding the proper
 292 method of doing the work, all conditions affecting the work to be done, the labor, equipment and
 293 materials, and the quantity of the work to be performed. The proposer agrees that it has
 294 satisfied itself by proposer's own investigation and research regarding all such conditions, and
 295 that proposer's conclusion to enter into the Service Contract and execution of the Service
 296 Contract is based upon such investigation and research, and that proposer shall make no claim
 297 against the City because of any of the information provided in this RFP, estimates, statements
 298 or interpretations made by any officer or agent of the City that may prove to be in any respect
 299 erroneous, as provided for in Disposal Services Form 7- Proposer to Make Examination.

300 **3.1.2 Term of Contracts**

301 Contractors currently provide the services that are the subject of this RFP, under contracts that
 302 terminate on June 30, 2015. Table 3-1 displays the expected effective date and beginning and
 303 ending dates of services for Disposal Services. The ending service date may be extended by
 304 up to two (2), five (5) year terms. Each extended term would be at the option of the City.

| TABLE 3-1 DISPOSAL SERVICES CONTRACT TERM | | | | | |
|--|---------------------------|---------------|-------------|-------------------------|-------------------------|
| Service | Estimated Date of Signing | Begin Service | End Service | Extension 1 End Service | Extension 2 End Service |
| Disposal Services | 1/1/2014 | 7/1/2015 | 6/30/2035 | 6/30/2040 | 6/30/2045 |

305 **3.1.3 Transition Schedule**

306 The time between the formal Service Contract signing and July 1, 2015 is intended to allow the
 307 Contractor sufficient time to order equipment, obtain permits and licenses, and establish/build
 308 facilities as necessary or as described in their proposal.

309 **3.1.4 Landfill Disposal**

310 MM&O Collection Contractor will be required to cause all unprocessed Mixed Materials and
 311 Mixed Material Residue (or an equivalent Tonnage amount) from processed Mixed Materials
 312 Collected under the terms of the MM&O Collection Services Contract to be delivered to the
 313 Disposal Services Contractor at the Landfill Disposal Facility selected by the City.

314 **3.1.5 Permanent Landfill Disposal Facility**

315 Proposals for Disposal Services must demonstrate a minimum capacity of thirty (30) years for
 316 the Disposal of all unprocessed Mixed Materials, Garbage, and Residue collected by the City
 317 and the City's MM&O Collection Contractor. Proposals for Disposal Services will be required to

318 accept all standard methods of collection and transfer, including but to limited to; packer trucks,
319 debris boxes, and tipper and moving floor transfer trailers.

320 **3.1.6 Diversion**

321 The City intends to reduce annual Tons sent to landfills, from the Tons disposed by the current
322 franchise hauler of approximately one hundred eighty five thousand (185,000) Tons in 2011 to
323 approximately forty thousand (40,000) Tons per year by 2030.

324 **3.1.7 Customer Service**

325 All Contractors will be responsible for ensuring that all staff maintain a professional and
326 courteous demeanor. Contractors shall be responsible for all employee interaction with
327 customers and City staff.

328 **3.1.8 Contractor Compensation and Rate Adjustments**

329 The Disposal Services Contractor's sole compensation will be based on actual Tons disposed
330 and the Disposal Tipping Fee. The Disposal Tipping Fee will be adjusted in accordance with the
331 methodology proposed by the successful proposer.

332 **3.1.9 Disposal**

333 Regardless of the location of the Disposal Facility Landfill, the Disposal Services Contractor
334 shall be required to include the identified governmental fees listed below as part of the Disposal
335 Tipping Fee and remit such fees to the appropriate parties. Proposers are responsible for
336 determining if any additional fees are applicable to the disposal program. Identified
337 governmental fees include:

- 338 ▪ Alameda County Measure D Fee;
- 339 ▪ Alameda County Waste Management Authority "Facility" Fee;
- 340 ▪ Alameda County Waste Management Authority Household Hazardous Waste Fee;
- 341 ▪ State of CA ([AB 939/1220](#))⁵ Fee;
- 342 ▪ County Open Space Fee;
- 343 ▪ Local Enforcement Agency (LEA) Landfill Fee (for County where the landfill is located);
- 344 ▪ City / County Business License Fee; and
- 345 ▪ County Planning Department Fee.

346 Proposers should note that regardless of the location of the Landfill, this requirement specifically
347 includes the Alameda County "Measure D" fee, the ACWMA "Facility" fee, and the ACWMA
348 Household Hazardous Waste fee in per-Ton amounts equal to the per-Ton amounts levied on
349 Tonnage Disposed in Alameda County.

350 **3.1.10 Payments to the City**

351 **3.1.10.1 Reimbursement for the Cost of this Procurement Process**

352 The City will require the Contractor to reimburse the City for the cost of this procurement in the
353 amount of ***Two Hundred and Fifty Thousand Dollars (\$250,000)***. This amount will not be

354 exceeded. The reimbursement is a one-time payment due within thirty (30) days after execution
355 of the Disposal Services Contract award.

356 **3.1.10.2 City Franchise Fee**

357 The City will require the Contractor to make franchise fee payments to the City to support the
358 City's Zero Waste programs and contractor management. The initial franchise fee for the fiscal
359 year July 1, 2015 through June 30, 2016 is ***Three Hundred Sixty Thousand Dollars***
360 ***(\$360,000)***.

361 The City franchise fee will be due no later than the 15th day of each month for that month
362 beginning with the month of July 2015 and will continue each month throughout the term of the
363 Contract. The City franchise fee will be adjusted each Contract Year as provided in Section
364 6.07.1 of the Disposal Services Contract presented in Section 5 of this RFP.

365

366

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368 **Section 4 PROPOSAL PREPARATION INSTRUCTIONS, AND**
369 **PROPOSAL FORMS FOR DISPOSAL SERVICES**

370 **4.1 RFP DOCUMENT**

371 This RFP document constitutes the complete set of proposal specifications and forms. All forms
372 and applicable documents must be executed and submitted as described in Section 4 of this
373 RFP. Proposals not submitted on the prescribed proposal forms shall be deemed non-
374 responsive. By submitting a proposal, the proposer agrees to be subject to all terms and
375 conditions specified herein. Except as otherwise set forth in this RFP, no exception to the terms
376 and conditions shall be allowed. Submittal of a response to this RFP constitutes a binding offer
377 by the proposer, that shall be open for a period of no less than eighteen (18) months from the
378 date of submittal.

379 **4.2 MISTAKES**

380 Proposers are expected to examine the RFP documents, including the Disposal Services
381 Contract, proposal forms, and all other instructions provided herein. FAILURE TO DO SO WILL
382 BE AT THE PROPOSER'S RISK. In the event of extension error(s), the unit price will prevail
383 and the proposer's total offer will be corrected accordingly. In the event of addition error(s), the
384 unit price will prevail and the proposer's total offer will be corrected accordingly.

385 **4.3 ADDITIONAL TERMS AND CONDITIONS**

386 Except as is set forth in Section 4.4 of this RFP, no additional terms and conditions included
387 with the RFP shall be evaluated or considered. Any and all such additional terms and conditions
388 shall have no force and effect and are inapplicable to this RFP.

389 **4.4 INTERPRETATIONS AND INQUIRES**

390 In order to be addressed at the MANDATORY pre-proposal meeting, questions concerning the
391 intent, meaning, and interpretation of the RFP document shall be submitted in writing and
392 received via email, U.S. Postal Service or delivery service, no later than 4:00 p.m. PDT on
393 August 29, 2012. When submitting questions, be specific, citing the RFP Section number,
394 page number and line number where possible. Written inquiries shall be addressed to the Zero
395 Waste Services RFP Process Coordinator:

396 Garrett Fitzgerald, Zero Waste Services RFP Process Coordinator
397 250 Frank H Ogawa Plaza, Ste. 5301
398 Oakland, CA 94612-2034
399 E-mail: zerowasterfp@oaklandnet.com

400 All proposers shall carefully examine the RFP document. Any ambiguities or inconsistencies
401 shall be brought to the attention of the City in writing as soon as possible.

402 Submission of a proposal will serve as prima facia evidence that the proposer has examined the
403 Contract and is fully aware of all conditions affecting the provision of Disposal Services.

404 No person is authorized to give oral interpretations of, or make oral changes to, the RFP
405 document. Therefore, oral statements will not be binding and should not be relied upon. Any
406 interpretation of, or changes to, the RFP document will be made in the form of a written
407 addendum to the RFP document and will be furnished by the City to all proposers who attend

408 the mandatory RFP release meeting and pre-proposal meeting. Only those interpretations of, or
409 changes to, the RFP document that are made in writing and furnished to the proposers by the
410 City may be relied upon.

411 **4.5 ORAL AGREEMENTS**

412 No oral agreement or conversation with any elected official, officer, agent, or employee of the
413 City, either before or after execution of the Disposal Services Contract, shall affect or modify
414 any of the terms or obligations contained in the Contract. Any such oral agreement or
415 conversation shall be considered as unofficial information and is in no way binding upon the City
416 or the proposer.

417 **4.6 QUALIFICATION OF PROPOSER**

418 The proposer must be qualified by experience, adequate financing, staffing and equipment to do
419 the work called for in the Contract.

420 **4.7 CONFLICT OF INTEREST**

421 All proposers must disclose, with their proposal, using Disposal Services Form 9, the name of
422 any officer, director, agent, or any relative of an officer, director, or agent who is an employee,
423 elected official or appointed official of the City. Furthermore, all proposers must disclose, to the
424 best of their knowledge, the name of any City employee, elected official or appointed official
425 who has any direct or indirect economic interest in the proposers' firm or any of its branches or
426 subsidiaries. "Economic interest" shall have the same meaning as that term is defined in Title 2,
427 California Code of Regulations Sections 18703 – 18703.5.

428 **4.8 PROPOSERS NON-COLLUSION AFFIDAVIT**

429 Any proposer submitting a proposal to this RFP must complete and execute the Non-Collusion
430 Affidavit included in the RFP document using Disposal Services Form 10. If two (2) or more
431 proposers intend to submit a proposal as part of a joint venture or partnership, notification must
432 be provided as set forth in Section 1.6 of this RFP. This notification will be kept confidential
433 until after submission of the proposals.

434 **4.9 LEGAL REQUIREMENTS**

435 Proposers are required to comply with all provisions of federal, state, county, and local laws,
436 ordinances, rules and regulations that are applicable to the services being offered in this RFP.
437 Lack of knowledge of the proposer shall in no way be a cause for relief from responsibility or
438 constitute a cognizable defense against the legal effects thereof.

439 **4.10 FAMILIARITY WITH LAWS AND ORDINANCES**

440 The submission of a proposal for the Disposal Services requested herein shall be considered as
441 a representation that the proposer is familiar with all federal, state, and local laws, ordinances,
442 rules, and regulations that affect those engaged or employed in the provision of such services,
443 or equipment used in the provision of such services, or which in any way affects the conduct of
444 the provision of such services, and no plea of misunderstanding will be considered on account
445 of ignorance thereof. The proposer's particular attention is directed to such relevant ordinances
446 and resolutions of the City, as may be amended from time to time, under which the authority,
447 terms, and conditions the Disposal Services program is to be operated. If the proposer

448 discovers any provisions in the RFP document that are contrary to or inconsistent with any law,
449 ordinance, or regulation, they shall report it without delay.

450 **4.11 DISPOSAL SERVICES CONTRACT**

451 The City shall not be obligated to any proposer to enter into a Disposal Services Contract
452 despite the City's governing body prospectively authorizing by ordinance award of the Contract
453 to a proposer. The City shall be obligated to a proposer if and only if the City enters into a
454 Disposal Services Contract with the proposer, and further, no action will lie against the City to
455 compel the City to execute any such Contract, or to recover from the City any damages, costs,
456 lost profits, expenses, etc., that any proposer may incur if the City chooses not to execute such
457 Contract. By submitting a proposal for the services, all proposers acknowledge and agree that
458 no enforceable contractual relationship arises until the City executes the appropriate Contract,
459 that no action shall require the City to fully execute such Contract at any time, and that each
460 proposer waives all claims to damages, lost profits, costs, expenses, etc., as a result of the City
461 not fully executing such Contract.

462 **4.12 FACILITIES**

463 The City reserves the right to inspect each proposer's facilities at any reasonable time, during
464 normal working hours, with prior notice to determine that the proposer has a bona fide place of
465 business and is a responsible proposer.

466 **4.13 INSURANCE**

467 The City has set forth the insurance requirements in Article 7 of the Disposal Services Contract
468 contained in Section 5 of this RFP. Proposers are strongly encouraged to review and obtain an
469 understanding of these requirements before submitting a proposal.

470 **4.14 CONTRACT MODIFICATIONS**

471 The City reserves the right to make modifications to the Contract to more fully effectuate the
472 intent of this RFP and the Disposal Services program.

473 **4.15 PROPOSERS' PROPOSAL SURETY**

474 Proposers are required to submit with their proposal a proposal bond executed by a surety
475 company licensed to do business in the State of California in the amount of **One Hundred**
476 **Thousand Dollars (\$100,000)**. In lieu of the proposal bond, proposers may provide an
477 irrevocable letter of credit in the amount of **One Hundred Thousand Dollars (\$100,000)**. The
478 letter of credit must be issued by an FDIC insured banking institution chartered to business in
479 the State of California, (consistent with the Uniform Customs and Practice for Documentary
480 Credits, then current revision or similar uniform convention approved by CITY), in CITY's name,
481 and be callable at the discretion of CITY.

482 The proposal bond shall be substantially the same as that provided in Disposal Services Form
483 3.

484 A proposal will not be considered unless accompanied by said proposal surety. Such surety
485 shall be a guarantee that the proposer, if awarded the Disposal Services Contract, will execute
486 such Contract and furnish the performance security and other required information. If the
487 proposer fails, refuses, or neglects to furnish the required performance security and information,

488 the City may enforce the proposal surety as compensation for liquidated damages for the
489 proposer's breach.

490 After the proposals are opened, checked, and duly considered, the City will release the
491 proposer's surety as follows:

- 492 ▪ Proposers, Other Than Three Highest Ranked - The surety of all except the three (3)
493 highest ranked proposers will be released within ten (10) business days after the
494 determination of the ranking of the proposers.
- 495 ▪ Second and Third Ranked Proposers - The surety of these proposers will be released
496 within ten (10) business days after the City has executed the Disposal Services
497 Contract.
- 498 ▪ Successful Proposer - The surety of the successful proposer will be released when the
499 performance security and all other required documents have been received, have been
500 found to be consistent with the requirements of this RFP and any amendments thereto,
501 and the executed Contract has been approved by the City.
- 502 ▪ Proposals Rejected - If all proposals are rejected, all sureties will be returned within ten
503 (10) business days after such rejection.

504 **4.16 WITHDRAWAL OR REVISION OF PROPOSAL PRIOR TO OPENING**

505 At any time prior to the closing time for receiving proposals, a proposer may, without prejudice,
506 withdraw, modify, or correct a proposal after it has been deposited with the City, provided a
507 request is made in writing to the City's Zero Waste Services RFP Process Coordinator, whose
508 name, address, and contact information is provided herein. Modification or corrections of
509 proposals may be made by means of email or other written communications, provided such
510 modifications or corrections are received by the City prior to the closing time set for receiving
511 proposals. Communications provided under this Section of the RFP shall be on proposers
512 letterhead and signed by the proposers authorized representative.

513 Proposals that are not submitted on the forms furnished by the City in Section 4 of this RFP and
514 are not in conformity with the provisions of this RFP document may be deemed non-responsive.
515 No corrections in proposals will be acceptable unless each correction is signed or initialed by
516 the proposer. If initialed, the City may require the proposer to identify any corrections so
517 initialed. A proposal in which omissions occur or which has been conditioned by the proposer in
518 a manner that is unacceptable to the City may be rejected. Omissions and corrections may be
519 made until the closing time set for receiving proposals.

520 **4.17 ACCEPTANCE OR REJECTION OF PROPOSALS**

521 The City reserves the following rights and options:

- 522 ▪ To deem non-responsive any and all proposals that fail to meet the literal and exact
523 requirements of the specifications provided in this RFP document;
- 524 ▪ To accept the proposal that is, in the judgment of the City Administrator, in the best
525 interest of the City and its residents;
- 526 ▪ To reject any and all non-responsive proposals;
- 527 ▪ To waive irregularities in any proposal as the City Administrator may elect to waive; and
528 ▪ To reject all proposals and to issue subsequent requests for new proposals.

529 Any or all proposals will be rejected if there is reason to believe that collusion existed among the
530 proposers. Proposals received from participants in such collusion will not be considered for the
531 same work when and if re-advertised.

532 **4.18 AWARD OF DISPOSAL SERVICES CONTRACT BY CITY**

533 The award of a Disposal Services Contract, if made, will be that Contract which best fulfills the
534 requirements and provides the best value to the City and the community. No award will be made
535 until all necessary investigations have been made to determine the responsiveness and
536 responsibility of the proposer under consideration. After opening the proposals, the City may
537 require the selected proposer(s) to submit a verified statement disclosing all ownership
538 interests, whether direct, indirect, or beneficial, and including intermediate and ultimate
539 ownership interests where several levels of ownership exist, disclosing any single source in
540 excess of thirty (30) percent of outstanding debt, and disclosing any person or entity that has
541 guaranteed in excess of thirty (30) percent of the proposer(s) outstanding debt furthermore,
542 such disclosure shall contain any information of or relating to any and all common ownership,
543 control, management, or common pecuniary benefit said proposing entity, its owners,
544 management, or representatives possess or retain in any other entity now participating, or
545 proposing to participate, in the Disposal Services Contract with the City.

546

547 In the event that the City Council award of the Contract is not received within **eighteen (18)**
548 **months** after opening of the proposals, the proposer may request that it be released from the
549 Contract obligation and that its proposal surety be released, in which case the City shall release
550 the proposer's surety within ten (10) business days of receipt of the request.

551 The foregoing action by the City or the proposer shall in no way provide any cause whatsoever
552 for claim against the City by the proposer.

553 **4.19 ADDENDUM**

554 The proposer shall sign each Addendum issued and attach it to the proposal in order to have
555 the proposal considered.

556 **4.20 EXAMINATION OF THE SITE OF THE WORK**

557 By the submission of a proposal to do the work, the proposer certifies that a careful examination
558 of all RFP documents has taken place, and that the proposer is fully informed concerning the
559 requirements of the RFP document, the physical conditions to be encountered in the work, the
560 quality and quantity of service to be performed, and of the materials and equipment to be
561 furnished. The proposer will not be entitled to additional compensation upon subsequently
562 finding that conditions require methods or equipment other than that anticipated in making the
563 proposal. Negligence or inattention of the proposer in determining conditions of the Contract
564 prior to submitting the proposal, or in any phase of the performance of the work, shall be
565 grounds for refusal by the City to agree to proposed additional compensation for additional work
566 caused by such negligence or inattention by the proposer.

567 **4.21 SUBCONTRACTORS**

568 Proposers intending to enter into contracts with subcontractors in order to provide the services
569 requested in this RFP must include in their proposal responses a list of those potential
570 subcontractors for approval by the City. Subcontractor contracts must meet the insurance and

571 competitive wage requirements specified in the Disposal Services Contract included in Section
572 5 of this RFP document.

573 **4.22 PROPOSAL PREPARATION INSTRUCTIONS**

574 **4.22.1 Receipt of Proposals**

575 The City will receive written and sealed proposals to furnish all labor, equipment, materials,
576 insurance, supervision, and all other items incidental thereto, and to perform all work necessary
577 and specified in the prescribed manner and time to provide services in accordance with the
578 terms and conditions set forth in the Disposal Services Contract. **Sealed proposals will be**
579 **received until 2:00 p.m. PDT, ~~December 12, 2012~~ January 9, 2013¹ at the office listed**
580 **below.**

581 The proposal and supporting documentation must be submitted in a sealed container plainly
582 labeled in the lower-left corner: "**PROPOSAL FOR DISPOSAL SERVICES**" along with the
583 proposal submittal date and time. Proposers must also include their company name and
584 address on the outside of the container. Proposals must be delivered to:

585 ***Office of the Public Works Agency***
586 ***250 Frank H. Ogawa Plaza, Suite 4313***
587 ***Oakland, CA 94612***

588 Proposers are responsible for making certain that proposals are delivered to the above address.
589 Mailing of a proposal or receipts of postal or other delivery agents does not ensure that the
590 proposal will be delivered on time or delivered at all.

591 Proposals will be accepted in person, by United States Postal Service, or by private courier
592 service. No proposals will be accepted by oral communication, telephone, electronic mail,
593 telegraphic transmission, or facsimile transmission. Proposals may be withdrawn prior to the
594 above scheduled time set for receipt of proposals. No proposer may withdraw a proposal after
595 the above scheduled time for opening the proposals. Any proposal received after the date and
596 hour specified will be rejected and returned unopened to the proposer.

597 The City reserves the right to postpone the date and time for opening proposals through an
598 addendum.

599 **4.22.2 Pre-Proposal Meeting**

600 A MANDATORY pre-proposal meeting is scheduled to be held on Wednesday, September 26,
601 2012 beginning at 1:00 p.m. PDT at ***Oakland City Hall, Sgt. Ervin Romans Hearing Room 2,***
602 ***1 Frank H. Ogawa Plaza, Oakland, CA 94612.***

603 Failure to attend the mandatory pre-proposal meeting shall render a proposal submitted by a
604 non-attendee to be deemed non-responsive, and the proposal from the non-attendee shall not
605 be considered for award. Decisions on these matters by the City shall be final.

606 At the pre-proposal meeting, representatives of the City will be available to answer questions
607 and explain the intent of this Disposal Services portion of the Zero Waste Services RFP. To the
608 extent possible, the City will answer questions or concerns that may be raised at that time. After
609 the pre-proposal meeting, the City will prepare written documentation to answer questions
610 addressed at the pre-proposal meeting related to interpretation of, or changes to, the Disposal
611 Services portion of the Zero Waste Services RFP documents which the City deems appropriate
612 for clarification. The documentation will be divided into two (2) areas:

- 613 1. Items only requiring clarification, interpretation, or explanation; and,
614 2. Items requiring an addition, deletion, or change to the proposal documents. (The
615 appropriate amended portion of the RFP document will accompany answers to items in
616 this category).

617 Proposers are again cautioned that only interpretations of, or changes to, the RFP documents
618 received from the City in writing may be relied upon.

619 After the pre-proposal meeting, written questions submitted by proposers who attended the pre-
620 proposal meeting and received by the City no later than 4:00 p.m. PDT on October 10, 2012,
621 will be responded to in writing by the City.

622 **4.22.3 Preparation of Proposals**

623 Seven (7) sets of the proposal (one single-sided original proposal and six (6) double-sided
624 copies), all placed in three ring binders, each with a cover indicating the company name and
625 proposal title, must be submitted. The cover of the original proposal shall be clearly marked
626 “*Original Proposal*” and the covers of the proposal copies shall be clearly marked “*Proposal*
627 *Copies*”. The City, at its discretion, may request additional copies. All blank spaces must be filled
628 in and noted, in ink or typed, with amounts extended and totaled as appropriate. Proposer must
629 also provide two (2) electronic copies of their proposal on CDs or USB flash drives. Proposals
630 must be printed on recycled content paper with a minimum of thirty (30) percent post-consumer
631 content.

632 All required original signatures must be in ink. All corrections made by the proposer to any part
633 of the RFP document must be initialed in ink.

634 Only one (1) Disposal Services proposal from any individual, firm, partnership, or corporation
635 under the same or different names will be considered.

636 Two (2) corporate officers must execute proposals by corporations in the corporate name. The
637 original proposal submitted must be signed as an original. One signature must be from the
638 chairman, president, or vice-president and the other signature must be from the chief financial
639 officer, assistant treasurer, secretary, or assistant secretary. The ~~corporate address and~~⁶ state
640 of incorporation shall be shown below the signature.

641 Proposals by partnerships must be executed in the partnership name and signed by a partner.
642 His/her title must appear under his/her signature, and the official address of the partnership
643 must be shown below the signature.

644 Proposals must be signed by a corporate officer authorized to negotiate and bind the proposer
645 contractually.⁷

646 No proposer shall take exception to the specifications set forth in this Section 4.22.3. Proposals
647 taking exception to the specifications may be rejected as non-responsive.

648 **4.23 PROPOSAL CONTENT**

649 In order to expedite the evaluation process, each proposal shall be organized in accordance
650 with this Section as outlined in Table 4-1. Instructions for preparing each Section of the
651 proposal shown in the outline are given in the following subsections. Proposals that do not
652 follow the specified format outlined below, or fail to provide the required documentation, may
653 receive lower scores. In the event of any conflict between any of the Proposal documents,
654 resolution thereof shall be in the City’s sole discretion.

655 The proposers shall provide the information as requested and as applicable to the proposed
 656 services. Headings and section numbering utilized in the proposal shall be the same as those
 657 identified in Table 4-1. Proposals shall include the following information in the format indicated.

| TABLE 4-1 OUTLINE FOR TECHNICAL PROPOSAL | |
|---|--|
| Section | Proposal Outline |
| 1 | Cover Letter |
| | Proposal Surety |
| | Performance Security Commitment Letter |
| | Receipt of Signed Addenda |
| | Table of Contents |
| 2 | Executive Summary |
| 3 | Qualifications |
| 4 | Statement of Financial Qualifications |
| 5 | Technical Proposal |
| 6 | Forms |
| 7 | Appendix |

658

659 **4.23.1 Cover Letter, Proposal SuretyBond, Performance Security**
 660 **Commitment Letter, Receipt of Signed Addenda, Table of Contents**
 661 **(Technical Proposal: Section 1)**

662 **4.23.1.1 Cover Letter:**

663 All proposals must be accompanied by a cover letter not exceeding the equivalent of four (4)
 664 single-sided pages and should provide as follows:

- 665 1. The name, addresses, telephone number, and email address of proposer’s key contact
 666 person.
- 667 2. Description of the type of organization (e.g. corporation, partnership, including joint
 668 venture teams and subcontractors) submitting proposals.
- 669 3. Name of the entity that will sign the Disposal Services Contract, in the event one is
 670 awarded.
- 671 4. A written statement certifying that the proposer has examined, understood, and agreed
 672 to all requirements set forth in the Disposal Services Contract.
- 673 5. A written statement warranting that the requirements of the Disposal Services Contract
 674 as described in this RFP document, its enclosures, attachments, and all addenda, by

675 listing all addenda and dates received, have been thoroughly reviewed and the proposer
676 has conducted all due diligence necessary to confirm material facts upon which the
677 proposal is based.

678 6. A written statement acknowledging that, should the City award the Disposal Services
679 Contract to the proposer, a payment in the amount set forth in Section 3.1.10.1 of this
680 RFP will be paid by the proposer to the City for reimbursement of the cost of this
681 procurement within thirty (30) days of execution of the Disposal Services Contract.
682 Failure to provide this statement or taking exception to this requirement will result in
683 disqualification.

684 7. A written statement acknowledging the validity of the proposal contents including the
685 proposed Disposal Tipping Fee through June 30, 2016.

686 **4.23.1.2 Proposal Surety**

687 In order to propose on Service Group 3 - Disposal Services proposers must submit a One
688 Hundred Thousand Dollar (\$100,000) proposal surety in accordance with Section 4.15 of this
689 RFP.

690 **4.23.1.3 Performance Security Commitment Letter**

691 In order to propose on Service Group 3 – Disposal Services, proposers must submit a Five
692 Million Dollar (\$5,000,000) Performance Bond Commitment Letter or a letter stating that the
693 proposer will provide a Letter of Credit in accordance with the requirements of Section 8.03 of
694 the Disposal Services Contract.

695 **4.23.1.4 Receipt of Addenda**

696 Proposers shall acknowledge receipt of each addendum to this Disposal Services portion of the
697 Zero Waste Services RFP by signing in the space provided on the issued addendum and by
698 submitting all addenda with their proposal.

699 **4.23.1.5 Table of Contents**

700 **4.23.2 Executive Summary (Technical Proposal: Section 2)**

701 Not to exceed two (2) single-sided pages. Proposers must highlight the major elements of the
702 proposer's qualifications and proposal, including a brief description of the proposer's facilities to
703 be used. All information should be provided in a concise manner.

704 **4.23.3 Qualifications (Technical Proposal: Section 3)**

705 **4.23.3.1 Key Staff Persons**

706 Include proposer's Contract Manager assigned to the City.

707 Proposers must identify each person and provide resumes and job responsibilities for key staff
708 proposed for the service identified herein. Of key importance to the City is demonstrated
709 experience in providing Disposal Services and coordination with the haulers and City staff.

710 **4.23.3.2 References**

711 Proposers must provide a minimum of three (3) municipalities that the City may contact to
712 conduct a reference check. The proposer must be providing or have provided similar services
713 under a long term disposal contract to the municipality within the last five (5) years.

714 **4.23.3.3 Conflict of Interest Statement**

715 Proposers must warrant that no gratuities have been or will be offered or given by the proposer,
716 or any agent or representative of the proposer, to any officer or employee of the City or any
717 participant in the selection of a proposer to furnish the services described herein in order to
718 secure a favorable treatment regarding the evaluation, grading, and contract award process.

719 **4.23.3.4 Litigation History**

720 The proposer must provide a history for the last ten (10) years of all claims settlements,
721 arbitrations, litigation proceedings, and civil actions involving One Hundred Thousand Dollars
722 (\$100,000) or more, and all criminal actions in which the company, its parent company,
723 subsidiaries, all partners, or principals were involved. For each case, the proposer must provide
724 the following:

- 725 ▪ The name of the claim, arbitration, litigation or action;
- 726 ▪ The amount at issue or the criminal charges alleged; and
- 727 ▪ The resolution of the case.

728 The proposer must also provide details of any current or threatened legal actions in California
729 against the proposer or its parent company, subsidiaries, all partners, principals, or joint venture
730 company(ies) by a governmental entity contracting with the proposer or its parent company for
731 services relating to solid waste management, or against such a government entity by the
732 proposer or its parent company or joint venture company(ies). For each action, the proposer
733 must provide the following:

- 734 ▪ The name of the action;
- 735 ▪ The court in which the action is pending;
- 736 ▪ The action number; and
- 737 ▪ The amount at issue.

738 The proposer shall provide a list of all enforcement actions taken against it during the last five
739 (5) years by any regulatory agency such as, but not limited to, the United States Environmental
740 Protection Agency, Air Quality Management District or a Local Enforcement Agency under the
741 California Integrated Waste Management Act. The list shall include the name of the regulatory
742 agency and the date of the enforcement action.

743 The proposer shall inform the City if it has had a permit, franchise, license, entitlement or
744 business license that has been revoked or suspended in the last five (5) years.

745 The proposer must list any liquidated damages, administrative fines, charges, or assessments
746 that total Ten Thousand Dollars (\$10,000) or greater in any one (1) calendar year during the last
747 five (5) years that have been paid by the proposer to a public agency as a result of disposal
748 services provided by proposer. The list shall include the name of the public agency, the date
749 and amount of the liquidated damages, administrative fines, charges, or assessments, and the

750 reason the public agency assessed the liquidated damages, administrative fines, charges, or
751 assessments.

752 The proposer must list any claims against a bid, proposal, or performance bond and the results
753 and failure to receive a bid, proposal, or performance bond, or any contractual defaults or
754 termination in the last twenty (20) years.

755 **4.23.4 Statement of Financial Qualifications (Technical Proposal:**
756 **Section 4)**

757 The proposer must provide copies of audited financial statements for the entity that is proposed
758 to **sign** the Disposal Services Contract for the most recent three (3) fiscal years. Audited
759 financial statements should include: balance sheet, income statement, cash flow statement,
760 footnotes, and subsidiary schedules. In the event that a proposer does not have audited
761 financial statements, three (3) years of business tax returns, with supporting schedules, may be
762 provided on an exception basis. However, tax returns are not an alternative to providing audited
763 financial statements; if the proposer has audited financial statements, those must be provided.

764

- 765 ■ If the entity that will sign the Disposal Services Contract has a parent company or is
766 proposing a joint venture, the parent company or joint venture company(ies) must also
767 provide audited financial statements for the most recent three (3) fiscal years. The
768 parent company must provide a statement indicating its intent and means to provide
financial assurance of performance.

769

- 770 ■ If the entity that will sign the Disposal Services Contract has been in existence less than
771 three (3) years, the proposer must provide sufficient financial data to substantiate, to the
satisfaction of the City, the proposer's financial capability and viability of the entity.

772

- 773 ■ In addition to the audited financial statements, the proposer must provide a statement
774 from the Chief Financial Officer indicating that there has been no material change in the
775 financial circumstances of the proposing entity (or its parent company or owners if they
776 are providing financial assurance of performance) since the date of the last audited
financial statements.

777

- 778 ■ Financing of the services and equipment will be the sole responsibility of the successful
779 proposer. Each proposer must demonstrate that it can provide the required financing
from either 1) internally generated funds, or 2) commitments from external sources.

780 The City reserves the right to require submission by the proposer, at no cost to the City, of an
781 opinion by a Certified Public Accountant with regard to the financial status of such proposer,
782 including ownership of, or interest in, equipment and facilities prior to award of an Service
783 Contract.

784 As is set forth in this RFP, the City will make reasonable efforts, but makes no representation
785 that it will be able to maintain total confidentiality of proposer's financial information. A proposer
786 that submits financial information that it asks to have treated as confidential should submit a
787 statement justifying the request, cross reference it in the proposal and label it as a separate
788 attachment, clearly identifying it as confidential. At all times, the City will comply with the
789 provisions of the California Public Records Act.

790 **4.23.4.1 Labor Agreements**

791 If Disposal Services will be provided under existing labor agreements, the proposer must
792 provide a copy of each agreement. If the proposer intends to enter into any labor agreements

793 related to the provision of Disposal Services, the proposer must describe the nature of the
794 agreements and when they will be implemented.

795 **4.23.5 Disposal Services Technical Proposal (Technical Proposal:**
796 **Section 5)**

797 Proposers are required to provide a description of the manner in which the requested services
798 are to be provided. The proposer's work plans as required below will be attached as Exhibits in
799 the approved Disposal Services Contract. The work plans must address and include those items
800 as specified below.

801 The City will place significant emphasis on proposer's proposed work plans during the
802 evaluation process. At a minimum, proposers shall include the following work plans:

803 **4.23.5.1 Disposal Operations Plan**

804 Proposers shall provide a detailed Disposal operations plan that presents the specific Disposal
805 programs that will be implemented. This may be appended as part of the signed Disposal
806 Services Contract. This **must** address items as listed ~~below above and also include~~⁸: (Note:
807 *proposers proposing to provide a "delivery" facility must provide the applicable information for*
808 *both the "delivery" facility and the Disposal Facility*).

809 **4.23.5.1.1. Facilities**

- 810 1. Complete Disposal Services Form 12 - Disposal Facility;
- 811 2. In the event the Disposal Services proposer proposes that the materials may be
812 delivered to a "delivery" facility for transportation by the Disposal Contractor, with all
813 associated costs being included in the proposed Disposal Tipping Fee, complete
814 Disposal Services Form 13 - Delivery Facility;
- 815 3. Method of transportation required for Disposal Facility access (truck, rail, barge, etc.);
- 816 4. Method of transportation required for "delivery" facility access (if applicable), (truck, rail,
817 barge, etc.);
- 818 5. The capacity of each facility, and the ability of the facility to accommodate the City's
819 requirements;
- 820 6. Demonstration of minimum Disposal capacity (including other service contracts currently
821 held);
- 822 7. Required permit revisions, mitigation, fees and approvals necessary to accept the City's
823 waste;
- 824 8. Documentation that the facility design and operations are in compliance with all
825 applicable federal, state, and local regulations, including, but not limited to, RCRA
826 Subtitle D 308 requirements;
- 827 9. A copy of the primary permits associated with site operations (i.e., State of California
828 Solid Waste Facility Permit);
- 829 10. The permitted and remaining capacity of the Disposal Facility;
- 830 11. A written commitment guaranteeing capacity (on a daily basis and annual basis) for the
831 Mixed Material, Garbage and Mixed Material Residue generated by the City and the
832 City's MM&O Contractor under the terms of the MM&O Collection Services Contract;

- 833 12. Describe any expansion plans, including additional capacity to be constructed, schedule
834 for expansion, and permitting status of the expansion plan needed to insure the
835 guaranteed capacity at the proposed Disposal Facility;
- 836 13. Provide a written commitment to indemnify the City against all events in connection with
837 or related to the Contractor's provision of Disposal Services, as described in the
838 Disposal Services Contract located in Section 5 of this RFP. Discuss the financial
839 mechanisms that are in place at this time to effectively indemnify Disposal site users;
- 840 14. Describe efforts to minimize and mitigate climate impacts. Details should include efforts
841 to:
- 842 ○ Minimize equipment emissions;
 - 843 ○ Maximize methane recovery;
 - 844 ○ Minimize unprocessed organics; and
 - 845 ○ Purchase carbon credits.
- 846 15. Describe efforts to minimize hazardous materials in the Landfill;
- 847 16. Describe efforts to minimize environmental and other impacts on host communities. The
848 environmental impacts of any Disposal options selected need to be considered as part of
849 the process in order to ensure that the City is not placing any undue burdens on host
850 communities of Disposal sites. Mitigation of any transportation, Disposal or other impacts
851 should be part of the arrangement with the host community and paid for by those
852 generating the waste;
- 853 17. Outline efforts to minimize future litigation. Outline any potential legal issues, such as
854 flow control that could lead to future litigation;
- 855 18. Outline contingency options in case the prime Disposal option is not available;
- 856 19. Describe current procedures for inspection, sampling and accounting for waste by
857 jurisdiction;
- 858 20. Describe contingency plan for Disposal of the City's waste in the event of an emergency;
- 859 21. Provide the procedures in place to keep banned materials out of the Disposal Facility;
- 860 22. Describe the site, site amenities and provide details of dump face access conditions
861 (e.g. road surface, road lighting, access to truck wash, number of tippers, etc.); and
- 862 23. Describe the current or planned waste diversion activities at the Disposal Facility.

863 4.23.5.1.2. Safety

- 864 1. Staffing safety requirements, including physical, drug, and alcohol testing requirements;
- 865 2. Hazardous waste, e-waste, and universal waste management protocol;
- 866 3. Design, permitting and operating features that protect and monitor public health and
867 safety and environmental quality;
- 868 4. ~~Contingency plan for disposal in emergency events~~⁹ and
- 869 5. Health and safety management procedures.

870 **4.23.5.1.3. Reporting**

- 871 1. Detailed material Tonnage monitoring and reporting program, including electronic
872 transmittal of reports to City;
- 873 2. ~~Procedures for inspecting, sampling and accounting for waste by jurisdiction;~~¹⁰ and
874 3. Process for reporting complaints and dispute resolution to the City.

875 **4.23.5.1.4. Operations**

- 876 1. Scale procedures;
- 877 2. Unloading and turnaround time;
- 878 3. Tipping procedures for incoming loads;
- 879 4. Load checking program;
- 880 5. Fuel type used for on-site equipment;
- 881 6. Labor discussions (lockouts/strikes), agreement terms and history; and
882 7. Materials accepted and used for daily cover and beneficial use.

883 **4.23.6 Forms (Technical Proposal: Section 6)**

884 All proposers must complete Disposal Services Forms 1 through 12, in the order they are listed
885 at the end of this Section. However, proposers are not required to complete Disposal Services
886 Form 3 if they elect to provide a letter of credit as proposal surety or they elect to provide a
887 proposal bond that is substantially the same as that provided in Disposal Services Form 3.
888 Proposers providing a “delivery” facility must also complete Disposal Services Form 13. Except
889 for Disposal Services Form 3, proposers shall use only the forms and format provided. Any
890 deviation from those provided forms may be grounds for rejection of the entire proposal.
891 Specific Forms for use by the Disposal Services proposers are included at the end of this
892 Section. All Forms will be distributed electronically as Word documents.

893 **4.23.7 Appendix (Technical Proposal: Section 7)**

894 Proposers may provide any additional information that they believe to be applicable to this
895 proposal and include such information as an Appendix. Proposers should include information
896 related to alternatives or exceptions in the Appendix.

897 **4.24 PROPOSAL ALTERNATIVES AND EXCEPTIONS**

898 Proposers may submit alternatives or exceptions to the services listed in this RFP to the extent
899 that such alternative or exception is an improvement in service or price. If alternatives or
900 exceptions are presented, the alternative or exception shall be included as the first item in the
901 Appendix Section of the proposal and shall contain the Disposal Tipping Fees related to the
902 alternative or exception using the forms provided at the end of this Section and shall include
903 revised Disposal Services Contract language. **Note that while the City will review proposal
904 exceptions or alternatives submitted as part of the RFP process, the City is not obligated
905 to evaluate or accept any alternative(s) or exception(s) submitted by proposers.
906 Proposers should note that in the event of Disposal Services Contract award, the
907 proposer will not be allowed to request the discussion of any exceptions or alternatives**

908 **that were not provided by the proposer in the proposal alternatives and exceptions**
909 **portion of their proposal.**

910 The City strongly suggests that proposers who hold “non-negotiable” positions in opposition to
911 the requirements set forth in the Disposal Services Contract consider submitting a written
912 request to the City to consider those positions during the pre-proposal process and prior to the
913 proposal submittal date. This will allow the City to provide a specific response to each item prior
914 to the proposer submitting its proposal. This is important because once the proposals are
915 submitted, the City is under no obligation to accept any exceptions or alternatives while the
916 proposer is obligated to accept an award of the Disposal Services Contract under the terms and
917 conditions as stated in that Disposal Services Contract.

918 **4.25 EVALUATION OF PROPOSAL**

919 **4.25.1 General**

920 Proposals submitted by the proposers will be judged through the evaluation process described
921 in this Section. The selected proposers will be chosen based on the outcome of this evaluation.

922 In order to be evaluated, proposals must comply with the following:

- 923 ▪ Proposers must have attended the RFP release meeting and pre-proposal meeting.
- 924 ▪ Proposals must be received by the submission date and time.
- 925 ▪ Proposals must be submitted in conformance with Section 4.23 of the RFP.

926 All proposals received by the submission date as indicated in this RFP will be reviewed to
927 determine whether they are responsive. Proposers whose proposals are not responsive will be
928 offered a debriefing session with City and will have the opportunity to protest the decision.
929 Responsive proposals will then be distributed to the evaluation committee for evaluation and
930 scoring. Furthermore, as part of the evaluation process, proposers will be asked to attend
931 personal interviews to discuss their proposals.

932 If for any reason during the course of negotiations with the selected proposer, the City
933 determines that a reasonable Contract cannot be negotiated, the City reserves the right to
934 suspend negotiations with the selected proposer, contact the next ranked proposer and begin
935 negotiations for the purpose of signing a Disposal Services Contract with that selected proposer.
936 The City further reserves the right to enter into simultaneous negotiations with two (2) or more
937 proposers if reasonably competitive proposals are received for Disposal Services.

938 **4.25.2 Disqualification**

939 Factors such as, but not limited to, any of the following may be considered just cause to
940 disqualify a proposal without further consideration:

- 941 ▪ Evidence of collusion, directly or indirectly, among proposers in regard to the amount,
942 terms, or conditions of this proposal;
- 943 ▪ Failure to direct all questions/inquiries through the City contact as set forth in Section 4.4
944 of this RFP;
- 945 ▪ Any attempt to improperly influence any member of the evaluation team;
- 946 ▪ Existence of any lawsuit, unresolved contractual claim or dispute between the City and
947 the proposer and/or the proposer’s related entities;

- 948 ▪ Submittal of “non-negotiable” exceptions to the requirements of the Disposal Services
 949 Contract;
- 950 ▪ Evidence of incorrect information submitted as part of the proposal; and
- 951 ▪ Evidence of proposer’s inability to successfully complete the responsibilities and
 952 obligations of the proposal.

953 **4.25.3 Non-Conforming Proposal**

954 A proposal shall be prepared and submitted in accordance with the provisions of these RFP
 955 instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from
 956 or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole
 957 discretion of the City.

958 **4.25.4 Required Documents**

959 Proposals will be reviewed to determine if all required documentation is included. Proposers
 960 who fail to submit the required documents with their proposal will be disqualified from further
 961 consideration.

962 **4.25.5 Proposal Evaluation**

963 The City reserves the right to award a Disposal Services Contract that is most advantageous to
 964 the City and its residents and businesses. The following Table contains the criteria and
 965 weighting the City will use to evaluate proposals to provide Disposal Services. Specific details
 966 on the criteria are listed below. In order to be evaluated, all proposals must be responsive and
 967 complete as per the submittal instructions.

| TABLE 4-2 CITY OF OAKLAND DISPOSAL SERVICES EVALUATION CRITERIA AND POINTS | |
|---|-----------|
| Criteria | Points |
| 1. Cost | 60 |
| 2. Operational Approach | 14 |
| 3. Experience/Qualifications/Performance | 13 |
| 4. Financial Capacity / Indemnification / Liability | 13 |
| 5. In-County Landfill Preference | 2 |

968

969 Evaluation Criteria.

970 1. Cost. The cost evaluation is intended to provide an equitable basis for cost comparison
 971 between proposals and an evaluation of the effect of those costs on residential and
 972 commercial customer rates, including additional administrative costs due to the award of
 973 multiple Contracts for Collection and Disposal Services. All cost information to be used
 974 in this evaluation will be as stated in the proposal. The proposals will be reviewed to
 975 verify that the proposed costs are consistent with the activities described in the proposal
 976 and the proposer’s work plans. Cost evaluation criteria to be considered will include
 977 without limitation:

- 978 ▪ Disposal Tipping Fee;

- 979 ▪ Location of Disposal Facility and, if applicable, “delivery” facility; and
 980 ▪ Discounts if contract awards of multiple Service Groups are made.
- 981 2. Operational Approach. Each proposal will be evaluated on their operational approach.
 982 This will include without limitation:
- 983 ▪ Guaranteed available Disposal capacity;
 984 ▪ Scale procedures;
 985 ▪ Unloading and turnaround time;
 986 ▪ Overall facility;
 987 ▪ Fuel type used for on-site equipment; and
 988 ▪ Labor discussions (lockouts/strikes), agreement terms and history.
- 989 3. Experience/Qualifications/Performance. The experience of each proposer will be
 990 evaluated to determine the relative ability of each proposer to implement the program
 991 elements described in this RFP and to attain the City objectives for maximizing
 992 diversion. Experience evaluation criteria and areas of experience to be considered will
 993 include without limitation:
- 994 ▪ Qualifications and structure of project management team, relationships between
 995 management team and corporate management, and internal controls;
 996 ▪ Demonstrated expertise in designing and using data management systems to assure
 997 accurate data collection, analysis and reporting; and
 998 ▪ Litigation history.
- 999 4. Financial Capacity / Indemnification / Liability. Each proposal will be evaluated to assess
 1000 the relative financial capacity and strength of the proposer. This will include without
 1001 limitation:
- 1002 ▪ An evaluation of financial statements, including a review of key financial ratios;
 1003 ▪ Proof of closure/post closure funding; and
 1004 ▪ Indemnification.
- 1005 5. In-County Landfill Preference. Proposals utilizing a Landfill located in Alameda County
 1006 as the Disposal Facility will receive two (2) preference points.

1007 **4.25.6 Announcement of Award**

1008 The City will inform all proposers of its intent to award a Disposal Services Contract in writing.

1009 **4.25.7 Protest Procedure**

1010 If an unsuccessful proposer wants to dispute the City’s proposal ranking determination, the
 1011 protest must be submitted in writing to the City Administrator appointed Protest Hearing Officer
 1012 no later than five (5) City business days after announcement of the City’s determination,
 1013 detailing the grounds and factual basis and providing all supporting information. Protests will not
 1014 be considered for disputes of proposal requirements and specifications, which must be
 1015 addressed in accordance with Section 4.4 of the RFP. Failure to submit a timely written protest
 1016 to the Protest Hearing Officer will bar consideration of the protest.

1017 The address for submitting protests is:

1018 City Administrator
1019 Office of the City Administrator
1020 City of Oakland
1021 1 Frank Ogawa Plaza, 3rd Floor
1022 Oakland, CA 94612

1023 **4.25.8 Contract Award**

1024 After the RFP evaluation process is completed, the City Administrator will recommend the top
1025 ranked proposer to the City Council for authorization to enter into negotiations. After completion
1026 of negotiations to the satisfaction of the City, the City Administrator will request authorization
1027 from the City Council to enter into a contract with the proposer. City Council will then make a
1028 decision whether to authorize the City Administrator to execute a contract with the proposer.

1029 **4.26 PROPOSAL FORMS**

1030 The City will receive written and sealed proposals to furnish all labor and equipment to provide
1031 the services as required in the Disposal Services Contract. **Disposal Services Forms 1**
1032 **through 2 and 4 through 12 on the following pages are the required forms that must be**
1033 **completed by Disposal Services proposers as part of the proposal.**

1034 Proposers may use Form 3 or may provide the required proposal surety through the use of a
1035 proposal bond that is substantially the same as that provided in Form 3 or through the use of a
1036 letter of credit.

1037 Proposers who propose the use of a “delivery” facility must complete Disposal Services Form
1038 13.

1039 The forms are set up **with expandable text boxes** to allow proposers to input their information
1040 directly into **Disposal Services Forms 1 through 13**. Answers to questions that are not
1041 applicable should be included and marked “Not Applicable.”

1042 **Instructions:**

1043 Open the fill-in form document and fill in the form using Microsoft Word. Enter information in the
1044 shaded  “fields” of the form. To move from field to field, use your mouse, the arrow keys
1045 or press Tab. Use your mouse or the spacebar to mark and unmark a checkbox.

1046 Be sure to sign and date your forms where applicable.

1047 The purpose of the forms contained herein is not intended in any way to limit the type, quality or
1048 quantity of data and information supplied by the proposer. Required Forms not completed in full
1049 may result in disqualification.

1050

DISPOSAL SERVICES FORM 1
DISPOSAL TIPPING FEE PROPOSAL AND PAYMENT TO CITY: SUMMARY AND SIGNATURE

In preparing the Disposal Tipping Fee Proposal Forms proposers should be aware of the following:

- All Disposal Tipping Fees proposed on these forms for **City of Oakland** shall be fixed through June 30, 2016 and should reflect service requirements and all one time and annual payments including franchise fees as specified in the Disposal Services Contract.
- Proposer must complete Disposal Services Form 1 if they are to be considered for Contract Award.
- Proposer shall ensure that **ALL** Government fees and charges are included in the Proposed Disposal Tipping Fee.

The Undersigned hereby certifies as follows:

- That _____ has personally and carefully examined the specifications and instructions for the work to be done as set forth in this RFP.
- That _____ has made examination of the services as applicable to the Proposal, and fully understand the character of the work to be done.
- That _____ agrees to pay the CITY the Procurement Reimbursement Cost within thirty (30) days of execution of the Disposal Services Contract.

That, having made the necessary examination, the undersigned hereby proposes to furnish all materials, vehicles, plant, equipment and facilities, and to perform all labor and services which may be required to do said work with the time fixed and upon the terms and conditions provided in the Contract, at the service rates set forth on Disposal Services Form 2 - Disposal Tipping Fee.

Note: Signatures shall be in accordance with Section 4.22.3 of this RFP.

PROPOSER _____
 Signature _____
 Print Name and Title _____
 Signature _____
 Print Name and Title _____
 Firm/Trade Name _____
 Individual: Partnership: Joint Venture
 Corporation _____, A _____ Corporation (State of Incorporation)
 Date _____

DISPOSAL SERVICES FORM 1
DISPOSAL TIPPING FEE PROPOSAL AND PAYMENT TO CITY: SUMMARY AND SIGNATURE

Signature Instructions:¹¹

~~If business is a CORPORATION, name of the corporation should be listed in full and both President and Secretary must sign the form, OR if one signature is permitted by corporation by laws, a copy of the by laws shall be furnished to the City as part of the proposal.~~

~~If business is a PARTNERSHIP, the full name of each partner should be listed followed by d/b/a (doing business as) and firm or trade name; any one partner may sign the form. If the business is an INDIVIDUAL PROPRIETORSHIP, the name of the owner should appear followed by d/b/a and name of the company.~~

~~If business is a JOINT VENTURE, the full name of each joint venturer should be listed in full and each joint venturer must sign the form, OR if one signature is permitted by the joint venture agreement or by laws, a copy of the agreement or by laws shall be furnished to the City as part of the proposal.~~

~~Two (2) corporate officers must execute proposals by corporations in the corporate name. The original proposal submitted must be signed as an original. One signature must be from the chairman, president, or vice-president and the other signature must be from the chief financial officer, assistant treasurer, secretary, or assistant secretary. The state of incorporation shall be shown below the signature.~~

~~Proposals by partnerships must be executed in the partnership name and signed by a partner. His/her title must appear under his/her signature, and the official address of the partnership must be shown below the signature.~~

~~Proposals must be signed by a corporate officer authorized to negotiate and bind the proposer contractually.~~

1051

DISPOSAL SERVICES FORM 2
DISPOSAL TIPPING FEE

Instructions for Completing Form 2.

Each Proposer may only provide one (1) Disposal Services Form 2 with its Disposal proposal.

In accordance with Section 1.2 of this RFP, proposers may include the cost of providing a “delivery” site where materials may, at the sole discretion of the City and the MM&O Contractor, be delivered by the City or the City’s MM&O Contractor for transport by the Disposal Services Contractor to the Disposal Facility. If the cost of providing “delivery” site and transportation services are included in the Disposal Tipping Fee they must be included as part of the Disposal Fee Element provided on this Disposal Services Form 2.

Proposers should note that the City is NOT requesting an optional Disposal Tipping Fee for the provision of a “delivery” site other than the proposed Disposal Facility and the transportation of material delivered to that “delivery” site by the City and the MM&O Contractor to the Disposal Facility. Instead, the City is providing proposers the ability to include the cost of proving such services in its proposed Disposal Tipping Fee at their discretion.

The Form shall include the following information:

1. Governmental Fee Element. Complete the Governmental Fee Elements portion of the Form for the first period (Column A). *Note: The Government Fees as of July 1, 2015 (Column B) will be completed as the information is available. Alameda County Fees listed in rows 1, 2, and 3 must be included regardless of where the proposed Disposal facility is located. Governmental fees listed in the following rows should be completed based on the location of the proposed Disposal Facility.*
2. Disposal Fee Element. Complete the Disposal Fee Element portion of the Form (Line 12) for the date the proposal is due (Column A) and the first day of operation (Column B). *Note: the Disposal Fee Element in Columns A and B must be the same.*
3. Total Disposal Tipping Fee. Complete the Total Disposal Tipping Fee portion of the Form (Line 13) for Column A only. *Note: the Total Disposal Tipping Fee for Column B will be completed as the Governmental Fee Element information becomes available.*
4. Multi-Service Discount. Complete the Multi-Service Discount portion of the form (Line 14). *Note: Proposers may propose any percentage discount including 0% but must complete Line 13 of the Form if they are proposing on more than one (1) Service Group. Proposers who are only proposing on Disposal Services (Service Group 3) should mark Line 14 as NA. The Multi-Service Discount, if applicable, will only be applied to the Disposal Fee Element. Proposers should note that, as described in Article 6 of the Contract, the annual franchise fee is a specific amount and not based on a percentage of the Disposal Tipping Fee. Accordingly, in the event of a multiple service award, the Multi-Service Discount will **NOT** be applied to the franchise fee amount set forth in Article 6 off the Contract.*
5. Annual Disposal Fee Element Adjustment. Proposers must provide a methodology for adjusting the Disposal Fee Element of the Disposal Tipping Fee during the term of the Disposal Services Contract. Article 6 of the Disposal Services Contract provides details of certain restrictions related to the annual adjustment of the Disposal Fee Element that proposers must incorporate into their adjustment methodology. Proposers may propose to adjust the Disposal Fee Element of the Disposal Tipping Fees in a variety of ways:
 - Proposers may propose the actual Disposal Fee Element for each year of the

DISPOSAL SERVICES FORM 2
DISPOSAL TIPPING FEE

Contract, except as set forth in Article 6 of the Contract;

- Proposers may propose a flat percentage change in the Disposal Fee Element for each year of the Contract, except as set forth in Article 6 of the Contract;
- Proposers may propose a percentage change in the Disposal Fee Element for each year of the Contract, except as set forth in Article 6 of the Contract, based on changes in a single index, such as the Consumer Price Index (CPI);
- Proposers may propose a percentage change in the Disposal Fee Element for each year of the Contract, except as set forth in Article 6 of the Contract, based on changes in multiple indices, such as the Refuse Rate Index (RRI); and
- Proposers may propose other methods for adjusting the Disposal Fee Element, except as set forth in Article 6 of the Contract.

| DISPOSAL SERVICES FORM 2 DISPOSAL TIPPING FEE | | | |
|--|---|---|---------------|
| | Governmental Fee Elements | Fee Amount/Ton | |
| | | Column A | Column B |
| Row | Agency | December 12, 2012 <u>January 9, 2013</u> ¹ | July 1, 2015 |
| 1. | Alameda County "Measure D" Fee | <u>\$0.00</u> | |
| 2. | Alameda County Waste Management Authority Facilities Fee | <u>\$0.00</u> | |
| 3. | Alameda County Waste Management Authority Household Hazardous Waste Fee | <u>\$0.00</u> | |
| 4. | State of California (AB <u>939</u> ¹² 1220) Fee | <u>\$0.00</u> | |
| 5. | County Open Space Fee | <u>\$0.00</u> | |
| 6. | Local Enforcement Agency Fee | <u>\$0.00</u> | |
| 7. | City/County Business License Fee | <u>\$0.00</u> | |
| 8. | County Planning Department Fee | <u>\$0.00</u> | |
| 9. | _____ Fee | <u>\$0.00</u> | |
| 10. | _____ Fee | <u>\$0.00</u> | |
| 11. | Total Governmental Fee Elements | <u>\$0.00</u> | |
| | Tipping Fee Element | Disposal/Ton | |
| 12. | Disposal Fee Element | <u>\$0.00</u> | <u>\$0.00</u> |
| 13. | Total Disposal Tipping Fee (Governmental Fee Element Plus Tipping Fee Element) | <u>\$0.00</u> | |
| 14. | Multi-Service Discount (Percentage) | <u>0.00%</u> | |
| 15. | Disposal Fee Element Adjustment Methodology | <u>Please provide on a separate sheet.</u> | |

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**DISPOSAL SERVICES FORM 3
PROPOSAL BOND FORM**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT _____

(hereinafter called the principal), as principal and _____ a corporation organized and doing business under and by virtue of the laws of the State of _____, and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as Surety, are held and firmly bound unto the City of Oakland, a municipal corporation, (hereinafter called the Obligee) in the just and full sum of One Hundred Thousand Dollars (\$100,000) lawful money of the United States of America, for the payment of which, well and truly to be made, we hereby bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the above bounden principal as aforesaid, is about to hand in and submit the oblige a proposal for Disposal Services.

In accordance with the plans and specifications filed in the office of the obligee and under the notice inviting proposals therefore.

NOW, THEREFORE, if the proposal as submitted by the said principal shall be accepted, and the contract for such work or supplies be awarded to the principal, and the said principal shall fail, neglect or refuse to enter into a contract to perform said work or deliver said supplies, and furnish good and sufficient bond therefore, then the amount of this bond shall be declared to be forfeited to said obligee City of Oakland as liquidated damages, it being agreed that said City will suffer damages as a result of such failure, neglect or refusal of the principal and that such damages are and will continue to be, impracticable and extremely difficult to determine.

IN WITNESS WHEREOF, said Principal and said Surety have caused these presents to be duly signed and sealed this _____ day of _____, ~~2012~~2013.

(Acknowledgment of Surety is required.
See reverse side.)

By _____
Attorney-in-Fact

DISPOSAL SERVICES FORM 3
PROPOSAL BOND FORM

ACKNOWLEDGMENT

State of California, County of _____

On _____ before me, _____ (Insert name and title of the officer) personally appeared, _____ who proved to on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their authorized capacity(ies), and that on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

| | | | | | | | |
|--|----------------------|--|--|--|--|-----------------------------------|--|
| | Proposal BOND | | | | to CITY OF OAKLAND A Municipal Corporation | Dated _____, 2012 2013 | |
|--|----------------------|--|--|--|--|-----------------------------------|--|

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DISPOSAL SERVICES FORM 4
SCHEDULE K PENDING DISPUTE DISCLOSURE FORM

Policy – All entities are required to disclose pending disputes with the City of Oakland when they submit bids, proposals or applications for a City contract or transaction involving:

- The purchase of products, construction, non-professional or professional services,
- Contracts with concessionaires, facility or program operators or managers,
- Contracts with project developers, including Disposition and Development Agreements, Lease Disposition and Development Agreements and other participation agreements,
- Loans and grants, or acquisition, sale, lease or other conveyance of real property, excluding licenses for rights of entry or use of City facilities for a term less than thirty (30) consecutive calendar days.

Disclosure is required at the time bids, proposals or applications are due for any of the above –described contracts or transactions when an entity is responding to a competitive solicitation and at the commencement of negotiations when bids, proposals or applications are solicited by or submitted to the City in a non-bid or otherwise non-competitive process.

The disclosure requirement applies to pending disputes on other City and Agency contracts or projects that: (1) have resulted in a claim or lawsuit against the City of Oakland (2) could result in a new claim or new lawsuit against the City of Oakland or (3) could result in a cross-complaint or any other action to make the City of Oakland a party to an existing lawsuit. “Claim” includes, but is not limited to, a pending administrative claim or a claim or demand for additional compensation.

Entities required to disclose under this Disclosure Policy include (1) any principal owner or partner, (2) any business entity with principal owners or partners that are owners or partners in a business entity, or any affiliate of such a business entity, which is involved in a pending dispute against the City of Oakland or Agency.

Failure to timely disclose pending disputes required by this policy may result in (1) a determination that a bid is non-responsive and non-responsible for price-based awards, or (2) non-consideration of a bid or proposal for a professional service contract or other qualification-based award. The City may elect to terminate contracts with entities that failed to timely disclose pending disputes and/or initiate debarment proceedings against such entities.

DISPOSAL SERVICES FORM 4
SCHEDULE K PENDING DISPUTE DISCLOSURE FORM

Individuals, Businesses or other entities should respond below:

1. Are you or your firm involved in a pending dispute or claim against the City of Oakland?

No Yes (check one)

1. If you answered "Yes", list existing and pending lawsuit(s) and claim(s) with the title and date of the contract, a brief description of the issues, officials or staff persons involved in the matter and the City or Agency department/division administering the contract.

Contract Title: _____

Date: _____ Official(s), Staff person(s) involved: _____

Administering Department/Division: _____

Issues: _____

Contract Title: _____

Date: _____ Official(s), Staff person(s) involved: _____

Administering Department/Division: _____

Issues: _____

(check) **Additional Disputes listed on Attachment**

By signing below, I certify that all representations and disclosures made herein are true, correct and complete.

Signature: _____

Print Name: _____

Title: _____ Date: _____

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DISPOSAL SERVICES FORM 5¹³
SCHEDULE N DECLARATION OF COMPLIANCE - LIVING WAGE ORDINANCE

The Oakland Living Wage Ordinance (The "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than \$25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than \$100,000 shall pay a prescribed minimal level of compensation to their employees for the time their employees work on City of Oakland contracts.

The contractor or city financial assistance recipient (CFAR) agree as described in Section 3-C "Health Benefits" of the Ordinance, to pay employees a wage no less than the minimum compensation of \$11.~~7035~~ per hour with health benefits, or \$13.~~4505~~ per hour without benefits and to provide for annual increases pursuant to Section 3-A "Wages" of the Ordinance. **Note: Effective July 1, of each year, Contractor shall pay the adjusted wage rates.**

- (a) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and at least ten additional days per year of uncompensated time off pursuant to Section 3-B "Compensated Days Off" of the Ordinance.
- (b) Health Benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.75 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- (c) To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov>, ~~for current guidelines as prescribed by the Internal Revenue Service~~ and (2) ~~the Earned Income Tax Outreach Kit at 222.cbpp.or/eic/2010~~ <http://www.irs.gov/individuals/article/0,,id=96466,00.html>.
- (d) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and
- (e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

Employment Questionnaire: Please respond to the following questions:

| Questions | Responses | Comments |
|--|-----------|----------|
| (1) How many permanent employees are employed with your company? (if less than 5, stop here) | _____ | _____ |
| (2) How many of your permanent employees are paid above the Living Wage rate? | _____ | _____ |
| (3) How many of your permanent employees are paid below the Living Wage rate? | _____ | _____ |

| DISPOSAL SERVICES FORM 5 ¹³ SCHEDULE N DECLARATION OF COMPLIANCE - LIVING WAGE ORDINANCE | | |
|--|--|---------------------|
| (4) Number of compensated days off per employee? (Refer to item "a" above.) | _____ | _____ |
| (5) Number of trainees in your company? | _____ | _____ |
| (6) Number of employees under 21 years of age, employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days. | _____ | _____ |
| <p><i>The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.</i></p> <p>Project Name: _____</p> | | |
| _____ | _____ | |
| Company Name | Signature of Authorized Representative | |
| _____ | _____ | |
| Address | Type or Print Name | |
| _____ | _____ | _____ |
| Phone | Date | Type or Print Title |

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| DISPOSAL SERVICES FORM 6 SCHEDULE N-1 EQUAL BENEFITS - DECLARATION OF NONDISCRIMINATION/EQUAL ACCESS Completed by the Prime Contractor ONLY | |
|---|--|
| Section A. Vendor / Contractor / Consultant / CFAR¹ Information | |
| Name of Company _____ | |
| Name of Company Contact _____ | |
| Address _____ | |
| City _____ | State _____ Zip _____ |
| Phone Number _____ | Fax Number _____ |
| Vendor Number _____ | Federal ID or Social Security Number _____ |
| Approximate Number of Employees in the U.S. _____ | |
| Are any of your employees covered by a collective bargaining agreement or union trust fund? | |
| Yes <input type="checkbox"/> No <input type="checkbox"/> (<i>check one</i>) | |
| Union Name (s) _____ | |
| Section B. Compliance | |
| Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees? (<i>please check one</i>) | |
| Yes <input type="checkbox"/> No <input type="checkbox"/> | |
| Does your company provide or offer access to any benefits to employees with domestic partners ² ? (<i>please check one</i>) | |
| Yes <input type="checkbox"/> No <input type="checkbox"/> | |

¹ CFAR is a City Financial Recipient.

² Domestic Partner is defined as same sex couples or opposite sex couples registered as such with a state or local government domestic partnership registry.

DISPOSAL SERVICES FORM 6
SCHEDULE N-1 EQUAL BENEFITS - DECLARATION OF NONDISCRIMINATION/EQUAL ACCESS
 Completed by the Prime Contractor ONLY

Section C. Compliance

Please check each benefit that applies

| Benefits | Offered to Employees only | Offered to Employees and their spouses | Offered to Employees and their Domestic Partners | Not Offered at all | Documentation attached |
|---------------------------------------|---------------------------|--|--|--------------------------|--------------------------|
| Health | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Dental | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Vision | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Retirement (Pension, 401K, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Bereavement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Family Leave | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Parental Leave | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Employee Assistance Program | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Relocation & Travel | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Company Discount, Facilities & Events | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Credit Union | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Child Care | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Signature _____

Date: _____

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DISPOSAL SERVICES FORM 7
PROPOSER TO MAKE EXAMINATION

The proposer agrees that it has satisfied itself by proposer's own investigation and research regarding all such conditions, and that proposer's conclusion to enter into the Contract and execution of the Contract is based upon such investigation and research, and that the proposer shall make no claim against the City because of any of the estimates, statements or interpretations made by any officer or agent of the City which may prove to be in any respect erroneous.

Signature _____ Name (typed) _____

Title _____ Date _____

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DISPOSAL SERVICES FORM 8
CERTIFICATION OF NON-GRATUITIES

TO: THE CITY OF OAKLAND

CERTIFICATION

This is a written certification, signed under penalty of perjury, stating that no persons acting on behalf of _____ has paid, or offered or attempted to pay, any elected or appointed official, officer or employee of City any compensation or consideration, in any form whatsoever, in connection with obtaining or entering into this Contract.

Name

Title

Signature

Date

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| DISPOSAL SERVICES FORM 9 CONFLICT OF INTEREST | | | |
|--|-------------|------|-------|
| FIRM NAME: _____ | Date: _____ | | |
| <p>All proposers must disclose, below, the name of any officer, director, agent, or any relative of an officer, director, or agent who is an employee, elected official or appointed official of the City. Furthermore, all proposers must disclose, to the best of their knowledge, the name of any City employee, elected official or appointed official who has any direct or indirect economic interest in the proposers' firm or any of its branches or subsidiaries. "Economic interest" shall have the same meaning as that term is defined in Title 2, California Code of Regulations Sections 18703-18703.5.</p> <p>The following officer, director, agent, or relative of an officer, director, or agent is an employee, elected official or appointed official of the City. <i>(Provide the full name of the individual, their relationship to the proposing company, and their position with the City. Indicate None if this is not applicable.)</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>To the best of my knowledge, the following City employee, elected official or appointed official has a direct or indirect economic interest in this firm or any of its branches or subsidiaries. <i>(Provide the full name of the individual, their position with the City and their direct or indirect interest in the proposing company. Indicate None if this is not applicable.)</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none;">Name</td> <td style="width: 40%; border: none;">Title</td> </tr> </table> <p>Signature _____ Date: _____</p> | | Name | Title |
| Name | Title | | |

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**DISPOSAL SERVICES FORM 10
NON-COLLUSION AFFIDAVIT OF PROPOSER**

State of _____ County of _____
_____, being duly sworn, deposes and says that:

1. He/She is _____ of _____ the proposer that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither said proposer nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly or indirectly, with any other proposer, firm or person to submit a collusive or sham proposal in connection with the Contract for which the attached proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other proposer, firm, or person to fix the price or prices in the attached RFP, or of any other proposer, or to fix any overhead, profit or cost component of the proposal or the response of any other proposer, or to secure through any collusion, connivance, or unlawful agreement any advantage against the City of Oakland, CA or any person interested in the proposed Contract; and
5. The Disposal Tipping Fee proposal in the attached RFP is fair and proper and is not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____ (Title)

Subscribed and sworn to before me this _____ day of _____, 20122013

My Commission Expires: _____

Notary Public, State of California

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DISPOSAL SERVICES FORM 11
EXCEPTIONS OR ALTERNATIVES¹⁴ TO CONTRACT

Proposers are to prepare the ~~Maximum Service Rates~~Cost Proposal Forms based on the program specifications set forth in the RFP documents without considering any exceptions or alternatives that may be set forth on this form. In the event the proposer takes exception or provides alternatives to the RFP specifications they may set forth those exceptions or alternatives in the following manner.

- The exceptions or alternatives are to be presented on a separate paper titled, "~~Form~~ Exceptions or Alternatives to Contract".
- Each exception or alternative must be presented separately by stating: the specific exception, or alternative the page and line numbers of the exception or alternative, the suggested changes to the program related to the exception or alternative, the suggested changes in the Contract language related to the exception or alternative, the manner in which the proposed change would benefit the City, the customers or both, and the specific dollar change in the Disposal Tipping Fee, as proposed by the proposer in this RFP, which would take place if the exception or alternative was accepted by the City.
- The exceptions or alternatives must be followed with the following language without exception.
- "Except as set forth above, the proposer is in complete agreement with the proposed terms, conditions and business arrangements described in the RFP including the attached Contract. The proposer assumes the risk of all conditions foreseen or unforeseen and agrees to provide the Disposal Services set forth in the Contract under whatever circumstances may develop other than as herein provided."
- The form must be signed by an individual authorized to commit the proposer's firm to the Contract in the manner set forth below.

Signature _____ Name (typed) _____

Title _____ Date _____

Please note that if exceptions or alternatives are taken, all required information as set forth above must be submitted. Exceptions or alternatives taken without providing the required information will not be considered.

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| DISPOSAL SERVICES FORM 12 DISPOSAL FACILITY Provide One Form Per Disposal Facility Site | |
|---|--|
| 1. Name of Disposal Facility | _____ |
| 2. Location of Disposal Facility | Street Address: _____ City: _____ State: _____ Zip Code: _____ |
| 3. Type and Class of Disposal Facility | _____ |
| 4. Proposer's role in the Disposal Facility | _____ |
| 5. Other contracting parties | _____ |
| 6. Name, telephone number and address of Disposal Facility owner | _____ _____ _____ |
| 7. CalRecycle Permit Type and Number | _____ |
| 8. Local Land-use Permit Number | _____ |
| 9. Permitted Capacity | _____ |
| 10. Currently Planned Capacity | _____ |
| 11. Permitted Daily Tonnage | _____ |
| 12. Currently Planned Daily Tonnage | _____ |
| 13. Actual Current Daily Tonnage | _____ |
| 14. Permitted Annual Tonnage | _____ |
| 15. Permitted Daily Vehicle Trips | _____ |
| 16. Currently Planned Daily Vehicle Trips | _____ |
| 17. Actual Current Daily Vehicle Trips | _____ |
| 18. Current Limits/Permit Restrictions | Hours of Operation: _____ Types of Vehicles: _____ Other (please specify): _____ |

| DISPOSAL SERVICES FORM 12 DISPOSAL FACILITY Provide One Form Per Disposal Facility Site | |
|---|--|
| 19. Remaining Current Capacity as of January 1, 2012 | _____ |
| 20. Projected Capacity in 2035 | _____ |
| 21. Current Major Customers (including Tonnage commitments) | <i>(If more space is required, please attach a separate sheet)</i> |
| Amount | Term |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| 22. Planned Expansions, if any, to twenty (20) years and beyond | _____ |
| 23. Current Environmental Status (Include any historical violation of permit provisions or legal actions at the proposed Disposal Facility) | _____ |
| 24. Description of Design, Permit and Operating Features that Protect and Monitor Public Health and Safety, Water Quality and Air Quality (leachate treatment facilities, landfill gas collection systems, base liner, etc.) | _____ |
| 25. Form of Closure/Post-Closure Maintenance Financial Assurance Provided Under Current Regulations (trust fund, corporate guarantee, etc.) | _____ |
| 26. Status of Current Permits and Regulatory Approvals for the Disposal Facility | _____ |
| 27. Required Permit Revision Mitigations, Fees (including host fees) and Approvals Necessary to Accept the City's Waste | _____ |

| DISPOSAL SERVICES FORM 12 DISPOSAL FACILITY Provide One Form Per Disposal Facility Site | |
|--|-------|
| 28. Method of Transportation Required for Landfill Access (e.g. transfer truck and trailer, rail car, etc.) | _____ |
| 29. Tipping Method for Incoming Load | _____ |
| 30. Environmental Impact on Host Community | _____ |

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| DISPOSAL SERVICES FORM 13 DELIVERY FACILITY (IF PROPOSED) Provide One Form Per Proposed Delivery Facility Site | |
|--|--|
| 1. Name of Delivery Facility | _____ |
| 2. Location of Delivery Facility | Street Address: _____ City: _____ State: _____ Zip Code: _____ |
| 3. Type and Class of Delivery Facility | _____ |
| 4. Proposer's role in the Delivery Facility | _____ |
| 5. Other contracting parties | _____ |
| 6. Name, telephone number and address of Delivery Facility owner | _____ _____ _____ |
| 7. CalRecycle Permit Type and Number | _____ |
| 8. Local Land-use Permit Number | _____ |
| 9. Permitted Daily Tonnage | _____ |
| 10. Currently Planned Daily Tonnage | _____ |
| 11. Actual Current Daily Tonnage | _____ |
| 12. Permitted Annual Tonnage | _____ |
| 13. Permitted Daily Vehicle Trips | _____ |
| 14. Currently Planned Daily Vehicle Trips | _____ |
| 15. Actual Current Daily Vehicle Trips | _____ |
| 16. Current Limits/Permit Restrictions | Hours of Operation: _____ Types of Vehicles: _____ Other (please specify): _____ |

| DISPOSAL SERVICES FORM 13 DELIVERY FACILITY (IF PROPOSED) Provide One Form Per Proposed Delivery Facility Site | | | | | | | | | |
|---|---|--------|------|-------|-------|-------|-------|-------|-------|
| 17. Current Major Customers (including Tonnage commitments) | <i>(If more space is required, please attach a separate sheet)</i> | | | | | | | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center;">Amount</th> <th style="width: 50%; text-align: center;">Term</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </tbody> </table> | Amount | Term | _____ | _____ | _____ | _____ | _____ | _____ |
| Amount | Term | | | | | | | | |
| _____ | _____ | | | | | | | | |
| _____ | _____ | | | | | | | | |
| _____ | _____ | | | | | | | | |
| 18. Planned Expansions, if any, to twenty (20) years and beyond | _____ | | | | | | | | |
| 19. Current Environmental Status (Include any historical violation of permit provisions or legal actions at the proposed Disposal Facility) | _____ | | | | | | | | |
| 20. Description of Design, Permit and Operating Features that Protect and Monitor Public Health and Safety, Water Quality and Air Quality (leachate treatment facilities, landfill gas collection systems, base liner, etc.) | _____ | | | | | | | | |
| 21. Status of Current Permits and Regulatory Approvals for the Delivery Facility | _____ | | | | | | | | |
| 22. Required Permit Revision Mitigations, Fees (including host fees) and Approvals Necessary to Accept the City's Waste | _____ | | | | | | | | |
| 23. Method of Transportation Provided for Facility Access (e.g. transfer truck and trailer, rail car, et.) | _____ | | | | | | | | |
| 24. Tipping Method for Incoming Load | _____ | | | | | | | | |
| 25. Environmental Impact on Host Community | _____ | | | | | | | | |

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DISPOSAL SERVICES FORM 14¹⁵
COMBINED SCHEDULE C-1, P, V

Schedule C-1

**“DECLARATION OF COMPLIANCE WITH THE
AMERICANS WITH DISABILITIES ACT”**

(Applicable to all city departments on all contracts and to be completed by the Prime Contractor)

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

I certify that I will comply with the Americans with Disabilities Act by:

- A. Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor’s goods, services and facilities for people with disabilities;
- B. Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;
- C. Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor’s program would result;
- D. Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;
- E. Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities; and
- F. If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.

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DISPOSAL SERVICES FORM 14
COMBINED SCHEDULE C-1, P, V

Schedule P
“NUCLEAR FREE ZONE DISCLOSURE FORM”

I certify that:

- A. Neither this Business Entity nor any of its subsidiaries, affiliates or agents engages in nuclear weapons work or anticipates entering into such work for the duration of its contract(s) with the City of Oakland, and
- B. The appropriate individuals of authority are cognizant of their responsibility to notify the Office of Finance of the City of Oakland if the Business Entity or any of its subsidiaries, affiliates or agents subsequently engages in nuclear weapons work.

Schedule V
“AFFIDAVIT OF NON-DISCIPLINARY OR INVESTIGATORY ACTION”

I certify that the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP) has not taken disciplinary or investigatory action against the Firm. If such action has been taken, attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action.

By signing and submitting this form the prospective primary participant’s authorized representative hereby obligates the proposer(s) to the Schedule C-1, Schedule P and Schedule V’s stated conditions.

Date Signature of Authorized Representative

Company Name Type or Print Name

Address Type or Print Title

City State Zip Phone/Email

1078 **Section 5 DISPOSAL SERVICES CONTRACT**

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Disposal Services Contract

**Executed Between
City of Oakland
and
[Insert Contractor name]**

July 1, 2015



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| Exhibit 1 | Approved Per Ton Disposal Tipping Fees..... | 46 |
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1

CITY OF OAKLAND

2 This Disposal Services Contract (Contract) is entered into [Insert Date] (the Effective Date) by
3 and between the City of Oakland, a California municipal corporation (“CITY”) and [Insert Name],
4 (“CONTRACTOR”).

5

RECITALS

6 **WHEREAS**, CITY enters this Contract with CONTRACTOR, under which CONTRACTOR
7 receives Garbage generated within the CITY and Residue from the Processing of Mixed
8 Materials Collected by the Mixed Materials and Organics (MM&O) Collection Contractor within
9 the CITY of Oakland at the Disposal Facility; and,

10 **WHEREAS**, the City Council of the City of Oakland determines, pursuant to its police powers,
11 that obtaining a long-term commitment for Disposal of Garbage generated in the CITY and
12 Residue from the Processing of Mixed Materials Collected by the MM&O Collection Contractor
13 within the CITY is in the best interests of the health, safety and well-being of the citizens of the
14 CITY; and,

15 **WHEREAS**, the State of California, through enactment of the California Integrated Waste
16 Management Act of 1989 (California Public Resources Code Section 40000, et. seq.), also
17 recognizes the important health and safety consideration to long-term planning for local
18 government's adequate Disposal needs. The California Integrated Waste Management Act of
19 1989 declares that the responsibility for management of Solid Waste is a shared responsibility
20 between the State and local governments. The State requires local governments to make
21 adequate provision for at least fifteen (15) years of Garbage Disposal capacity to preserve the
22 health, safety and well-being of the public. The California Integrated Waste Management Act of
23 1989 and Oakland City Charter Article X and Oakland Municipal Code Chapter 8.28 also
24 authorize local governments to enter into exclusive franchise contracts to provide Garbage
25 handling services for the health, safety and well-being of its citizens (California Public
26 Resources Code Section 40059); and,

27 **WHEREAS**, this Contract also advances the objectives of the federal government to encourage
28 environmentally sound Garbage management (Resource Conservation and Recovery Act of
29 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.); and,

30 **WHEREAS**, in 1990 the Alameda County Waste Reduction and Recycling Initiative Charter
31 Amendment established a county-wide solid waste diversion goal of seventy five (75) percent by
32 2010; and

33 **WHEREAS**, in 2002 the City Council of the City of Oakland approved Resolution No. 77500
34 C.M.S., adopting a goal of 75% reduction of waste going to landfills by 2010 in support of the
35 Measure D goal, and the implementation date established by the Alameda County Source
36 Reduction and Recycling Board; and,

37 **WHEREAS**, in 2006 the City Council of the City of Oakland approved Resolution No. 79774
38 C.M.S. adopting a Zero Waste Goal by 2020; and

39 **WHEREAS**, in 2006 the City Council of the City of Oakland approved Resolution No. 80286
40 C.M.S., adopting a Zero Waste Strategic Plan; and,

41 **WHEREAS**, the Disposal Facility is intended to be the principal facility for the Disposal of Mixed
42 Materials and Garbage generated in the CITY and Mixed Materials Residue from the
43 Processing of Mixed Materials Collected by the MM&O Collection Contractor within the CITY;
44 and,

45 **WHEREAS**, the CONTRACTOR guarantees permitted capacity at the Disposal Facility for up to
46 thirty (30) years for Disposal of all Mixed Materials and Garbage generated in the CITY and
47 Mixed Materials Residue from the Processing of Mixed Materials Collected by the MM&O
48 Collection Contractor within the CITY; and,

49 **WHEREAS**, the City Council of the City of Oakland determines that in order to provide adequate
50 Disposal capacity, it is in the best interests of the CITY to secure a commitment from
51 CONTRACTOR for the right to a portion of the Disposal Facility's current Disposal capacity on
52 the terms and subject to the conditions set out in this Contract. The intent of this provision is, in
53 part, for the CITY to contribute to preventing the substantial environmental, aesthetic, health,
54 and safety problems that may be created from increasing volumes of Garbage in this country;
55 and,

56 **WHEREAS**, the CONTRACTOR has represented that it has the experience and ability to
57 provide for Disposal of Mixed Materials, Garbage and Residue, at the Disposal Tipping Fees
58 provided for herein; and,

59 **WHEREAS**, the CITY has entered into Collection Service Contracts to provide: i) Mixed Material
60 and Organics Collection Services and ii) Residential Recycling Collection Services within the
61 CITY; and,

62 **WHEREAS**, the CONTRACTOR receives Disposal Tipping Fees from the CITY'S MM&O
63 Collection Contractor for the acceptance of Mixed Materials, Garbage and Residue at the
64 Disposal Facility for final Disposal; and,

65 **WHEREAS**, the CITY determined that the CONTRACTOR has proposed to provide Disposal
66 Services at the Disposal Facility in a manner and on terms which are in the best interest of the
67 CITY and its residents and businesses, taking into account the qualifications and experience of
68 the CONTRACTOR, and the Disposal Tipping Fees for providing such services; and,

69 **WHEREAS**, the CITY wishes to engage the CONTRACTOR to provide the services specified
70 within this Contract, in accordance with the terms and conditions of this Contract; and,

71 **WHEREAS**, the City Council of the City of Oakland declares its intention of maintaining
72 reasonable Disposal Tipping Fees for the Disposal of Mixed Materials, Garbage and Residue.

73 Now therefore, in consideration of the mutual promises, covenants, and conditions contained in
74 this Contract and for other good and valuable consideration, the CITY and CONTRACTOR
75 agree as follows.

76 **ARTICLE 1. DEFINITIONS**

77 For the purpose of this Disposal Services Contract ("Contract"), the definitions contained in this
78 Article shall apply unless otherwise specifically stated. When not inconsistent with the context,
79 words used in the present tense include the future, words in the plural include the singular, and
80 words in the singular include the plural. Use of the masculine gender shall include the feminine
81 gender. (Note: Several definitions will be revised in the event the awarded Contract
82 includes the use of a "delivery" facility)

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83 1.01 Bulky Goods. Materials such as, but not limited to, stoves, refrigerators, water
84 heaters, washing machines, clothes dryers, small air conditioning units, other large and small
85 household appliances, including appliances containing Freon, furniture, carpets, tires, wood,
86 household items, tires with or without rims, mattresses, clothing, Large Plant Debris, corrugated
87 cardboard, materials generated from minor home repairs or remodeling and other similar
88 materials that can be handled by two (2) people and which do not individually weigh more than
89 seventy-five (75) pounds and which are delivered to the Disposal Facility by the MM&O
90 Collection Contractor.

91 1.02 Change in Law. The adoption, promulgation, or modification of any enforceable
92 federal, State or local rule, law, regulation, ordinance, permit or administrative agency
93 guidelines duly adopted and promulgated officially in writing for uniform application occurring
94 after the effective date of this Contract. Change in Law does not include changes initiated by
95 CONTRACTOR. Change in Law shall not include such changes enacted or adopted prior to the
96 effective date of this Contract but which do not take effect until after the date of this Contract.

97 1.03 CITY. The CITY of Oakland, California, a municipal corporation.

98 1.04 CITY Administrator. The CITY official who is responsible for the day-today
99 operations of CITY agencies and departments or his/her designee.

100 1.05 Collect/Collection. To pick up, transport, and remove Garbage, Mixed Materials,
101 Organic Materials, or Bulky Goods.

102 1.06 Collection Contractor(s). The Mixed Materials and Organic (MM&O) Collection
103 Contractor and the Residential Recycling (RR) Collection Contractor.

104 1.07 Contract or Franchise Contract. The written document and all amendments
105 thereto, between CITY and CONTRACTOR, governing the provision of Disposal Services as
106 provided herein, including all exhibits hereto, as it may be amended from time to time.

107 1.08 Construction and Demolition Debris. Materials resulting from construction,
108 remodeling, repair or demolition operations on any house, residential property, commercial
109 building, pavement, or other structure. Construction and Demolition Debris includes but is not
110 limited to rocks, soils, tree remains and other Plant Debris that results from land clearing or land
111 development operations in preparation for construction.

112 1.09 Contract Manager. The CITY employee(s) designated by the CITY Administrator
113 to act as his/her designee regarding the day to day management of this Contract.

114 1.10 CONTRACTOR. [Insert Contractor Name].

115 1.11 Covered Electronic Device or CED. Discarded electronic devices that the
116 California Department of Toxic Substances Control (DTSC) has determined to be a covered
117 electronic device (California Public Resources Code Section 42463). CEDs include cathode ray
118 tube (CRT) devices (including televisions and computer monitors); LCD desktop monitors;
119 laptop computers with LCD displays; LCD televisions; plasma televisions; portable DVD players
120 with LCD screens; and other electronic devices as may be added by the DTSC from time to
121 time.

122 1.12 Disposal (Dispose). The final Processing and disposition of Mixed Materials,
123 Garbage and Residue received from the Collection Contractor(s) and CITY by CONTRACTOR
124 under the terms of this Contract onto land located at the Disposal Facility, including but not
125 limited to placement as alternative daily cover, road construction, slope stabilization, or other
126 beneficial uses. Disposal does not include transformation using incineration, pyrolysis,

127 distillation, gasification, biological conversion or other similar methodologies unless authorized
128 by CITY.

129 1.13 Disposal Facility or Landfill. The [Insert Disposal Facility Name] Landfill located
130 at [insert address] that is that is owned and operated by CONTRACTOR.

131 1.14 Disposal Services. The receipt, acceptance and Disposal of all Mixed Materials,
132 Garbage and Residue delivered by the Collection Contractor(s) and CITY to the Disposal
133 Facility.

134 1.15 Disposal Tipping Fee or Tipping Fee. The charges for acceptance of material
135 delivered to the Disposal Facility as set forth in Exhibit 1, which is attached to and included in
136 this Contract.

137 1.16 Divert (or Diversion). To prevent Recyclable Materials, Organic Materials and
138 other materials from Disposal at the Disposal Facility or transformation facilities (including
139 facilities using incineration, pyrolysis, distillation, gasification or biological conversion methods)
140 through source reduction, reuse, recycling and composting, as provided in Section 41780 of the
141 California Integrated Waste Management Act of 1989, as such California Integrated Waste
142 Management Act may be hereafter amended or superseded.

143 1.17 E-Waste. Waste that is powered by batteries or electricity, such as computers,
144 telephones, answering machines, radios, stereo equipment, tape players/recorders,
145 phonographs, videocassette players/recorders, compact disc players/recorders, calculators and
146 other items also defined as CED's.

147 1.18 Food Scraps. Raw or cooked vegetable, fruit, grain, fish, and other items,
148 including meat, bones, dairy products, cooking fats, oil or kitchen grease; paper, cardboard, and
149 other compostable items that have been contaminated with food, cooking fats, oil or kitchen
150 grease; compostable or paper or plastics associated with food preparation or consumption, such
151 as paper towels, paper plates, paper cups, tissue, waxed paper and waxed cardboard; and
152 other materials designated by CITY that are capable of being composted and that are set out
153 separate from Mixed Materials for Collection as Organic Materials.

154 1.19 Force Majeure. Any acts of God, such as landslides, lightning, fires, storms,
155 floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a
156 public enemy, wars, terrorism, blockades, riots, or other industrial disturbances, eminent
157 domain, condemnation or other taking, or other events of a similar nature, not caused or
158 maintained by CITY or CONTRACTOR, which event is not reasonably within the control of the
159 party claiming the excuse from its obligations due to such event, to the extent such event has a
160 significant and material adverse effect on the ability of a party to perform its obligations
161 thereunder. Force Majeure shall not include power outages, fuel shortages, strikes, work
162 stoppage or slowdown, sickout, lockout, picketing or other concerted job action conducted by
163 CONTRACTOR, CONTRACTOR'S employees or subcontractors, or directed at CONTRACTOR
164 or subcontractor. Force Majeure shall include a Change in Law if such Change in Law prohibits
165 a party's performance hereunder. Notwithstanding the foregoing, (i) no event relating to a
166 Disposal Facility, other than a Disposal Facility operated by CONTRACTOR or a related party of
167 CONTRACTOR, or the delivery of Garbage, Mixed Materials and/or Residue to that facility shall
168 constitute a Force Majeure under this Contract unless (and then only to the extent) that such
169 event prevents the delivery of or acceptance of Garbage, Mixed Materials and Residue to or by
170 that facility; (ii) no failure of performance by any subcontractor of CONTRACTOR shall be a
171 Force Majeure unless such failure was itself caused by a Force Majeure; (iii) except as provided
172 herein, no event which merely increases CONTRACTOR'S cost of performance shall be a

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173 Force Majeure; and (iv) no event, the effects of which could have been prevented by reasonable
174 precautions, including compliance with agreements and applicable laws, shall be a Force
175 Majeure.

176 1.20 Garbage. All, putrescible and non-putrescible waste, non-recyclable packaging
177 and rubbish attributed to normal activities of the service address wherein the Garbage is
178 generated. Garbage does not include abandoned automobiles or those items defined herein as
179 Unacceptable Waste.

180 1.21 Gas Control Credits. All greenhouse gas credits, carbon credits and other similar
181 credits that can be received for the control of gases emitted by the Disposal Facility, such as
182 emission cap and trade allowances issued under the Regional Greenhouse Gas Initiative or the
183 rules of any of its member states, and any emission credit authorized by the Global Warming
184 Solutions Act for the reduction of greenhouse gases.

185 1.22 Guarantor. [Insert Name]

186 1.23 Guaranty. The document contained in Exhibit 3, which is attached to and
187 included in this Contract that is executed by the Guarantor guaranteeing the timely and full
188 performance of CONTRACTOR'S obligations.

189 1.24 Hazardous Waste. For purposes of this Contract, Hazardous Waste shall include
190 those wastes defined as Hazardous Waste in Oakland Municipal Code Section 8.28.010 or as
191 subsequently amended. Section 8.28.010 currently defines Hazardous Waste as any hazardous
192 waste, material, substance or combination of materials which because of its quantity,
193 concentration, or physical, chemical, or infectious characteristics may cause, or significantly
194 contribute to an increase in mortality or an increase in serious irreversible, or incapacitating
195 reversible illness; or may pose a substantial present or potential risk to human health or the
196 environment when improperly treated, stored, transported, disposed or otherwise managed; and
197 which requires special handling under any present or future federal, State or local law, excluding
198 de minimis quantities of waste of a type and amount normally found in residential Garbage after
199 implementation of programs for the safe Collection, recycling, treatment and Disposal of
200 Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California
201 Public Resources Code. Hazardous Waste shall include, but not be limited to: (a) substances
202 that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any
203 fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic
204 substances or related hazardous materials; and (d) substances defined, regulated or listed
205 (directly or by reference) by applicable local, State or federal law as "hazardous substances,"
206 "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste," or
207 "toxic substances," or similarly identified as hazardous to human health or the environment,
208 including those so defined in or pursuant to any of the following statutes: (i) the Comprehensive
209 Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC Section
210 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC Section 1802,
211 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq.; (iv) the
212 Clean Water Act, 33 USC Section 1251 et seq.; (v) California Health and Safety Code Section
213 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC Section 7901 et seq.;
214 and (vii) California Water Code Section 13050; all rules and regulations adopted and
215 promulgated pursuant to such statutes, and future amendments to or recodifications of such
216 statutes, and any regulations adopted pursuant to these statutes after the date of this Contract,
217 as well as any subsequently enacted federal or California statute relating to the use, release or
218 disposal of toxic or hazardous substances, or to the remediation of air, surface waters,
219 groundwater, soil or other media contaminated with such substances; any other hazardous or

220 toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or
221 regulated under any other applicable federal, State or local environmental laws currently
222 existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated
223 biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products. The
224 parties intend that this definition not be limited to any particular statutory or regulatory regime
225 and that it be construed as broadly as possible so that CONTRACTOR bears the responsibility
226 for exercising due diligence as provided in Section 5.11 of this Contract in the investigation,
227 monitoring, control, decontamination, removal, transportation, remediation, and/or safe disposal
228 of Hazardous Waste as appropriate and as required in order to protect against actual or
229 potential risk to public health and safety or the environment.

230 1.25 Household Hazardous Waste. Any Hazardous Waste generated at a single
231 family or multi-family service address within the CITY, including, but not limited to, cleaning
232 products, automotive products, fuel, lubricants, E-Wastes, paints, painting supplies, fluorescent
233 lamps, compact fluorescent lamps, varnishes, solvents, herbicides, pesticides, fertilizers,
234 automobile batteries, household batteries, adhesives, and Universal Waste except those items
235 defined in this Contract as Recyclable Materials, including Used Oil or Used Oil Filters, and dry
236 cell household batteries.

237 1.26 Landfill Gas-to-Energy Credits. All energy credits, fuel production credits and
238 other similar credits that may be available for the creation of a fuel or the production of
239 alternative energy.

240 1.27 Large Plant Debris. Oversized Plant Debris such as tree trunks, branches or
241 untreated and unpainted wood.

242 1.28 Material Recovery Facility (or MRF). Any facility, selected by the Collection
243 Contractor(s) and approved by CITY, or specifically designated by CITY, designed, operated,
244 and legally permitted for the purpose of receiving, sorting, Processing, storing, or preparing
245 Recyclable Materials, Organic Materials or Mixed Materials for sale, market, or reuse.

246 1.29 Mixed Materials. All Garbage, Recyclable Materials, Organic Materials, and
247 Bulky Goods, excluding items that are source separated from Garbage or Collected for
248 Processing and marketing. Mixed Materials do not include items defined herein as
249 Unacceptable Waste.

250 1.30 Mixed Materials and Organics (MM&O) Collection Contractor. The company
251 holding a current Mixed Materials and Organics Collection Services Contract with the CITY of
252 Oakland.

253 1.31 Mixed Materials Residue. Materials remaining after the Processing of Mixed
254 Materials that cannot reasonably be Diverted from the Landfill.

255 1.32 Organic Materials ("Organics"). Plant Debris, Food Scraps, compostable food
256 ware, compostable food containers, compostable paper, horse stable matter, etc. Organic
257 Materials do not include items herein defined as Unacceptable Waste.

258 1.33 Organic Materials Residue. Materials remaining after the Processing of Organic
259 Materials that cannot reasonably be Diverted from the Landfill.

260 1.34 Person. An individual, association, partnership, corporation, joint venture, the
261 United States, the State of California, any municipality or other political subdivision thereof, or
262 any other entity whatsoever.

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263 1.35 Plant Debris. Any vegetative matter resulting from normal yard and landscaping
264 maintenance or unpainted and untreated wood. Plant Debris includes palm, yucca, cactus;
265 grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of
266 horticultural waste. Plant Debris does not include items defined herein as Unacceptable Waste.

267 1.36 Post-Closure. All activities and related costs during the period subsequent to the
268 closure of the Disposal Facility or portions of the Disposal Facility in accordance with applicable
269 laws and permits.

270 1.37 Processing or Process. An operation or series of operations, whether involving
271 equipment or manual labor, which sorts, enhances, upgrades, concentrates, decontaminates,
272 packages or otherwise prepares Mixed Materials, Recyclable Materials, Organic Materials or
273 Bulky Goods for a secondary use. Processing begins at the time Mixed Materials, Recyclable
274 Materials, Bulky Goods or Organic Materials are delivered to the Processing Facility and ends
275 when the Processed materials are sold or reused, and the Residue is properly Disposed.

276 1.38 Recovered Materials. Recyclable Materials or Organic Materials removed at the
277 Disposal Facility from Garbage, Mixed Materials or Residue and directed to recycling, reuse or
278 compost processing.

279 1.39 Recyclable Materials. Those materials designated in this Contract or by CITY for
280 Collection and Processing under the MM&O or RR Collection Service Contracts which are
281 segregated from Mixed Materials by the CITY or service recipient at the source of generation
282 and set out for Collection. Recyclable Materials include those materials defined by CITY,
283 including newspaper, mixed paper (including white and colored paper, magazines, telephone
284 books, chipboard, junk mail, and high grade paper) glass containers, metal containers (ferrous,
285 non-ferrous, and bi-metal Containers including empty aerosol containers), aluminum foil and
286 trays, milk and juice cartons, all narrow neck rigid plastic containers, non-bottle rigid plastics,
287 and corrugated cardboard. Recyclable Materials also include dry cell batteries generated by
288 residential service recipients and CITY facilities.

289 1.40 Recyclable Materials Residue. Materials remaining after the Processing of
290 Recyclable Materials that cannot reasonably be Diverted from the Landfill.

291 1.41 Residential Recycling (RR) Contractor. The company holding a current
292 Residential Recyclable Materials Collection Services Contract with the CITY of Oakland.

293 1.42 Residue. Mixed Materials Residue, Organic Materials Residue and Recyclable
294 Materials Residue.

295 1.43 Revenue Generating Resources. Resources generated by or at the Disposal
296 Facility including, but not limited to, Recovered Materials, Gas Control Credits, Landfill Gas-to-
297 Energy Credits and landfill gas that can be sold or otherwise used to produce revenue for
298 CONTRACTOR.

299 1.44 Ton (or Tonnage). A unit of measure for weight equivalent to two thousand
300 (2,000) standard pounds where each pound contains sixteen (16) ounces.

301 1.45 Universal Waste ("U-Waste"). Materials that the California Department of Toxic
302 Substances Control considers Universal Waste, (California Code of Regulations Title 22, Div
303 4.5, Ch 23) including materials such as batteries, thermostats, lamps, cathode ray tubes,
304 computers, telephones, answering machines, radios, stereo equipment, tape players/recorders,
305 phonographs, video cassette players/recorders, compact disc players/recorders, calculators,

306 some appliances, aerosol cans, fluorescent lamps, certain mercury-containing devices and such
307 other items as may be added from time to time..

308 1.46 Unacceptable Waste. Any and all waste, including but not limited to, Hazardous
309 Waste, the acceptance or handling of which would cause a violation of any permit condition or
310 legal or regulatory requirement, damage or threatened damage to CONTRACTOR'S equipment
311 or facilities, or present a substantial endangerment to the health or safety of the public or
312 CONTRACTOR'S employees; provided, that de minimis quantities or waste of a type and
313 amount normally found in Garbage, Mixed Materials, or Residue after implementation of
314 programs for the safe Collection, Processing, treatment, and Disposal of Household Hazardous
315 Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code
316 shall not constitute Unacceptable Waste.

317 1.47 Work Day. Any day, Monday through Saturday that is not a holiday as set forth
318 in Section 5.06 of this Contract.

319 **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF** 320 **CONTRACTOR**

321 CONTRACTOR hereby makes the following representations and warranties for the benefit of
322 CITY as of the date of this Contract.

323 2.01 Corporate Status. CONTRACTOR is a corporation duly organized, validly
324 existing and in good standing under the laws of the State of California. It is qualified to transact
325 business in the State of California and has the corporate power to own its properties and to
326 carry on its business as now owned and operated and as required by this Contract.

327 2.02 Corporate Authorization. CONTRACTOR has full legal right, power, and authority
328 to execute, deliver, and perform its obligations under this Contract. The Board of Directors of
329 CONTRACTOR (or the shareholders if necessary) has taken all actions required by law, its
330 articles of incorporation, its bylaws or otherwise to authorize the execution and delivery of this
331 Contract. The Persons signing this Contract on behalf of CONTRACTOR have authority to do
332 so.

333 2.03 Contract Duly Executed. The Persons signing this Contract on behalf of
334 CONTRACTOR have been authorized by CONTRACTOR to do so, and this Contract has been
335 duly executed and delivered by CONTRACTOR in accordance with the authorization of its
336 Board of Directors or shareholders, if necessary, and constitutes a legal, valid, and binding
337 obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

338 2.04 No Conflict With Applicable Law or Other Documents. Neither the execution and
339 delivery by CONTRACTOR of this Contract nor the performance by CONTRACTOR of its
340 obligations hereunder:

341 2.04.1 Conflicts with, violates or will result in a violation of any existing
342 applicable law; or

343 2.04.2 Conflicts with, violates or will result in a breach or default under any
344 term or condition of any existing judgment, order or decree of any court, administrative agency
345 or other governmental authority, or of any existing contract or instrument to which
346 CONTRACTOR is a party, or by which CONTRACTOR or any of CONTRACTOR'S properties
347 or assets is bound; or

389

ARTICLE 4. OBLIGATIONS OF CITY

390 4.01 General. CITY and CONTRACTOR acknowledge that CITY will not be
391 responsible for the payment of Disposal Tipping Fees for Mixed Materials, Garbage or Residue
392 that the Collection Contractor(s) deliver to the Disposal Facility. CITY contractually controls the
393 delivery of Mixed Materials and Garbage Collected in CITY and Residue from Mixed Materials
394 Processing activities by the MM&O Collection Contractor and shall direct the MM&O Collection
395 Contractor to deliver such Mixed Material, Garbage or Mixed Material Residue to the Disposal
396 Facility. CONTRACTOR acknowledges that CITY has no ability to direct individuals who self-
397 haul to use the Disposal Facility. CITY may utilize CITY staff and vehicles to haul Mixed
398 Materials, Garbage, Bulky Goods or other materials generated by or at any building, structure,
399 yard, park, or any other facility owned, leased, or operated by CITY to the Disposal Facility.
400 CONTRACTOR shall bill CITY for CITY-hauled loads at no more than the then current Disposal
401 Tipping Fee, as calculated under this Contract, for the type of material being hauled.

402 4.02 Hazardous Waste Programs. CITY shall contractually require its Collection
403 Contractor(s) to develop and implement a load inspection program to detect and discover
404 Hazardous Waste and Household Hazardous Waste and shall prohibit Collection Contractor(s)
405 from knowingly delivering such material to the Disposal Facility. CITY shall encourage its
406 residents to participate in the Alameda County Household Hazardous Waste Program that
407 provides residents with a place for safe recycling, treatment, and/or disposition of Household
408 Hazardous Waste. The parties recognize, however, that CITY cannot assure CONTRACTOR
409 that such programs will prevent any amount of Hazardous Waste or Household Hazardous
410 Waste from being delivered to the Disposal Facility.

411 4.03 No Limit on Waste Prevention. CITY, Collection Contractor(s) or other CITY
412 agents will continue to develop and participate in waste prevention activities including, source
413 reduction and Diversion activities, which may reduce the amount of material delivered to the
414 Disposal Facility. Nothing in this Contract shall restrict CITY, Collection Contractor(s) or other
415 CITY agents from any such activities.

416

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

417 5.01 General. During the term of this Contract, and consistent with Section 5.12
418 herein, CONTRACTOR shall provide Disposal Services under the terms and conditions of this
419 Disposal Services Contract. CONTRACTOR shall perform its obligations with respect to
420 Disposal Services hereunder in accordance with sound management and operations practice,
421 regulatory and permit requirements, applicable law, the provisions hereof, and covenants,
422 conditions, and restrictions pertaining to the Disposal of Mixed Materials, Garbage and Residue.
423 (Note: in the event that the successful proposer proposes to provide a "delivery" facility, this
424 Article will be amended to include the requirements for the "delivery" facility.)

425

5.02 Facility Permits.

426 5.02.1 Existing Permits. CONTRACTOR shall obtain, at its own expense, all
427 permits and licenses required by law or ordinance and maintain same in full force and effect
428 throughout the term of this Contract. CONTRACTOR shall provide proof of such permits,
429 licenses or approvals and shall demonstrate compliance with the terms and conditions of such
430 permits, licenses and approvals upon the request of the Contract Manager.

431

432 5.02.1.1 CONTRACTOR shall keep CITY fully informed, in a timely
manner, of its progress in securing permits, or renewals of permits that occur during the term of

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433 this Contract as they pertain to the Disposal operations at the Disposal Facility in accordance
434 with this Contract and the costs related thereto.

435 5.02.1.2 CONTRACTOR shall provide CITY, upon CITY'S request, with
436 copies of any applications that CONTRACTOR submits to any regulatory body in connection
437 with the issuance of new permits, or the extension, revision or modification of existing permits
438 with respect to the Disposal Facility.

439 5.02.2 CONTRACTOR Compliance with Permits. CONTRACTOR shall
440 comply with all permits, terms, and conditions of such permits as they may be amended or
441 superseded related to the operation and maintenance of the Disposal Facility. Over the term of
442 this Contract, CONTRACTOR shall be solely responsible for assuring that the facility is
443 operated in compliance with all requirements of the California Environmental Quality Act
444 (CEQA). CONTRACTOR shall be solely responsible for paying any fines or penalties imposed
445 by governmental agencies for CONTRACTOR'S noncompliance with permit terms or
446 CONTRACTOR'S failure to obtain or maintain compliance with the requirements of the permits
447 necessary to operate the Disposal Facility.

448 5.03 Operations. CONTRACTOR, at its cost and expense, shall operate the Disposal
449 Facility in the manner required by applicable law and permits. CONTRACTOR'S responsibilities
450 for the Disposal Facility shall include, but are not limited to, the following:

451 5.03.1 Operation, management, and maintenance of the Disposal Facility will
452 comply with sound management and operations practice, regulatory and permit requirements,
453 applicable law, standard industry practices, and covenants, conditions and restrictions
454 pertaining to the site;

455 5.03.2 Provision, operation, and maintenance of all equipment, rolling stock,
456 and supplies necessary for operations, and environmental monitoring; and

457 5.03.3 Operation, maintenance, and management of leachate and Disposal
458 Facility gas management systems, groundwater monitoring and management systems, storm
459 water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities,
460 and any other required facility elements.

461 5.04 Days and Hours of Operation. CONTRACTOR shall operate the Disposal
462 Facility for the receipt of Mixed Materials, Garbage and Residue in accordance with the days
463 and hours of operation as set forth in all permits. At a minimum, CONTRACTOR shall accept
464 Mixed Materials, Garbage and Residue delivered by the Collection Contractor(s) Monday
465 through Friday from 6:00 a.m. to 5:00 p.m. and Saturday from 6:00 a.m. to 4:30 p.m.
466 CONTRACTOR may not reduce the hours or total number of hours for acceptance of Mixed
467 Materials, Garbage and Residue delivered by the Collection Contractor(s) required by the
468 Contract without the concurrence of CITY and Collection Contractor(s) except where such
469 changes are required by a change in the Disposal Facility permits.

470 5.05 Emergency Services. In the event of a tornado, major storm, earthquake, fire,
471 natural disaster, or other such event, the Contract Manager may require CONTRACTOR to
472 extend the hours of operation in order to accept materials from CITY'S Collection Contractor(s).
473 However, CONTRACTOR shall not be required to extend the hours of operation to the extent
474 that such extension would cause CONTRACTOR to violate its permit(s).

475 5.06 Holidays. CONTRACTOR shall not be required to accept Mixed Materials,
476 Garbage or Residue from the Collection Contractor(s) at the Disposal Facility on January 1st,
477 Thanksgiving Day, and December 25th.

478 5.07 Average Turnaround Time.

479 5.07.1 In the event CONTRACTOR is not the MM&O Collection Contractor
480 as defined under this Contract, CONTRACTOR shall operate the Disposal Facility so that all
481 MM&O Collection Contractors' vehicles are processed, unloaded, and exited from the facility no
482 more than twenty (20) minutes, on average, after arriving at the scale house and mounting the
483 scale to weigh-in. For purposes of this 5.07.1, "on average" shall be calculated on a monthly
484 basis.

485 5.07.2 In the event CONTRACTOR is the MM&O Collection Contractor, but
486 CITY has exercised its authority to have other personnel Collect and deliver Mixed Materials,
487 Garbage or Residue to the Disposal Facility as a result of a strike or other labor unrest,
488 CONTRACTOR shall operate the Disposal Facility so that all Collection vehicles delivering
489 Mixed Materials, Garbage and Residue from CITY are processed, unloaded, and exited from
490 the facility no more than twenty (20) minutes, on average after arriving at the scale house and
491 mounting the scale to weigh-in, unless CITY has approved a labor peace plan specifying a
492 longer time period.

493 5.08 Scale Operation.

494 5.08.1 Weighing Standards and Procedures. The scale house(s) at the
495 Disposal Facility entrance shall serve as the location for weighing vehicles and charging Tipping
496 Fees as provided herein. All weighing shall be conducted by CONTRACTOR or its agents by a
497 licensed weigh master. CONTRACTOR scale house personnel shall be responsible for
498 inspecting the Mixed Materials, Garbage and Residue delivered to the Disposal Facility. The
499 Collection Contractor(s)' vehicles shall be charged Tipping Fees based on the Tonnage of
500 Mixed Materials, Garbage and Residue accepted by the Disposal Facility and the applicable
501 Disposal Tipping Fees as set forth in Exhibit 1 which is attached to and included in this Contract.
502 CONTRACTOR shall weigh and record inbound weights of all Collection Contractor(s) vehicles
503 when the vehicles arrive at the Disposal Facility. In addition, CONTRACTOR shall weigh and
504 record outbound weights of such vehicles for which CONTRACTOR does not maintain tare
505 weight information. CONTRACTOR shall provide each driver with a receipt showing the date,
506 time, and quantity and type of Mixed Materials, Garbage or Residue delivered to the Disposal
507 Facility and the Tipping Fee charged for such material. The scale house computer system shall
508 compile information into various reports, which typically include for each transaction, date of
509 receipt, inbound and (as applicable) outbound times, documentation of the Tipping Fee
510 charged, inbound and outbound weights of vehicle, vehicle identification number, hauler
511 identification and/or classification, customer account, material type, vehicle type, weight of load,
512 and invoice number.

513 5.08.2 Maintenance and Operation. CONTRACTOR shall maintain, in
514 accordance with applicable law, at least two (2) State-certified motor vehicle scales at the
515 Disposal Facility. All scales shall be linked to a centralized computer recording and billing
516 system which shall be compatible with CONTRACTOR'S systems and account for tracking all
517 incoming and outgoing materials. CONTRACTOR shall operate such scales during facility
518 receiving hours, established in Section 5.04, provided that CONTRACTOR shall provide CITY
519 with access to weighing information at all times and copies thereof within three Work Days of
520 request from CITY.

521 5.08.3 Vehicle Tare Weights. Between the time this Contract is executed
522 and June 1, 2015, CONTRACTOR shall weigh and determine the unloaded ("tare") weight of
523 each MM&O Collection Contractor's vehicles to be used to deliver Mixed Materials, Garbage or

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524 Mixed Materials Residue to the Disposal Facility beginning July 1, 2015. Before July 1, 2015,
525 CONTRACTOR shall provide CITY and MM&O Collection Contractor with a report listing vehicle
526 tare weight information, which shall include, at a minimum, hauler name, tare weight, vehicle
527 identification number, and date tare weight was determined. CONTRACTOR shall, at least
528 every six (6) months, reweigh and revise tare weights for all MM&O Collection Contractors'
529 vehicles used to deliver Mixed Materials, Garbage or Mixed Materials Residue to the Disposal
530 Facility.

531 **5.08.3.1** When CONTRACTOR is notified in writing by the MM&O
532 Contractor that new vehicles have been placed into service or significant repairs have been
533 made to vehicles, CONTRACTOR shall promptly weigh such vehicles and determine the tare
534 weight of each vehicle. Within ten (10) Work Days of weighing, CONTRACTOR shall provide
535 CITY and MM&O Collection Contractor with a report listing vehicle tare weight information.
536 CONTRACTOR, CITY, and MM&O Collection Contractor shall have the right to request re-
537 weighing of vehicles up to two (2) times per year, unless there is reasonable suspicion or
538 evidence that tare weights are not accurate, in which case the scales shall be recalibrated in
539 accordance with the provision so of Section 5.08.6 and tare weights shall be updated. (Note:
540 Sections 5.08.3 and 5.08.3.1 may be deleted or modified based on the final Disposal Services
541 Contract award.)

542 **5.08.4** Substitute Scales. To the extent practicable, if a scale is inoperable,
543 being tested or otherwise unavailable, all vehicles shall be weighed on the remaining operating
544 scale(s). To the extent that all Disposal Facility scales are inoperable, being tested, or
545 otherwise unavailable, CONTRACTOR shall substitute portable scales until the permanent
546 scales are replaced or repaired. CONTRACTOR shall arrange for any inoperable scale to be
547 repaired as soon as possible and, in any event, within three (3) Work Days of the failure of the
548 permanent scale. CONTRACTOR shall arrange to immediately obtain a temporary substitute
549 scale(s) should the repair of the permanent scale require more than twelve (12) hours.

550 **5.08.5** Estimates. Pending substitution of portable scales or during power
551 outages, CONTRACTOR shall estimate the Tonnage of Mixed Materials, Garbage and Residue
552 delivered to the Disposal Facility by utilizing the arithmetic average of that vehicle's recorded
553 Tons of Mixed Materials, Garbage or Residue delivered on its preceding three (3) deliveries, on
554 the same day of the week, to the Disposal Facility, with the exception that the estimate of
555 Tonnage in roll-off boxes shall be made by multiplying the estimated number of cubic yards of
556 Mixed Materials, or Garbage delivered per non-compacted roll-off box by 0.25 Tons per cubic
557 yard or compacted roll-off box by 0.50 Tons per cubic yard or such other amounts as may be
558 agreed to in writing between CONTRACTOR and CITY.

559 **5.08.5.1** All information required by this Article shall continue to be
560 recorded for each delivery of Mixed Material, Garbage or Residue to the Disposal Facility during
561 any period the scales are out of service.

562 **5.08.6** Testing. CONTRACTOR shall test and calibrate all scales in
563 accordance with applicable law, but at least every twelve (12) months. Upon CITY request,
564 CONTRACTOR shall provide CITY with copies of test results. CONTRACTOR shall further test
565 and calibrate any or all scales upon written request therefore by CITY, within three (3) Work
566 Days of such request. If such test results indicate that the scale or scales complied with
567 applicable law, CITY shall reimburse CONTRACTOR the direct costs of such tests. If such test
568 results indicate that the scale or scales did not comply with applicable law, CONTRACTOR shall
569 bear the costs thereof and CONTRACTOR shall at its own cost adjust and correct, consistent

570 with the results of such test, all weight measurements recorded and Tipping Fees calculated,
571 charged and paid, as the case may be, from the date of such request.

572 5.08.7 Records. CONTRACTOR shall maintain scale records that provide
573 information such as, but not limited to, date of receipt, inbound and, (as applicable) outbound
574 time, inbound and outbound weights of vehicles, Tipping Fee charged, vehicle identification
575 number, vehicle type, type of material, hauler identification and/or classification, type, and
576 weight. CONTRACTOR shall also maintain records of all outbound materials that provide
577 information such as, but not limited to material type, weight, destination and revenue from sale
578 of materials. CONTRACTOR'S records shall, to the extent practical, include the above
579 information for all Oakland material delivered by self-haulers.

580 5.09 Personnel. CONTRACTOR shall engage and train qualified and competent
581 employees, including managerial, supervisory, clerical, maintenance, and operating personnel,
582 in numbers necessary and sufficient for operation of the Disposal Facility and to perform
583 CONTRACTOR'S obligations hereunder.

584 5.10 Ownership of Materials. Once Mixed Materials, Garbage or Residue are
585 delivered to the Disposal Facility by Collection Contractor(s), ownership and possession of such
586 material shall transfer directly from the Collection Contractor(s) to CONTRACTOR.
587 CONTRACTOR is hereby granted the right to retain, recycle, Process, Dispose, subject to the
588 limitations set forth in Section 1.12 on allowable Disposal methodologies, and otherwise use
589 such materials, or any part thereof, in any lawful fashion or for any lawful purpose desired by
590 CONTRACTOR. Such right shall include CONTRACTOR'S right to retain any benefit resulting
591 from its right to retain, recycle, Process, Dispose, or reuse the Mixed Materials, Garbage or
592 Residue in accordance with the provisions of the Revenue Sharing Plan provided by
593 CONTRACTOR as set forth in Exhibit 6 which is attached to and included in this Contract.

594 5.11 Rejection of Unacceptable Waste.

595 5.11.1 Inspection. CONTRACTOR shall use standard industry practices to
596 endeavor to detect and discover Unacceptable Waste and shall not knowingly accept
597 Unacceptable Waste at the Disposal Facility. CONTRACTOR shall comply with the inspection
598 procedures contained in its permit requirements. CONTRACTOR shall promptly modify such
599 procedure to reflect any changes in permits or applicable law.

600 5.11.2 Unacceptable Waste Handling and Costs. CONTRACTOR shall
601 arrange for or provide transportation and delivery to an appropriately permitted facility of all
602 Unacceptable Waste, which has been accepted by CONTRACTOR, that are encountered and
603 which cannot be accepted at the Disposal Facility. CONTRACTOR is solely responsible for
604 handling and arranging transport and disposition of any Unacceptable Waste that is contained in
605 or with Mixed Materials, Garbage or Residue accepted by CONTRACTOR, and for all related
606 costs.

607 5.11.3 Remedies for Rejected Materials. If CONTRACTOR rejects material
608 delivered to the Disposal Facility by Collection Contractor(s), because it contains Unacceptable
609 Waste including Hazardous Wastes, CONTRACTOR shall direct Collection Contractor(s) to
610 remove and dispose of it in a safe and lawful manner, at the sole expense of the Collection
611 Contractor(s). In the event that Unacceptable Waste is delivered to the Disposal Facility,
612 CONTRACTOR shall be entitled to pursue whatever remedies, if any, it may have against
613 Collection Contractor(s) bringing such Unacceptable Waste to the Disposal Facility, provided
614 that in no case shall CITY be considered to have brought such Unacceptable Waste to the
615 Disposal Facility. In the event the Collection Contractor(s) delivers Unacceptable Waste on a

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616 frequent or continuous basis and the Collection Contractor(s) refuses to provide for the proper
617 handling and disposition of such Unacceptable Waste, CONTRACTOR shall provide written
618 notice to CITY of such refusal by Collection Contractor(s). Nothing herein shall excuse
619 CONTRACTOR from the responsibility of handling such Unacceptable Waste in a lawful manner
620 and to arrange for the proper disposition of such materials. In the event the CITY delivers
621 unacceptable waste to the Disposal Facility, CITY shall have the same responsibility as the
622 Collection Contractor(s).

623 5.11.4 Notification. In the event CONTRACTOR is not the Collection
624 Contractor(s) and CONTRACTOR rejects delivered materials, CONTRACTOR shall
625 immediately notify the Collection Contractor(s) verbally and then follow such verbal notification
626 with written notice. The written notice will identify: the date and time of occurrence; material
627 type; material weight or volume; characterization of material; and CONTRACTOR'S reason for
628 rejection of the delivered material.

629 5.12 Reservation of Disposal Capacity. CONTRACTOR guarantees its ability to
630 accept and Dispose all Mixed Materials, Garbage and Mixed Material Residue delivered to the
631 Disposal Facility by, or on behalf of, CITY, and CITY'S MM&O Collection Contractor, or
632 successor for thirty (30) years from July 1, 2015. CONTRACTOR shall be responsible for
633 reasonably estimating the quantity of capacity that it shall be required to provide to accept and
634 Dispose of all Mixed Materials, Garbage and Mixed Materials Residue generated in CITY over
635 the term of the Contract. CITY makes no representations, and is under no obligation, regarding
636 the quantity or composition of the Mixed Material, Garbage and Mixed Material Residue to be
637 delivered to the Disposal Facility by, or on behalf of, CITY and CITY'S MM&O Collection
638 Contractor or successor.

639 5.13 Alternate Disposal Facility.

640 5.13.1 If CONTRACTOR becomes unable to accept Mixed Material, Garbage
641 and Mixed Materials Residue generated in CITY at the Disposal Facility because it did not use
642 reasonable business efforts in resisting changes, alterations and amendments to permits, or
643 due to reasons within its control and which could have been avoided by the exercise of due
644 care, or as the result of any labor unrest, including but not limited to, strike, work stoppage or
645 slowdown, sick-out, lockout, picketing, or other concerted job action conducted by
646 CONTRACTOR, CONTRACTOR'S employees or subcontractors, then and only if, and to the
647 extent, CONTRACTOR is actually prevented from accepting, Processing and/or transferring
648 Mixed Materials, Garbage and Mixed Materials Residue at the Disposal Facility because of a
649 concerted labor action, CONTRACTOR shall (i) accept, and Dispose of such Mixed Materials,
650 Garbage and Mixed Materials Residue at another Disposal Facility owned by it (or by another
651 company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the then-
652 current Disposal Tipping Fees in effect under this Contract, and shall pay any additional
653 transportation costs incurred by the MM&O Collection Contractor in delivering the Mixed
654 Materials, Garbage and Mixed Materials Residue to the other Disposal Facility, or (ii) shall
655 arrange for all Mixed Materials, Garbage and Mixed Materials Residue to be accepted, and
656 Disposed at a disposal facility not owned by it or an affiliated company, in which case
657 CONTRACTOR shall pay any difference in the fees charged at such disposal facility plus any
658 additional transportation costs incurred in delivering Mixed Materials, Garbage and Mixed
659 Materials Residue to the disposal facility, and the then-current Disposal Tipping Fees in effect
660 under this Contract. If as a result of a labor action directed at CONTRACTOR, CONTRACTOR
661 makes arrangements that allow for continued operation of the Disposal Facility during the labor
662 action, then it shall not be obligated to provide an alternative Disposal Facility and CITY shall be

663 required to direct all Mixed Materials, Garbage and Mixed Materials Residue to the Disposal
664 Facility, providing operations at the Disposal Facility are consistent with the requirements under
665 this Contract.

666 5.13.2 If CONTRACTOR, despite using reasonable business efforts to resist
667 changes, alterations and amendments to permits under Section 5.02, becomes unable to accept
668 and Dispose of Mixed Materials, Garbage and Mixed Materials Residue generated in CITY at
669 the Disposal Facility, or if CONTRACTOR becomes unable to accept and Dispose of Mixed
670 Materials, Garbage and Mixed Materials Residue at the Disposal Facility as the result of an
671 event of Force Majeure as defined herein then CONTRACTOR shall, to the extent it is legally
672 able to do so, offer to accept and Dispose of Mixed Materials, Garbage and Mixed Materials
673 Residue at another disposal facility owned by it (or by another company which is owned and
674 controlled, directly or indirectly, by CONTRACTOR), at the then-current Disposal Tipping Fees
675 in effect under this Contract. CONTRACTOR has no obligation, however, to pay for additional
676 transportation costs incurred by the MM&O Collection Contractor. CITY has no obligation to
677 accept such offer and, if CITY rejects such an offer, CITY may terminate this Contract by giving
678 written notice in the manner as set forth in Article 21 of this Contract. Such termination shall be
679 effective thirty (30) calendar days after CITY has given notice.

680 5.14 Monthly Report. Beginning on July 1, 2015, and monthly during the term of this
681 Contract, CONTRACTOR shall provide a complete and accurate monthly report no later than
682 twenty (20) calendar days after the end of the reporting month. Therefore, the first report will be
683 due no later than August 20, 2015 for the reporting month of July 2015. The report shall be
684 prepared in an electronic format in a form approved by the Contract Manager and shall, if
685 requested by CITY, include data that can be uploaded by CITY. The report shall include the
686 total Tonnage of Mixed Materials, Garbage and Residue generated in the CITY that was
687 accepted and Disposed at the Disposal Facility and shall also list other applicable information,
688 including date of receipt, inbound and outbound time, inbound and outbound weights of
689 vehicles, Disposal Tipping Fee charged, vehicle identification number, vehicle type, type of
690 material, hauler identification; ~~type, and weight, separately for each of the following categories
691 for material Collected by the Collection Contractor(s) within CITY: residential Garbage, Mixed
692 Materials, Mixed Materials Residue, residential Organic Materials Residue, or residential
693 Recyclable Materials Residue, commercial Garbage, Mixed Materials, or Residue, and CITY
694 Garbage, Mixed Materials, or Residue.~~² In addition, the report shall include Tonnage information
695 for materials generated in the CITY delivered by other companies, small vehicles, CITY hauled
696 materials, and other self-haulers, Recovered Materials and destination of outbound materials.
697 The monthly report shall also include the following using an allocation methodology, where
698 appropriate, that is acceptable to CITY:

699 5.14.1 Tonnage information by material type for material accepted at the
700 Disposal Facility;

701 5.14.2 Gross revenue from the sale of each Revenue Producing Resource;

702 5.14.3 Number and nature of rejected loads during the month;

703 5.14.4 In addition CONTRACTOR shall maintain and make the following
704 information available to CITY upon request:

705 5.14.4.1 Number and nature of occurrences in which CONTRACTOR
706 identified Hazardous Waste inadvertently accepted; and

707 5.14.4.2 Number and nature of any notices of violation.

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708 5.15 Annual Report of Disposal Facility Activity. Beginning February 15, 2016 and
709 annually thereafter during the term of this Contract, CONTRACTOR shall submit a complete
710 and accurate annual report of Disposal Facility activity to CITY. Annual reports shall be
711 submitted no later than forty-five (45) calendar days after the end of each full or partial calendar
712 year. Therefore, the first report will be due no later than February 15, 2016, for the partial
713 calendar year of July 2015 through December 2015. The report shall be prepared in an
714 electronic format in a form approved by the Contract Manager and shall, if requested by CITY,
715 include data that can be uploaded by CITY. This report shall contain all items required by
716 Section 5.14 in addition to the following: a list of parties that CONTRACTOR has guaranteed
717 capacity to through written agreements, the annual estimated Tonnage to be delivered by each
718 party, and the term of CONTRACTOR'S capacity commitment. In the event CONTRACTOR
719 has agreements with private companies, the name of the party may be withheld from the list;
720 however, the annual Tonnage estimate and term of the commitment must be provided.

721 5.15.1 The annual report shall include information on amounts of Mixed
722 Materials, Garbage and/or Residue delivered to the Disposal Facility and Disposed, Recycled or
723 Diverted and other information that CITY may request in order to meet its related federal, State
724 and local solid waste obligations.

725 5.16 Correction of Reports. In the event CONTRACTOR is notified in writing by CITY
726 of the need to resubmit a corrected monthly or annual report, as set forth in Section 5.14 or 5.15
727 above, CONTRACTOR shall submit the corrected report within three (3) Work Days of the
728 written notification.

729 5.17 Closure and Post-Closure of Landfill. CONTRACTOR shall safely manage the
730 Disposal Facility in full regulatory compliance not only during normal Disposal Facility operating
731 period but also during the Disposal Facility closure and Post-Closure periods. CONTRACTOR
732 acknowledges that it is solely responsible for: (i) the appropriate closure and Post-Closure
733 activities of the Disposal Facility; and, (ii) the establishment and funding of any reserve funds
734 required by applicable law for the purposes of providing funds for the payment of costs of
735 closure of the Disposal Facility (or any Landfill cell within the Disposal Facility) or Post-Closure
736 activities relating to the Disposal Facility. Without limitation, in no event shall CITY or Collection
737 Contractor(s) be responsible for paying any deficiencies in such required reserves. In addition,
738 CITY or Collection Contractors(s) shall have no responsibility to make any payments in the
739 event that actual closure and Post-Closure costs relating to the Disposal Facility exceed the
740 amounts upon which CONTRACTOR'S Disposal Tipping Fee was based on and the amount
741 reserved by CONTRACTOR for such purposes.

742 5.18 Right to Enter Disposal Facility and Observe Operations. Upon reasonable
743 written notice of not less than twenty-four (24) hours, CITY and its designated representative(s)
744 shall have the right to enter, observe and inspect the Disposal Facility at any time during
745 operations; conduct studies or surveys of the Disposal Facility; meet with the Disposal Facility
746 manager(s) or their representatives at any time; and meet with other employees upon request,
747 which request shall not be unreasonably denied by CONTRACTOR, provided that CITY and its
748 representatives comply with CONTRACTOR'S reasonable safety and security rules and shall
749 not interfere with the work of CONTRACTOR or its subcontractors. Upon CITY request,
750 CONTRACTOR shall make personnel available to accompany CITY employees on inspections.
751 CONTRACTOR shall ensure that its employees cooperate with CITY and respond to CITY'S
752 reasonable inquiries.

753 5.19 Provision of Emergency Services. CONTRACTOR shall provide emergency
754 services, at CITY'S request, in the event of major accidents, disruptions, or natural calamities.

755 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours
756 of notification by CITY, or as soon thereafter as is reasonably practical, in light of the
757 circumstances. Emergency services that exceed CONTRACTOR'S obligations under this
758 Contract including, but not limited to, obligations related to facility receiving hours, the types and
759 quantities of permitted materials accepted at the Disposal Facility, and the nature of resource
760 recovery activities, shall be compensated through a modification to the scope of services using
761 procedures set forth on Section 5.20.

762 5.19.1 Specifically, with reference to any legal action contesting charges for
763 services under this Contract or the MM&O Collection Contract, should a court of competent
764 jurisdiction or other regulatory agency set aside, invalidate or stay all or a portion of the
765 Maximum Services Rate or Disposal Tipping Fees established by City, Contractor agrees to
766 continue to provide Disposal Services as otherwise set forth herein. City may take such
767 urgency actions as necessary to facilitate Contractor's continuation of Disposal Services,
768 potentially including interim suspension of portions of MM&O or Disposal Services. Under such
769 circumstances, City and Contractor agree to cooperate and mutually act in good faith and, if
770 needed, immediately meet and confer to address the impact of these legal actions. Such legal
771 actions shall not be considered a change in law or force majeure event excusing Contractor's
772 performance.

773 If as a result of a legal action the Contractor is unable to include Franchise Fees
774 or other Governmental Fees in the rates it charges for Disposal Services, then Contractor
775 agrees, upon direction from the City, to reduce its charges to MM&O Contractor in an amount
776 corresponding to the disallowed fee or charge, and shall thereafter not be required to remit the
777 amount of the disallowed fee or charge to the City or other governmental entity provided it is not
778 collected from MM&O Contractor.³

779 5.20 Modifications to Scope of Service.

780 5.20.1 General. CITY may direct CONTRACTOR to perform additional
781 services (including, but not limited to, performance of resource recovery activities) or modify the
782 manner in which CONTRACTOR performs existing services (including, but not limited to, the
783 modifications to or elimination of services). CONTRACTOR'S Disposal Tipping Fee shall be
784 increased or decreased, as appropriate, to give effect to these adjustments.

785 5.20.2 Proposal for Modification of Services. Within sixty (60) calendar days
786 of CITY request for a proposal, CONTRACTOR shall present its proposal to modify existing
787 services. At a minimum, the proposal shall contain a complete description of the following:

788 5.20.2.1 Program objectives and goals to be used in measuring the
789 success of the program as discussed in Section 5.20.5 below;

790 5.20.2.2 Methodology to be employed (changes to equipment, staffing,
791 etc.);

792 5.20.2.3 Equipment to be utilized (equipment number, types, capacity,
793 age, etc.);

794 5.20.2.4 Labor requirements (changes in number of employees by
795 classification);

796 5.20.2.5 Provision for program publicity, education, and marketing (if
797 appropriate);

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798 5.20.2.6 Estimate of the impact of the service modification (increased
799 Diversion Tonnage, reduced costs, increased public service, etc.); and

800 5.20.2.7 Five (5) year projection of the financial results of the program's
801 operations in an operating statement format including documentation of the key assumptions
802 underlying the projections and the support for those assumptions, giving full effect to the
803 savings or costs to existing services.

804 5.20.3 CITY'S Review. Within ninety (90) calendar days of receiving
805 CONTRACTOR'S proposal, CITY shall review and comment on, and approve or disapprove of
806 the modification to the scope of services. CITY and CONTRACTOR may mutually agree to
807 extend the time period for review due to the complexity of the scope of service modification
808 under consideration, the time needed for the review or approval, or for other reasonable
809 reasons.

810 5.20.3.1 CITY may request the assistance of an independent third party
811 to review the proposal. The reasonable costs of such review shall be paid by CONTRACTOR if
812 the modification to the scope of services is initiated by CONTRACTOR or, by CITY if the
813 modification to the scope of services is initiated by CITY. CONTRACTOR'S refusal to pay the
814 reasonable cost of review of a CONTRACTOR-initiated proposal shall be grounds for CITY
815 rejection of such proposal.

816 5.20.3.2 CITY may request copies of, or access to, CONTRACTOR'S
817 operating and business records reasonably required to verify the reasonableness and accuracy
818 of the impacts associated with a modification to the scope of services. CONTRACTOR shall
819 fully cooperate with CITY'S request and provide CITY and its agent(s) copies of or access to
820 CONTRACTOR'S records.

821 5.20.4 Approval of Modification to Scope of Services. Upon CITY approval
822 or determination, CITY will issue a notice approving the modification to the scope of service and
823 documenting any change to CONTRACTOR'S Disposal Tipping Fees, and approved change to
824 CONTRACTOR'S obligations hereunder. The parties shall prepare a written amendment to the
825 Contract documenting any and all changes resulting from the modification to the scope of
826 services. No adjustment in CONTRACTOR'S Disposal Tipping Fees, change in
827 CONTRACTOR'S obligations, or change in scope of services shall become effective absent
828 such written approval or determination from CITY.

829 5.20.5 Termination for Cause. CITY shall have the right to terminate a
830 program for cause, at no cost to CITY or CITY'S ratepayers if CONTRACTOR is not achieving
831 the program's agreed to and defined goals and objectives as approved by CITY in accordance
832 with Section 5.20.3. Prior to such termination CITY shall meet and confer with CONTRACTOR
833 for a period of up to ninety (90) calendar days to resolve CITY'S concerns. Thereafter, CITY
834 may terminate the program if CITY reasonably believes CONTRACTOR cannot meet or is not
835 meeting the agreed to and defined project goals and objectives. Notwithstanding these
836 changes, CONTRACTOR shall continue the program during the ninety (90) day period unless
837 instructed in writing by CITY to discontinue the program.

838 5.20.6 Termination without Cause. CITY shall also have the right to
839 terminate a program without cause. Prior to such termination, and as a condition of the
840 termination, CITY shall reimburse CONTRACTOR for all costs incurred for implementation and
841 performance of the program that were identified in the program proposal prepared and
842 submitted by CONTRACTOR and agreed to by CITY which will have not been funded or
843 otherwise recovered through program compensation at the time the program is terminated.

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888 and County ordinances concerning public health, safety and environmental issues and all laws,
889 regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any
890 governmental agency having jurisdiction over the disposition of Mixed Materials, Garbage or
891 Residue that are in force on the effective date of this Contract, including any current provisions
892 that become effective on or which require compliance by a date after the effective date of this
893 Contract. The Disposal Tipping Fee comprises two (2) elements: 1) a Disposal Fee Element,
894 and 2) a Government Fee Element.

895 6.01.1 Annual Adjustments to the Disposal Fee Element. Except as provided
896 in this Article 6, the Disposal Fee Element shall not be adjusted over the term of this Contract.

897 6.01.1.1 Annual Disposal Fee Element Adjustment Through July 1,
898 2024. Beginning on July 1, 2016 and annually thereafter through July 1, 2024, the Disposal Fee
899 Element of the Disposal Tipping Fee shall be adjusted by the (methodology to be inserted) as
900 set forth in Exhibit 2 except that the Disposal Fee Element adjustment shall never increase or
901 decrease by more than five (5) percent in any year regardless of the calculated adjustment. If
902 the five (5) percent limit is applied to adjustments in the Disposal Fee Element of the Disposal
903 Tipping Fee in any year, the difference between five (5) percent and the percentage by which
904 Disposal Fee Element of the Disposal Tipping Fee would have been increased or decreased in
905 the absence of the five (5) percent limit will not be considered in any future year.

906 6.01.1.2 Disposal Fee Element Adjustment for July 1, 2025. Prior to
907 March 1, 2025 CITY shall conduct a survey of posted Disposal Tipping Fees at all disposal
908 facilities within a fifty (50) mile radius of CONTRACTOR'S Disposal Facility. In addition,
909 CONTRACTOR shall provide CITY with on-site access to documentation of tipping fees
910 charged to its twenty (20) largest current customers. The July 1, 2025 Disposal Fee Element
911 shall be set at an amount that is based on the average of the three (3) lowest tipping fees found
912 in the tipping fee survey and the two (2) lowest tipping fees charged by CONTRACTOR to its
913 twenty (20) largest customers as of January 1, 2025, adjusted to compensate for potential
914 differences in required governmental and regulatory fees (Governmental Fee Elements).
915 However, such adjustment to the Disposal Fee Element, whether positive or negative, shall be
916 limited to no more than fifteen (15) percent of CONTRACTOR'S July 1, 2024 Disposal Fee
917 Element regardless of the calculated adjustment.

918 6.01.1.3 Disposal Fee Element Adjustment From July 1, 2026 Through
919 July 1, 2034. Beginning on July 1, 2026 and annually thereafter through July 1, 2034, the
920 Disposal Fee Element of the Disposal Tipping Fee shall be adjusted by the (methodology to be
921 inserted) as set forth in Exhibit 2 except that the adjustment shall never increase or decrease by
922 more than five (5) percent in any year regardless of the calculated adjustment. If the five (5)
923 percent limit is applied to adjustments in the Disposal Fee Element of the Disposal Tipping Fee
924 in any year, the difference between five (5) percent and the percentage by which Disposal Fee
925 Element of the Disposal Tipping Fee would have been increased or decreased in the absence
926 of the five (5) percent limit will not be considered in any future year.

927 6.01.1.4 Disposal Fee Element Adjustment for July 1, 2035. In the
928 event CITY elects to extend this Contract as set forth in Sections 3.01.1 and 3.01.2, CITY may
929 at its sole discretion negotiate an alternative methodology to adjust the Disposal Fee Element
930 over the term of the extension(s). In the event City elects not to negotiate an alternative
931 methodology for adjusting the Disposal Fee Element or CITY and CONTRACTOR cannot agree
932 on an alternative methodology within thirty (30) calendar days of beginning negotiations, the
933 Disposal Fee Element for July 1, 2035 shall be adjusted as follows. Prior to March 1, 2035
934 CITY shall conduct a survey of posted Disposal tipping fees at all disposal facilities within a fifty

935 (50) mile radius of CONTRACTOR'S Disposal Facility. In addition, CONTRACTOR shall
936 provide CITY with on-site access to documentation of tipping fees charged to its twenty (20)
937 largest current customers. The July 1, 2035 Disposal Fee Element shall be set at an amount
938 that is based on the average of the three (3) lowest tipping fees found in the tipping fee survey
939 and the two (2) lowest tipping fees charged by CONTRACTOR to its twenty (20) largest
940 customers as of January 1, 2035, adjusted to compensate for potential differences in required
941 governmental and regulatory fees (Governmental Fee Elements). However, such adjustment to
942 the Disposal Fee Element whether positive or negative shall be limited to no more than fifteen
943 (15) percent of CONTRACTOR'S July 1, 2034 Disposal Fee Element regardless of the
944 calculated adjustment.

945 6.01.1.5 Disposal Fee Element Adjustment From July 1, 2036 Through
946 the End of the Extended Contract Term. Except as set forth below, beginning on July 1, 2036
947 and annually thereafter through the end of the extended Contract term the Disposal Fee
948 Element of the Disposal Tipping Fee shall be adjusted by the (methodology to be inserted) as
949 set forth in Exhibit 2 except that the adjustment shall never increase or decrease by more than
950 five (5) percent in any year regardless of the calculated adjustment. If the five (5) percent limit is
951 applied to adjustments in the Disposal Fee Element of the Disposal Tipping Fee in any year, the
952 difference between five (5) percent and the percentage by which Disposal Fee Element of the
953 Disposal Tipping Fee would have been increased or decreased in the absence of the five (5)
954 percent limit will not be considered in any future year. In the event CITY and CONTRACTOR
955 negotiate an alternative methodology to adjust the Disposal Element beginning July 1, 2036 in
956 accordance with Section 6.01.1.4 above, that methodology shall be utilized to adjust the
957 Disposal Fee Element from July 1, 2036 through the end of the Contact term.

958 6.02 Government Fees. The Disposal Tipping Fee includes the Government Fee
959 Elements set forth in Exhibit 1.

960 6.02.1 Changes in Government Fee Elements. Government Fee Elements
961 shall be adjusted each July 1st as needed, so that they equal the then current government fees
962 required to be paid by CONTRACTOR. In the event of a new government fee, or a change in
963 an existing government fee, which becomes effective at some time other than July 1 of any
964 year, CONTRACTOR shall be compensated for such change through the inclusion of a
965 "Retroactive Element" in the next rate adjustment. CITY and CONTRACTOR agree that the
966 "Retroactive Element" shall be an amount needed to compensate CONTRACTOR for increases
967 in fees paid during the period from the inception of the fee increase through the subsequent
968 June 30th and shall not include interest, overhead, or any other costs of any type. The
969 "Retroactive Element" shall only be included in the rate structure for twelve (12) months or that
970 period necessary to allow CONTRACTOR to recover all retroactive amounts, if less than twelve
971 (12) months, and shall be removed prior to calculating the rates to be set as of the subsequent
972 July 1st.⁴ However, no governmental fees or charges to which CONTRACTOR agrees
973 contractually or negotiates shall be passed through to customers unless agreed to in writing by
974 CITY.

975 6.02.2 Payment of Governmental Fees. CONTRACTOR shall pay, when
976 and as due, any and all governmental fees to the appropriate federal, State, regional, or local
977 governmental entities that levied the fees, and shall provide CITY with proof of such payments
978 promptly upon request.

979 6.03 Annual Adjustment. The annual Disposal Tipping Fee adjustment shall comprise
980 the changes in the Disposal Fee Element, subject to the limitations set forth above, and the

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981 changes in the Governmental Fee Elements. (Note: once the actual methodology is known the
982 Contract will be amended to provide specific language and an example)

983 6.04 Changes in Disposal Fee Element Due To Changes in Law.

984 6.04.1 The Disposal Fee Element in Exhibit 1 includes all costs associated
985 with complying with all existing laws, governmental regulations and permits applicable to the
986 Disposal Facility as of the date of this Contract and including requirements that may be imposed
987 on permits for which CONTRACTOR has applied for including amendments to permits, as of the
988 effective date of this Contract. The purposes of this Section 6.04 are (a) to specify the costs of
989 compliance with laws and governmental regulations that is included in the Disposal Fee
990 Element, as well as other similar costs, whose increase may not result in an increase in the
991 Disposal Fee Element, (b) to identify those laws and governmental regulations that may be
992 enacted in the future, a proportionate share of the cost of which may be the basis for an
993 increase in the Disposal Fee Element, and (c) to specify the method by which CITY'S
994 proportionate share of such costs will be determined.

995 6.04.2 The Disposal Fee Element will not be increased as a result of any of
996 the following:

997 6.04.2.1 Costs to comply with all laws and governmental regulations
998 existing as of the Effective Date, if any, which become effective, or which require compliance by
999 a date, after the Effective Date of this Contract, including but not limited to, all closure and Post-
1000 Closure cost regulations.

1001 6.04.2.2 Costs due to CONTRACTOR'S negligence, active or passive,
1002 or intentional misconduct, or fines or penalties for violations of law.

1003 6.04.2.3 Costs for which CONTRACTOR is already responsible under
1004 other provisions of this Contract.

1005 6.04.2.4 Costs attributable to the classification of the Disposal Facility
1006 that are only necessary in order to allow CONTRACTOR to accept material other than Garbage
1007 or Residue at the Disposal Facility.

1008 6.04.2.5 Costs attributable to permits and amendments to permits, (i)
1009 which have been issued to CONTRACTOR, or (ii) for which CONTRACTOR has applied for by
1010 the effective date of this Contract (attached as Exhibit 7 - to be added if appropriate).

1011 6.04.3 The Disposal Fee Element may be increased to reflect CITY'S
1012 proportionate share, determined as provided in Section 6.04.4, of the net increase in the
1013 Disposal Fee Element attributable to the following, to the extent mandated by Changes in Laws:
1014 (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of
1015 performing closure/Post-Closure monitoring at the Disposal Facility, and/or (3) costs caused
1016 directly by, or directly necessary for operations at the Disposal Facility, including costs of site-
1017 specific record keeping and reporting, if such costs (in items (1), (2), and/or (3)) are necessary
1018 to comply with changes to the existing laws and governmental regulations enacted or
1019 promulgated after the effective date of this Contract, and not otherwise excluded by virtue of
1020 Section 6.04.2.1, with new laws and governmental regulations enacted or promulgated after the
1021 effective date of this Contract and not otherwise excluded by virtue of Section 6.04.2, with new
1022 permits and changes to the terms and conditions contained in existing permits (except as
1023 provided in Section 6.04.2) applicable to the Disposal Facility.

1024 6.04.3.1 This Article is not intended to allow the Disposal Fee Element
1025 to be increased to cover increased overhead and general or administrative expenses unless
1026 they can be specifically identified and related to disposal of Mixed Materials, Garbage or
1027 Residue Collected in CITY, e.g., a laboratory technician added at the regional level, and which
1028 are attributable to Changes in Law.

1029 6.04.4 Proportionate Share of Disposal Facility Costs. To the extent that the
1030 net increase in costs of complying with Changes in Law are attributable to material already in
1031 place at the Disposal Facility at the time such Change in Law occurs, then CITY'S proportionate
1032 share of the present value of such increases in costs shall be determined by multiplying such
1033 increase in costs by a fraction, the numerator of which is the amount of material as of the time of
1034 increase is computed that is deposited at the Disposal Facility which was delivered ~~from CITY~~
1035 under this Contract⁵ and the denominator of which is the total amount of material then deposited
1036 at the Disposal Facility from all sources. CONTRACTOR represents that these amounts as of
1037 January 1, 2015 are approximately (to be inserted based on Contract award) Tons and (to be
1038 inserted based on contract award) Tons, respectively. The costs of compliance with Changes in
1039 Law described in this section shall be calculated on a "per Ton" basis, amortized over the useful
1040 life of the facilities constructed, and the annual amortization incorporated in the Disposal Tipping
1041 Fee over the remaining term of this Contract. The annual increase in the Disposal Fee Element
1042 attributable to the amortization of such costs shall be determined by dividing CITY'S aggregate
1043 proportionate share of such costs by (i) the remaining term of this Contract and (ii) the average
1044 number of Tons of Mixed Materials and Garbage collected from within CITY'S boundaries
1045 during the preceding year. The annual amortization described in the prior sentence shall be
1046 added to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for
1047 said year as set forth in Section 6.01.1, adjustments to reflect changes in the Governmental
1048 Fees Element as described below, and adjustments to the Disposal Fee Element described in
1049 the following section.

1050 6.04.4.1 To the extent that the costs of complying with Changes in Law
1051 are attributable to material not yet in place at the Disposal Facility at the time such Change in
1052 Law occurs, then CITY'S proportionate share of such costs shall be determined by multiplying
1053 the present value of such costs by a fraction, the numerator of which is the average number of
1054 Tons of material from CITY Disposed of at the Disposal Facility during the preceding three (3)
1055 years multiplied by the number of years remaining in the term of this Contract and the
1056 denominator of which is the total remaining permitted air space available for Disposal at the
1057 Disposal Facility as of the date of the change. As of the effective date of this Contract, the
1058 remaining air space is approximately (to be completed based on Contract Award) Tons. The
1059 costs of compliance with Changes in Law shall be calculated on a "per Ton" basis and
1060 amortized over the remaining life of the Disposal Facility and the annual amortization
1061 incorporated in the Disposal Fee Element over the remaining term of this Contract by adding
1062 CITY'S proportionate share of such increases to the Disposal Fee Element. The annual
1063 amortization described in the prior sentence shall be added to the Disposal Fee Element after
1064 said Disposal Fee Element is otherwise adjusted for said year as set forth in Section 6.01.1, and
1065 to reflect changes in the Governmental Fees Element as described in the preceding paragraph
1066 above. In all cases in which CONTRACTOR requests an increase in the Disposal Fee Element
1067 above that provided for in Section 6.01.1 based on the costs of compliance with a Change in
1068 Law, CONTRACTOR shall provide CITY, on an annual basis, evidence showing (1) that the
1069 work required by the Change in Law has been performed, (2) the amount of costs actually
1070 incurred, and (3) that the costs incurred were necessary to comply with the Change in Law.

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1071 6.04.5 Procedures for Sharing in Cost of Changes in Laws. If
1072 CONTRACTOR believes that complying with Changes in Law will increase the costs of
1073 operating the Disposal Facility, and that it is entitled, under this Article to an increase in the
1074 Disposal Fee Element to reflect the costs of compliance, then it must follow the procedures in
1075 this Article before the Disposal Fee Element will be increased.

1076 6.04.5.1 CONTRACTOR shall give CITY prompt notice (in no case less
1077 than ninety (90) days before their effective date, if possible) of the regulations, specifically
1078 identifying them and describing what changes in operations at the Disposal Facility are required,
1079 when compliance is required, and whether CONTRACTOR or the Disposal Facility is eligible for
1080 any exemptions or variances.

1081 6.04.5.2 CONTRACTOR shall thereafter submit to CITY for review and
1082 comment, its proposed method for complying with the regulations, the estimated cost of
1083 compliance, CITY'S proportionate share thereof, and the associated increase necessary in the
1084 Disposal Fee Element. CITY will act promptly on the submission.

1085 6.04.5.3 CONTRACTOR shall thereafter submit its proposed method of
1086 compliance to the appropriate regulatory agency. If the regulatory agency approves that method
1087 without conditions, the proportionate share of the costs necessary to implement that method of
1088 compliance will be the amount by which the Disposal Fee Element may be increased.

1089 6.04.6 No fees or charges to which CONTRACTOR agrees contractually or
1090 negotiates shall be passed through to customers unless agreed to in writing by CITY.

1091 6.05 Payment of Taxes. CONTRACTOR shall pay, when and as due, any and all
1092 governmental assessments, or taxes incurred as a result of CONTRACTOR'S provision of
1093 services under this Contract, including estimated taxes, and shall provide CITY with proof of
1094 such payments promptly upon request.

1095 6.06 Disposal Facility Closure/Post Closure Funding. CITY and CONTRACTOR
1096 agree that CITY shall not be liable for any Disposal Facility closure/Post-Closure costs for waste
1097 Disposal prior to July 1, 2015.

1098 6.06.1 CONTRACTOR acknowledges and agrees that from July 1, 2015
1099 going forward, the Disposal Tipping Fee adequately funds CITY'S liability for Disposal Facility
1100 closure/Post -Closure costs.

1101 6.07 CONTRACTOR'S Payments to CITY. CONTRACTOR shall make payment to
1102 CITY of a Franchise Fee, and such other fees as may be specified in Section 6.07.

1103 6.07.1 Franchise Fee. The Franchise Fee for the fiscal year July 1, 2015
1104 through June 30, 2016 shall be Three Hundred Sixty Thousand Dollars (\$360,000). The
1105 Franchise Fee for the next fiscal year and each subsequent fiscal year shall be adjusted
1106 annually by the same percentage as the percentage used to adjust the Disposal Fee Element
1107 for that fiscal year as set forth in Section 6.01.1. The Franchise Fee for each fiscal year shall be
1108 divided into 12 equal payments, and paid monthly no later than the 15th of each month for that
1109 month. The Franchise Fee payments will begin no later than July 15th, 2015 and will continue
1110 each month throughout the term of the Contract.

1111 6.07.2 Proposal Development Fee. No later than thirty (30) calendar days
1112 after the execution of this Contract by CITY and CONTRACTOR, CONTRACTOR shall submit a
1113 one-time proposal development fee to CITY in the amount of Two Hundred Fifty Thousand
1114 Dollars (\$250,000).

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ARTICLE 7. INDEMNITY AND INSURANCE,

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7.01 CONTRACTOR'S Duty to Indemnify CITY. CONTRACTOR shall and does indemnify and hold harmless CITY, its agents (for purposes of this Article, including attorneys and consultants), officers, employees, volunteers, successors, assigns, and appointed and elected officials (collectively "Indemnitees") from and against any and all losses, liabilities, claims, suits, allegations, actions, damages, interest, penalties, fines, forfeitures, demands and/or causes of action (collectively "claims") arising from or in connection with CONTRACTOR'S performance hereunder, including but not limited to closure/Post-Closure costs associated with a Change in Law related to Tonnage received prior to the Change in Law, except to the extent such claims arise out of the negligence or willful misconduct of CITY, in which case CONTRACTOR'S indemnification shall be reduced in proportion to CITY'S degree of comparative fault. CONTRACTOR shall indemnify and hold harmless the Indemnitees from and against all costs of investigation, litigation, negotiation or alternative dispute resolution; counsel fees; expenses incurred in obtaining expert testimony and the attendance of witnesses; and all other expenses and liabilities incurred in connection with the defense of any action or proceedings brought thereon, and from and against any orders, judgments, or decrees which may be entered therein. CITY shall provide CONTRACTOR with prompt notice of any claims, and CONTRACTOR shall assume the defense of any claim, with counsel reasonably acceptable to the Indemnitees, and CONTRACTOR shall have authority to settle any claim, with CITY'S consent which may not be unreasonably withheld and provided such settlement fully releases and extinguishes Indemnitees' alleged liability under the claim. Where a conflict of interest exists between the Indemnitees and CONTRACTOR with respect to a claim, CONTRACTOR shall provide the Indemnitees with independent legal counsel of the Indemnitees' choice, at CONTRACTOR'S expense. Without limiting the generality of the foregoing, CONTRACTOR'S indemnification shall include: personal injury, death or damage to property (including contamination); product liability, violation of federal, State, or local law; or any other claim whatsoever connected with the activities of CONTRACTOR, its subcontractors, agents, and/or employees under this Contract or on account of the performance of character of the work performed hereunder, including unforeseen difficulties, accidents, occurrence, or omissions, including but not limited to, any failure to exclude Hazardous Waste from Collection or Processing; any claim that CONTRACTOR, or its agents, subcontractors, directors, officers, employees or representatives, has breached an express or implied warranty of merchantability or fitness for particular use or any other warranty relating to any materials marketed pursuant to this Contract; or any claim that any of them has violated any license, copyright, or other limitation on CONTRACTOR'S use of computer software in connection with CONTRACTOR'S performance of services under this Contract. Notwithstanding the foregoing, CONTRACTOR shall not be required to indemnify the Indemnitees for: (i) claims resulting entirely from the acts or omissions of independent (not affiliated with Contractor) third party owners or operators of facilities approved by CITY under this Contract, where such third party acts or omissions are beyond CONTRACTOR'S control; (ii) third party claims based solely on CONTRACTOR'S delivery of the de minimis amounts of materials excluded from the definition of Hazardous Waste under this Contract to a facility approved by CITY under this Contract, and (iii) any claim that CITY set or approved Disposal Tipping Fees in violation of applicable law. Approval of insurance coverage or acceptance of work or services by CITY under this Contract does not relieve CONTRACTOR or its agents, subcontractors, directors, officers, employees, or representatives of liability under this Article.

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7.02 Hazardous Material Indemnification. CONTRACTOR shall indemnify, defend with counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and

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1163 expense, CITY, its City Council, officers, officials, employees, volunteers and agents, and the
1164 Collection Contractor(s) (collectively, "Indemnitees") from and against any and all claims,
1165 damages, injuries, costs (including and without limit any and all response, remediation and
1166 removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or
1167 administrative proceedings, interest, fines, charges, penalties, and expenses (including
1168 reasonable attorneys' and expert witness fees, expenditures for investigation and remediation)
1169 and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered by or asserted
1170 against any of the Indemnitees by reason of, or arising from, the presence, Disposal, escape,
1171 migration, leakage spillage, discharge, emission, release, handling or transportation of
1172 Hazardous Materials in, on, at, or under the Disposal Facility (collectively, "environmental
1173 events"), any personal injury, death, or property damage, arising out of or related to any of the
1174 environmental events; any lawsuit brought or threatened, settlement reached, or government
1175 hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Materials or any
1176 of the environmental events.

1177 7.02.1 Such indemnification shall apply to all events arising from or
1178 attributable to the acts or omissions of CONTRACTOR, its officers, directors, employees,
1179 whether or not negligent or otherwise culpable, in connection with or related to
1180 CONTRACTOR'S performance of this Contract, including without limit damages arising from or
1181 attributable to any operations, repair, clean-up or detoxification, or preparation and
1182 implementation of any removal, remedial, response, closure, Post-Closure or other plan
1183 (regardless of whether undertaken due to governmental action) concerning any Hazardous
1184 Materials at the Disposal Facility. For the avoidance of doubt, the foregoing indemnity is
1185 intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental
1186 Response, Compensation and Liability Act, CERCLA, 42 U.S.C. §9607(e) and California Health
1187 and Safety Code §25364, to defend, protect, hold harmless, and indemnify CITY from liability
1188 thereunder.

1189 7.02.2 This provision is in addition to all other provisions in this Contract
1190 and is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall
1191 extend to the indemnification obligation hereunder.

1192 7.03 Environmental Indemnification. CONTRACTOR shall indemnify, defend with
1193 counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,
1194 CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection
1195 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,
1196 costs (including and without limit any and all response, remediation and removal costs), losses,
1197 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,
1198 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert
1199 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,
1200 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any
1201 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,
1202 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR'S alleged
1203 failure or actual failure to comply with the environmental laws and regulations. This
1204 indemnification will not extend to environmental claims to the extent they are caused by the sole
1205 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,
1206 employees or agents, or the Collection Contractor(s).

1207 7.03.1 This provision is in addition to all other provisions in this Contract and
1208 is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall
1209 extend to the indemnification obligation hereunder.

1210 7.04 Insurance. CONTRACTOR shall secure and maintain throughout the course of
1211 the Contract, insurance against claims for injuries to persons or damages to property which may
1212 arise from or in connection with the performance of the work hereunder by CONTRACTOR, its
1213 agents, representatives, employees or subcontractors.

1214 7.04.1 Commercial General Liability Insurance. CONTRACTOR, at its own
1215 expense, shall maintain liability and property damage insurance for the period covered by this
1216 Contract in the amount of Five Million Dollars (\$5,000,000) per occurrence. If such CGL
1217 insurance contains an aggregate limit, either the general aggregate limit shall apply separately
1218 to this project/location or the general aggregate limit shall be twice the required occurrence limit.
1219 The scope of such coverage shall be at least as broad as Insurance Services Office
1220 Commercial General Liability Coverage (occurrence form CG0001). CITY and CONTRACTOR
1221 shall review coverage within sixty (60) days of the end of calendar year 2020. Such coverage
1222 shall include, but not be limited to, protection against claims arising from: bodily and personal
1223 injury, including death resulting therefrom; damage to property resulting from activities
1224 contemplated under this Contract; product liability; and claims relating to completed operations.
1225 Any failure to comply with reporting or other provisions of the policies including breaches of
1226 warranties, shall not affect coverage provided to the additional insured parties. The policy shall
1227 stipulate that this insurance is primary insurance and that no other insurance carried by CITY
1228 will be called upon to contribute to a loss suffered by CONTRACTOR hereunder, except where
1229 indemnity from CITY applies. The policy shall stipulate that this insurance shall apply separately
1230 to each of the insured parties against whom a claim is made, except with respect to the limits of
1231 the insurer's liability. Such insurance shall be with insurers and under forms of policies
1232 reasonably satisfactory in all respects to CITY and shall provide that written notice must be
1233 given to CITY thirty (30) days prior to policy cancellation by certified mail, return receipt
1234 requested. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge of or any
1235 material change in coverage that impacts this Contract.

1236 7.04.2 Motor Vehicle Liability Insurance. CONTRACTOR, at its own
1237 expense, shall maintain motor vehicle liability insurance for the period covered by this Contract
1238 in the amount of Five Million Dollars (\$5,000,000) per occurrence combined single limit
1239 coverage for personal and bodily injury and property damage. The scope of such coverage shall
1240 be at least as broad as Insurance Services Office form number CA 0001 Covering Automobile
1241 Liability, Code (any auto). CITY and CONTRACTOR shall review coverage within sixty (60)
1242 days of the end of calendar year 2020. CITY may require reasonable changes in the amount of
1243 the insurance coverage set forth herein based on documented changes in industry standards
1244 during the five (5) year period ended June 30, 2020. Such insurance shall be with insurers and
1245 under forms of policies reasonably satisfactory in all respects to CITY and shall provide that
1246 written notice must be given to CITY thirty (30) days prior to policy cancellation by certified mail,
1247 return receipt requested. CONTRACTOR shall notify CITY within thirty (30) days of its
1248 knowledge or any material change in coverage that impacts this Contract.

1249 7.04.3 Worker Compensation Insurance. CONTRACTOR, at its own
1250 expense, shall carry and maintain full Worker Compensation Insurance, as required by the
1251 California Labor Code and Employer's Liability insurance with limits not less than Five Million
1252 Dollars (\$5,000,000) for each employee per accident or disease. The scope of such coverage
1253 shall be at least as broad as the Worker's Compensation insurance required by the State of
1254 California and Employer's Liability insurance. Such insurance shall be with insurers and under
1255 forms of policies reasonably satisfactory in all respects to CITY, unless CONTRACTOR is self-
1256 insured and complies with the requirements of Section 7.04.5. Such policies shall provide that

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1257 written notice must be given to CITY thirty (30) days prior to cancellation by certified mail, return
1258 receipt requested. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge or
1259 any material change in coverage that impacts this Contract. The Workers Compensation policy
1260 shall be endorsed with a waiver of subrogation in favor of CITY for all work performed by
1261 CONTRACTOR, its employees, agents, and subcontractors.

1262 7.04.4 Environmental Impairment and Pollution Liability. CONTRACTOR, at
1263 its own expense, shall carry and maintain environmental impairment and pollution liability
1264 insurance for the term, including any extensions thereto, in the amount of Ten Million Dollars
1265 (\$10,000,000) per loss and in annual aggregate, covering liability arising from the release of
1266 waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if
1267 commercially available, without involvement of CITY, automatically broaden in its form of
1268 coverage to include legislative changes in the definition of waste materials and/or irritants,
1269 contaminants or pollutants. The policy shall stipulate this insurance is primary insurance and no
1270 other insurance carried by CITY will be called upon to contribute to a loss suffered by
1271 CONTRACTOR hereunder and waive subrogation against CITY and other additional insureds.

1272 7.04.5 Other Insurance Provisions. The liability policies are to contain, or be
1273 endorsed to contain, the following provisions:

1274 7.04.5.1 CITY may require reasonable changes in the amount of the
1275 insurance coverage set forth herein based on documented changes in industry standards during
1276 the five (5) year period ended June 30, 2020.

1277 7.04.5.2 CITY, its Councilmembers, directors, officers, agents,
1278 employees, and volunteers are to be covered as respects: liability arising out of activities
1279 performed by or on behalf of CONTRACTOR, products and completed operations of
1280 CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or vehicles owned,
1281 leased, hired, or borrowed by CONTRACTOR. The coverage shall contain no special limitations
1282 on the scope of protection afforded to CITY, its Councilmembers, directors, officers, agents,
1283 employee's agents (including attorneys and consultants) or volunteers.

1284 7.04.5.3 For any claims related to this Contract, CONTRACTOR'S
1285 insurance coverage shall be primary insurance as respects CITY, its Councilmembers,
1286 directors, officers, agents, employees, and volunteers. Any insurance or self-insurance
1287 maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of
1288 CONTRACTOR'S insurance and shall not contribute with it.

1289 7.04.5.4 Any failure to comply with reporting or other provisions of the
1290 policies including breaches of warranties shall not affect coverage provided to CITY, its
1291 Councilmembers, directors, officers, agents, employees, or volunteers.

1292 7.04.5.5 CONTRACTOR'S insurance shall apply separately to each
1293 insured against whom claim is made or suit is brought, except with respect to the limits of the
1294 insurer's liability. CONTRACTOR shall monitor its insurance contracts and coverage at all times
1295 to provide the minimum coverage specified by this Article.

1296 7.04.5.6 Each insurance policy required by this Article shall be
1297 occurrence based (except as provided in Section 7.04.5.11), shall be endorsed to state
1298 coverage, shall not be canceled by either party or changed materially except after thirty (30)
1299 days' prior written notice by certified mail, return receipt requested, has been given to CITY.

1300 7.04.5.7 CITY, its Councilmembers, directors, officers, agents,
1301 employees, and volunteers shall be named as additional insured on all policies. In the event of

1302 cancellation, or material change in coverage, thirty (30) days prior written notice thereof shall be
1303 given to CITY. Notice shall be sent by certified mail to the parties designated in Section 21.01.:

1304 7.04.5.8 CONTRACTOR shall furnish CITY with original certificates
1305 affecting coverage required by this clause. The certificates are to be signed by a Person
1306 authorized by that insurer to bind coverage on its behalf. All endorsements are to be received
1307 and approved by CITY before work commences. The insurance information required by this
1308 provision shall be provided to CITY by May 15, 2015.

1309 7.04.5.9 Insurance is to be placed with insurers with a current A.M.
1310 Best's rating of no less than A:VII or a rating which is acceptable to CITY.

1311 7.04.5.10 CONTRACTOR and insurer agree to waive all rights of
1312 subrogation against CITY for losses arising from work performed by CONTRACTOR for CITY.
1313 CONTRACTOR shall deliver the insurer's consent to such waiver within thirty (30) days of the
1314 Effective Date of this Contract.

1315 7.04.5.11 The Comprehensive General Liability Insurance and
1316 Automobile Liability insurance shall be written on an occurrence basis and kept in force during
1317 the entire term of this Contract; Environmental Impairment and Pollution Liability Insurance is
1318 written on a claims-made basis and shall be maintained through continuous renewals so as to
1319 provide the same levels of coverage after the expiration of this Contract as might be necessary
1320 to protect CITY from any and all liability during all applicable statutes of limitation which might
1321 apply to claims of third parties arising out of the activities of CONTRACTOR during the term of
1322 this Contract. The deductibles or self-insured retention with respect to any Environmental
1323 Impairment and Pollution Liability Insurance, including any renewals as set forth herein, shall
1324 not exceed Five Million Dollars (\$5,000,000). Hazardous Waste and Environmental Impairment
1325 Liability will include coverage for all operations of CONTRACTOR under this Contract. If
1326 coverage is on a claims made basis, the retroactive date must be shown, and must be before
1327 the date of the Contract or the beginning of the Contract work. Insurance must be maintained
1328 and evidence of insurance must be provided for at least five (5) years after completion of the
1329 Contract of work. If coverage is cancelled or non-renewed, and not replaced with another
1330 claims-made policy form with a retroactive date prior the contract effective date, CONTRACTOR
1331 must purchase "extended reporting" coverage for a minimum of five (5) years after completion of
1332 work.

1333 7.04.5.12 CONTRACTOR shall comply with all requirements of the
1334 insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any
1335 obligation under this Contract. If any claim exceeding the amount of any deductibles or self-
1336 insured reserves is made by any third Person against CONTRACTOR or any subcontractor on
1337 account of any occurrence related to this Contract, CONTRACTOR shall promptly report the
1338 facts in writing to the insurance carrier and to CITY.

1339 7.04.5.13 The limits of insurance are the minimum required limits and if
1340 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits
1341 maintained by CONTRACTOR.

1342 7.05 Subcontractors. CONTRACTOR shall include subcontractors as insureds under
1343 its policies or shall furnish separate certificates and endorsements for each subcontractor.
1344 Coverage for subcontractors shall be subject to all requirements stated herein.

1345 7.06 Non-renewal or Cancellation. Upon notification of receipt by CITY of a notice of
1346 cancellation, material change in coverage, or expiration of policy(ies), CONTRACTOR shall file

1347 with CITY a certified copy of a new or renewal policy(ies) and certificates for such policy(ies),
1348 satisfactory to CITY.

1349 7.07 Failure to Comply. If at any time during the term of the Contract, CONTRACTOR
1350 fails to comply with the provisions of Section 7.04 CITY may, in addition to any other remedy
1351 available to CITY, take out and maintain, at CONTRACTOR’S expense, such insurance as
1352 CITY may deem proper and charge the cost thereof to CONTRACTOR.

1353 7.08 Deductibles and Self-Insured Retentions. The level of deductibles and amounts
1354 of self-insured retention shall be subject to the approval by CITY and CITY may require
1355 additional financial assurances in the event that deductibles or self-insured retention exceed
1356 CITY’s approved levels. Except as set forth in Section 7.04.5.11 above, any deductibles or self-
1357 insured retentions shall be for the account of CONTRACTOR and shall be the sole responsibility
1358 of CONTRACTOR.

1359 **ARTICLE 8. PERFORMANCE SECURITY**

1360 8.01 Performance Bond. A performance bond must be furnished by CONTRACTOR
1361 within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has
1362 been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in
1363 a form with language that is acceptable to CITY, for the faithful performance of this Contract and
1364 all obligations arising hereunder in an amount of Five Million Dollars (\$5,000,000). The
1365 performance bond must be executed by a surety company that is acceptable to CITY; an
1366 admitted surety company licensed to do business in the State of California; has an "A:VII" or
1367 better rating by A. M. Best or Standard and Poors; and is included on the list of surety
1368 companies approved by the Treasurer of the United States

1369 8.02 Renewal. Beginning July 1, 2016, and each July 1st thereafter, CONTRACTOR
1370 shall have the performance bond renewed annually and be executed by a surety company that
1371 is acceptable to CITY; an admitted surety company licensed to do business in the State of
1372 California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included
1373 on the list of surety companies approved by the Treasurer of the United States.

1374 8.03 Letter of Credit. As an alternative to the performance bond required by Section
1375 8.01, at CITY’S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in
1376 an amount as set forth in Section 8.01 or such other amount as may be agreed to between
1377 CITY and CONTRACTOR. If allowed, the letter of credit must be issued by an FDIC insured
1378 banking institution chartered to business in the State of California, (consistent with the Uniform
1379 Customs and Practice for Documentary Credits, then current revision or similar uniform
1380 convention approved by CITY), in CITY’s name, and be callable at the discretion of CITY.
1381 Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of the
1382 performance bond.

1383 **ARTICLE 9. CORPORATE GUARANTY**

1384 9.01 In addition to the performance security required in Article 8, CONTRACTOR is
1385 required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR’S
1386 performance of this Contract, including CONTRACTOR’S indemnification obligations hereunder
1387 pursuant to a Guaranty in substantially the form attached as Exhibit 3. The Guaranty is being
1388 provided concurrently with CONTRACTOR’S execution of this Contract.

1389

ARTICLE 10. FORCE MAJEURE

1390 10.01 CONTRACTOR shall not be in default of its obligations under this Contract in the
1391 event, and for so long as, it is impossible or extremely impracticable for it to perform its
1392 obligations due to an "act of Force Majeure" which is not the fault of, and is beyond the
1393 reasonable control of, the party claiming excuse from performance. Any labor unrest, including
1394 but not limited to, strike, work stoppage or slowdown, lockout, sick-out, picketing, or other
1395 concerted job action conducted by CONTRACTOR, CONTRACTOR'S employees or
1396 subcontractor or directed at CONTRACTOR is not an excuse from performance under this
1397 provision and CONTRACTOR shall be obligated to continue to accept and Dispose of Mixed
1398 Materials, Garbage and Mixed Materials Residue, notwithstanding the occurrence of any or all
1399 of such events. To claim excuse under this Article CONTRACTOR must: (i) have taken
1400 reasonable precautions, if possible, to avoid being affected by the cause, including, in the case
1401 of impossibility of performance based on inability to obtain a governmental permit, compliance
1402 with the requirement of Section 5.02, and (ii) notify CITY in writing within five (5) Work Days
1403 after the occurrence of the event specifying the nature of the event, the expected length of time
1404 that CONTRACTOR expects to be prevented from performing, and the steps which
1405 CONTRACTOR intends to take to restore its ability to perform.

1406 10.02 The interruption or discontinuance of CONTRACTOR'S ability to accept and
1407 Dispose Mixed Materials, Garbage and Mixed Materials Residue caused by one or more of the
1408 events described in this Article shall not constitute a default by CONTRACTOR under this
1409 Contract. Notwithstanding the foregoing, however, if CONTRACTOR is excused from
1410 performing its obligations hereunder for any of the causes listed in this Article for a period of
1411 thirty (30) calendar days or more, upon expiration of the thirty (30) calendar days, CITY shall
1412 have the right, in its sole discretion, to terminate this Contract by giving ten (10) calendar days'
1413 notice, except that such termination may be effective two (2) Work Days after receiving notice
1414 by certified mail if such event(s) result in CONTRACTOR'S failure to accept and Dispose Mixed
1415 Materials, Garbage or Mixed Materials Residue.

1416

ARTICLE 11. DEFAULT OF CONTRACT

1417 11.01 Termination By CITY. CITY may cancel this Contract, except as otherwise
1418 provided below in this Article, by giving CONTRACTOR thirty (30) calendar days advance
1419 written notice, to be served as provided in Article 21, upon the happening of any one of the
1420 following events:

1421 11.01.1 CONTRACTOR shall take the benefit of any present or future
1422 insolvency statute, or shall make a general assignment for the benefit of creditors, or file a
1423 voluntary petition in bankruptcy court or a petition or answer seeking an arrangement for its
1424 reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or
1425 under any other law or statute of the United States or any state thereof, or consent to the
1426 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

1427 11.01.2 By order or decree of a court, CONTRACTOR shall be adjudged
1428 bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of
1429 the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its
1430 indebtedness under the federal bankruptcy laws or under any law or statute of the United States
1431 or of any state thereof, provided that if any such judgment or order is stayed or vacated within
1432 sixty (60) calendar days after the entry thereof, any notice of default shall be and become null,

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1433 void and of no effect; unless such stayed judgment or order is reinstated in which case, said
1434 default shall be deemed immediate; or

1435 11.01.2.1 By, or pursuant to, or under the authority of any legislative act,
1436 resolution or rule or any order or decree of any court or governmental board, agency or officer
1437 having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or
1438 substantially all of the property of CONTRACTOR, and such possession or control shall
1439 continue in effect for a period of sixty (60) calendar days; or

1440 11.01.3 CONTRACTOR has defaulted, by failing or refusing to pay in a timely
1441 manner the franchise fees, liquidated damages or other monies due CITY and said default is not
1442 cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

1443 11.01.4 CONTRACTOR has defaulted by allowing any final judgment for the
1444 payment of money related to performance under this Contract to stand against it unsatisfied and
1445 said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do
1446 so; or

1447 11.01.5 In the event that the monies due CITY under Section 11.01.3 above or
1448 an unsatisfied final judgment under Section 11.01.4 above is the subject of a judicial
1449 proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds
1450 shall be in the form acceptable to the CITY Attorney; or

1451 11.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or
1452 observe the terms, conditions or covenants in this Contract or any of the rules and regulations
1453 promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the
1454 instructions of the Contract Manager relative thereto and said default is not cured within thirty
1455 (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of
1456 such default, the same cannot be remedied within thirty (30) calendar days following receipt by
1457 CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the
1458 remedy of such default within said thirty (30) calendar days following such written notice or
1459 having so commenced shall fail thereafter to continue with diligence the curing thereof with
1460 CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured
1461 within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default,
1462 and such default will be cured within a reasonable period of time; or

1463 11.01.7 CONTRACTOR fails to perform its obligations under this Contract,
1464 and: (i) if the failure or refusal of CONTRACTOR to perform Disposal Services required by this
1465 Contract has created an imminent threat to public health and is not cured within (2) Work Days
1466 after receiving written notice from CITY specifying the breach; or (ii) in the case of any other
1467 breach of the Contract, the breach continues for more than thirty (30) calendar days after
1468 receiving written notice from CITY for the correction thereof, provided that where such breach
1469 cannot be cured within such thirty (30) calendar day period, CONTRACTOR shall not be in
1470 default of this Contract if CONTRACTOR shall have commenced such action required to cure
1471 the particular breach within ten (10) calendar days after such notice, and it continues such
1472 performance diligently until completed. However, if CONTRACTOR has complied with its
1473 obligations to arrange and pay for Disposal of Mixed Materials, Garbage and Residue at an
1474 alternative disposal facility as set forth in Section 5.13, it shall not be in default of this Contract.

1475 11.02 Effective Date of Termination. In the event of the aforesaid events specified
1476 above, and except as otherwise provided in said subsections, termination shall be effective
1477 upon the date specified in CITY'S written notice to CONTRACTOR and upon said date this
1478 Contract shall be deemed immediately terminated and upon such termination all liability of CITY

1479 under this Contract to CONTRACTOR shall cease, and CITY shall have the right to call the
1480 performance security instrument and shall be free to negotiate with other contractors for the
1481 operation of the herein specified services.

1482 11.03 Right to Perform. If this Contract is suspended and/or terminated due to
1483 CONTRACTOR default, CITY shall have the right to perform and complete, by contract or
1484 otherwise, the work herein or such part thereof as it may deem necessary and incur all
1485 expenses necessary for completion of the work, including, but not limited to, Disposal of Mixed
1486 Materials, Garbage and Residue at an alternative disposal facility, but not including any right to
1487 operate the Disposal Facility. If such expenses (including, but not limited to, the actual fees
1488 charged for Disposal) exceed the amounts which would have been paid to CONTRACTOR
1489 under this Contract, if it had been fully performed by CONTRACTOR, then CONTRACTOR shall
1490 pay for the remaining term of this Contract, the amount of such excess costs to CITY within
1491 thirty (30) calendar days of CONTRACTOR'S receipt of a claim for reimbursement, and
1492 evidence of costs incurred, from CITY.

1493 11.04 Immediate Termination. CITY may terminate this Contract immediately upon
1494 written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the
1495 performance security as required by this Contract, CONTRACTOR fails to obtain or maintain
1496 insurance policies endorsements as required by this Contract, or CONTRACTOR fails to
1497 provide the proof of insurance as required by this Contract.

1498 11.05 Termination Cumulative. CITY'S right to terminate this Contract is cumulative to
1499 any other rights and remedies provided by law or by this Contract.

1500 **ARTICLE 12. LEGAL REPRESENTATION**

1501 12.01 Acknowledgement. It is acknowledged that each party was, or had the
1502 opportunity to be, represented by counsel in the preparation of and contributed equally to the
1503 terms and conditions of this Contract and, accordingly, the rule that a Contract shall be
1504 interpreted strictly against the party preparing the same shall not apply herein due to the joint
1505 contributions of both parties.

1506 **ARTICLE 13. FINANCIAL INTEREST**

1507 13.01 Representation. CONTRACTOR warrants and represents that no elected official,
1508 officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract
1509 or the compensation to be paid under it and, further, that no CITY employee who acts in the
1510 CITY as a "purchasing agent" as defined in the appropriate section of California Statutes, nor
1511 any elected or appointed officer of CITY, nor any spouse or child of such purchasing agent,
1512 employee or elected or appointed officer, is a partner, officer, director or proprietor of
1513 CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or
1514 appointed officer, or the spouse or child of any of them, alone or in combination, has a material
1515 interest in CONTRACTOR. Material interest means direct or indirect ownership of more than
1516 five (5) percent of the total assets or capital stock of CONTRACTOR.

1517 **ARTICLE 14. INDEPENDENT CONTRACTOR**

1518 14.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be
1519 an independent contractor and not an officer, agent, servant or employee of CITY.
1520 CONTRACTOR shall have exclusive control of the details of the services and work performed

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1521 and over all persons performing such services and work. CONTRACTOR shall be solely
1522 responsible for the acts and omissions of its officers, agents, employees, contractors and
1523 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors
1524 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,
1525 or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives
1526 any claim it may have or acquire to such benefits.

1527 **ARTICLE 15. LAWS TO GOVERN**

1528 15.01 The law of the State of California shall govern the rights, obligations, duties and
1529 liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of
1530 this Contract.

1531 **ARTICLE 16. CONSENT TO JURISDICTION**

1532 16.01 The parties agree that any litigation between CITY and CONTRACTOR
1533 concerning or arising out of this Contract shall be filed and maintained exclusively in the
1534 Municipal or Superior Courts of Alameda County, State of California, or in the United States
1535 Court for the Northern District of California to the fullest extent permissible by law. Each party
1536 consents to service of process in any manner authorized by California law.

1537 **ARTICLE 17. ASSIGNMENT**

1538 17.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR acknowledges
1539 that this Contract involves rendering a vital service to CITY'S residents and businesses, and
1540 that CITY has selected CONTRACTOR to perform the services specified herein based on (1)
1541 CONTRACTOR'S experience, skill and reputation for conducting its operations in a safe,
1542 effective and responsible fashion, at all times in keeping with applicable environmental laws,
1543 regulations and best management practices for Disposal of Mixed Materials, Garbage and
1544 Residue and (2) CONTRACTOR'S financial resources to maintain the required equipment and
1545 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of
1546 these factors, among others, in choosing CONTRACTOR to perform the services to be
1547 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either
1548 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract
1549 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,
1550 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day
1551 written notice to CONTRACTOR. In the event such notice of termination is given as authorized
1552 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of
1553 termination, to provide any or all of the services it is obligated to perform under this Contract if
1554 requested by CITY in writing. CITY'S right to terminate the Contract in whole or in part shall
1555 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as
1556 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this
1557 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially
1558 all of CONTRACTOR'S assets dedicated to any or all of the services to be provided under this
1559 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of
1560 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of
1561 control of CONTRACTOR or any sale, exchange or transfer of the common stock of
1562 CONTRACTOR which results in the effective transfer of control of substantially all of
1563 CONTRACTOR'S assets dedicated to any or all of the services to be provided under this

1564 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-
1565 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow
1566 arrangement, liquidation or other transaction to which results in a change of ownership or
1567 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or
1568 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution
1569 being levied against this Contract, appointment of a receiver taking possession of
1570 CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v)
1571 any combination of the foregoing (whether or not in related or contemporaneous transactions)
1572 which has the effect of any such transfer or change of ownership, or change of control of
1573 CONTRACTOR, or substantially all of the assets used for providing any of the services under
1574 this Contract to a third party.

1575 17.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR
1576 requests CITY'S consideration of and consent to an assignment, CONTRACTOR shall meet the
1577 following preliminary requirements:

1578 17.02.1 CONTRACTOR shall pay CITY its reasonable expenses for attorney's
1579 fees, consultant's fees and investigation costs necessary to investigate the suitability of any
1580 proposed assignee, and to review and finalize any documentation required as a condition for
1581 approving any such assignment;

1582 17.02.2 CONTRACTOR shall furnish CITY with audited financial statements of
1583 the proposed assignee's operations for the immediately preceding three (3) operating years;

1584 17.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1) the
1585 proposed assignee has at least ten (10) years of Mixed Materials, Garbage and Residue
1586 Disposal experience on a scale equal to or exceeding the scale of operations conducted by
1587 CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not
1588 suffered any significant citations or other censure from any federal, State or local agency having
1589 jurisdiction over its Mixed Materials, Garbage and Residue Disposal operations due to any
1590 significant failure to comply with State, federal or local environmental laws and the assignee has
1591 provided CITY with a complete list of such citations and censures; (3) the proposed assignee
1592 has at all times conducted its operations in an environmentally safe and conscientious fashion;
1593 (4) the proposed assignee conducts its Mixed Materials, Garbage and Residue Disposal
1594 practices in accordance with sound management practices in full compliance with all federal,
1595 State and local laws regulating the Disposal of Mixed Materials, Garbage and Residue including
1596 hazardous substances; and, (5) of any other information required by CITY to ensure the
1597 proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

1598 17.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to
1599 consider any proposed assignment if CONTRACTOR is in default at any time during the period
1600 of consideration.

1601 17.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,
1602 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial
1603 assignment, the corporate guaranty provided in Section 1.23 and Exhibit 3 and the performance
1604 security provided in Article 8 shall remain in effect unless CITY in its sole discretion consents to
1605 adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR
1606 shall not be released from liability under this Contract.

1607 17.05 Subcontractor. The use of a subcontractor to perform services under this
1608 Contract shall not constitute delegation of CONTRACTOR'S duties provided that
1609 CONTRACTOR has received prior written authorization from CITY to subcontract such services

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1610 and the Contract Manager has approved a subcontractor who will perform such services.
 1611 CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors
 1612 and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole
 1613 responsibility of CONTRACTOR. CITY shall have the right to require the removal of any
 1614 approved subcontractor for reasonable cause. No subcontractors have been approved by CITY.

1615 **ARTICLE 18. COMPLIANCE WITH LAWS**

1616 18.01 In the performance of this Contract, CONTRACTOR shall comply with all
 1617 applicable laws, regulations, ordinances and codes of the federal, State and local governments,
 1618 including without limitation those of CITY.

1619 18.02 CITY shall provide written notice to CONTRACTOR of any planned amendment
 1620 to the CITY Ordinances that would substantially affect the performance of CONTRACTOR'S
 1621 services pursuant to this Contract. Such notice shall be provided at least thirty (30) calendar
 1622 days prior to the Oakland City Council's approval of such an amendment.

1623 **ARTICLE 19. WAIVER**

1624 19.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term
 1625 covenant or condition of this Contract shall not be deemed to be a waiver of any other term,
 1626 covenant or condition or any subsequent breach or violation of the same or of any other term,
 1627 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other
 1628 monies which may become due from CONTRACTOR to CITY shall not be deemed to be a
 1629 waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

1630 **ARTICLE 20. POINT OF CONTACT**

1631 20.01 The day-to-day dealings between CONTRACTOR and CITY shall be between
 1632 CONTRACTOR and the Contract Manager.

1633 **ARTICLE 21. NOTICES**

1634 21.01 Except as provided herein, whenever either party desires to give notice to the
 1635 other, it must be given by written notice by registered or certified mail, or by other methods
 1636 designated for next day delivery with proof of receipt, addressed to the party for whom it is
 1637 intended, at the place last specified and to the place for giving of notice in compliance with the
 1638 provisions of this paragraph. For the present, the parties designate the following as the
 1639 respective persons and places for giving of notice:

1640 As to CITY:

1641 City Administrator
 1642 Office of the City Administrator
 1643 City of Oakland
 1644 1 Frank Ogawa Plaza, 3rd Floor
 1645 Oakland, CA 94612
 1646 Telephone: (510) 238-3301
 1647 E-mail: cityadministrator@oaklandnet.com

1648 With copies to:

1649
1650 Director of Public Works
1651 Public Works Agency
1652 City of Oakland
1653 250 Frank Ogawa Plaza, Suite 4314
1654 Oakland, CA 94612
1655 Telephone(510) 238-4470
1656 E-mail: vtroyan@oaklandnet.com
1657
1658 City Attorney
1659 Office of the City Attorney
1660 City of Oakland
1661 1 Frank Ogawa Plaza, 6th Floor
1662 Oakland, CA 94612
1663 Telephone: (510) 238-3601
1664 E-mail: info@oaklandcityattorney.org
1665
1666 Director of Finance and Management
1667 Finance and Management Agency
1668 City of Oakland
1669 150 Frank Ogawa Plaza, Suite 5215
1670 Oakland, CA 94612
1671 Telephone: (510) 238-2220
1672 E-mail: sjohnson@oaklandnet.com
1673

1674 As to CONTRACTOR:
1675 [Title]
1676 [Company]
1677 [Street Address]
1678 [City, State, Zip]
1679 Telephone: (xxx) xxx-xxxx
1680 E-mail: xxx@xxx.xxx

1681 and

1682 [Title]
1683 [Company]
1684 [Street Address]
1685 [City, State, Zip]
1686 Telephone: (xxx) xxx-xxxx
1687 E-mail: xxx@xxx.xxx

1688 21.02 Notices shall be effective when received at the address as specified above.
1689 Changes in the respective address to which such notice is to be directed may be made by
1690 written notice with a courtesy copy provided by email. The original of items that are transmitted
1691 by email must also be mailed as required herein.

1692 **ARTICLE 22. NONDISCRIMINATION**

1693 22.01 Nondiscrimination. In the performance of all work and services under this
 1694 Contract, CONTRACTOR shall not discriminate against any person on the basis of such
 1695 person’s race, color, religion/religious creed, sex/gender, pregnancy, marital status, age,
 1696 national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation,
 1697 gender identity, military or veteran status, or status in any other group protected by federal,
 1698 State or local law. CONTRACTOR shall comply with all applicable local, State and federal laws
 1699 and regulations regarding nondiscrimination, including those prohibiting discrimination in
 1700 employment.

1701 **ARTICLE 23. CONTRACTOR’S RECORDS**

1702 23.01 CONTRACTOR shall maintain all documents and records that demonstrate
 1703 performance under this Contract for a minimum period of five (5) years, or for any longer period
 1704 required by law, from the date of termination or completion of this Contract.

1705 23.02 Any records or documents required to be maintained pursuant to this Contract
 1706 shall be made available for inspection, copy or, audit at any time during regular business hours,
 1707 upon written request by the Contract Manager, City Attorney, City Auditor, CITY Administrator,
 1708 or a designated representative of any of these officers. Copies of such documents shall be
 1709 provided to CITY for inspection at CITY offices when it is practical to do so. Otherwise, unless
 1710 an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR’S
 1711 address indicated for receipt of notices in this Contract.

1712 23.03 Where CITY has reason to believe that such records or documents may be lost
 1713 or discarded due to the dissolution, disbandment or termination of CONTRACTOR’S business,
 1714 CITY may, by written request or demand of any of the above named officers, require that
 1715 custody of the records be given to CITY and that the records and documents be maintained in
 1716 CITY offices. Access to such records and documents shall be granted to any party authorized
 1717 by CONTRACTOR, CONTRACTOR’S representatives, or CONTRACTOR’S successor-in-
 1718 interest.

1719 **ARTICLE 24. QUALITY OF PERFORMANCE OF CONTRACTOR**

1720 24.01 Liquidated Damages. The parties further acknowledge that consistent and
 1721 reliable Disposal Services are of utmost importance to CITY and that CITY has considered and
 1722 relied on CONTRACTOR’S representations as to its quality of service commitment in awarding
 1723 the Contract to it. The parties further recognize that some quantified standards of performance
 1724 are necessary and appropriate to ensure consistent and reliable service and performance. The
 1725 parties further recognize that if CONTRACTOR fails to achieve the performance standards, or
 1726 fails to submit required documents in a timely manner, CITY, Collection Contractor(s) and
 1727 CITY’S residents and businesses will suffer damages, and that it is and will be impractical and
 1728 extremely difficult to ascertain and determine the exact amount of damages. Therefore, without
 1729 prejudice to CITY’S right to treat such non-performance as an event of default under Article 11
 1730 the parties agree that the liquidated damages amounts defined in this Article represent
 1731 reasonable estimates of the amounts of such damages considering all of the circumstances
 1732 existing on the effective date of this Contract, including the relationship of the sums to the range
 1733 of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual
 1734 damages would be costly or impractical. In placing their initials at the places provided, each

1735 party specifically confirms the accuracy of the statements made above and the fact that each
 1736 party has had ample opportunity to consult with legal counsel and obtain an explanation of the
 1737 liquidated damage provisions at the time that the Contract was made.

1738 CITY Initial Here _____ CONTRACTOR Initial Here _____

1739 24.01.1 CONTRACTOR agrees to pay (as liquidated damages and not as
 1740 penalty) the following amounts:

| Liquidated Damages | | |
|--------------------|---|--------------------------------------|
| Item | | Amount |
| a. | Failure to maintain minimum operation hours or days. (Section 5.04) | \$1,000 per Work Day. |
| b. | Failure to turnaround Collection Contractor vehicles at the Disposal Facility as set forth in Section 5.07. | \$100 per occurrence. |
| c. | Failure to provide adequate primary and alternate capacity to accept and Dispose of Mixed Materials, Garbage and/or Residue. (Sections 5.12 and 5.13) | \$10,000 per calendar day. |
| d. | Failure to submit complete and accurate required reports to CITY in a timely manner. (Sections 5.14 and 5.15) | \$300 per calendar day. |
| e. | Failure to correct submittal of inaccurate data within three (3) Work Days (or such other time period as may be agreed to in writing between CITY and CONTRACTOR) of written notification by CITY as set forth in Section 5.16. | \$500 per incident per calendar day. |
| f. | Failure to remit the Franchise Fee to CITY by the 15 th of each month. (Section 6.07.1) | \$150 per calendar day. |
| g. | Failure to comply with the insurance provisions of this Contract as set forth in Article 7. | \$500 per incident per calendar day. |
| h. | Failure to cure non-compliance with the provisions of this Contract in the manner and time set forth in the Contract (Various Articles). | \$150 per incident per calendar day. |

1741
 1742 24.02 CITY may determine the occurrence of events giving rise to liquidated damages
 1743 through the observation of its own employees or representative or investigation of complaints by
 1744 Collection Contractor(s).

1745 24.03 Procedure for Review of Liquidated Damages. The Contract Manager may
 1746 assess liquidated damages pursuant to this Article 24 on a monthly basis. At the end of each
 1747 month during the term of this Contract, the Contract Manager may issue a written notice to
 1748 CONTRACTOR (“Notice of Assessment”) of the liquidated damages assessed and the basis for
 1749 each assessment.

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1750 24.03.1 The assessment shall become final unless, within thirty (30) calendar
1751 days of the date of the notice of assessment, CONTRACTOR provides a written request for a
1752 meeting with the Contract Manager to present evidence that the assessment should not be
1753 made.

1754 24.03.2 The Contract Manager shall schedule a meeting between
1755 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as
1756 reasonably possible after timely receipt of CONTRACTOR'S request.

1757 24.03.3 The CITY Administrator or the CITY Administrator's designee shall
1758 review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated
1759 damages as soon as reasonably possible after the meeting. Written notice of the decision shall
1760 be provided to CONTRACTOR.

1761 24.03.4 In the event CONTRACTOR does not submit a written request for a
1762 meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract
1763 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no
1764 later than ten (10) Work Days following final determination. If CITY does not receive
1765 CONTRACTOR'S payment within the ten (10) Work Day period, CITY may proceed against the
1766 letter of credit required by Section 24.04 of this Contract

1767 24.03.5 CITY'S assessment or Collection of liquidated damages shall not
1768 prevent CITY from exercising any other right or remedy, including the right to terminate this
1769 Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth
1770 in this Contract.

1771 24.04 Security for Liquidated Damages. In order to insure the ability of CITY to collect
1772 liquidated damages assessed against CONTRACTOR, CONTRACTOR shall deposit with CITY
1773 an irrevocable letter of credit in an amount of Twenty Thousand Dollars (\$20,000). The letter of
1774 credit must be issued by an FDIC insured banking institution chartered to business in the State
1775 of California, (consistent with the Uniform Customs and Practice for Documentary Credits, then
1776 current revision or similar uniform convention approved by CITY), in CITY'S name, and be
1777 callable at the discretion of CITY. The letter of credit shall be structured so that in the event
1778 funds are drawn by CITY the balance of Twenty Thousand Dollars (\$20,000) is restored within
1779 two (2) Work Days.

1780

ARTICLE 25. LABOR PEACE

1781 25.01 General. CITY has determined that the level of vulnerability of the proposed
1782 Contract to labor disputes is sufficient to warrant that labor peace is essential to the proprietary
1783 interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of
1784 CONTRACTOR'S Employee and Labor Relations Plan set forth in Exhibit 5 to this Contract.

1785 25.02 Lockouts. Because it is the intent of this Contract that CONTRACTOR shall
1786 consistently provide the highest level of services to the businesses and residents of Oakland,
1787 CONTRACTOR shall never institute a lockout of any or all of its employees unless
1788 CONTRACTOR has previously provided an alternate plan of continuing the highest level of
1789 services during the entire possible period of such a lockout with ample fully trained substitutes
1790 for all such locked out employees, and CITY has approved such alternate plan in writing prior to
1791 such lockout being instituted by CONTRACTOR. In addition, CONTRACTOR shall fully defend,
1792 indemnify and hold harmless CITY against anything whatsoever related to any such lockout
1793 including but not limited to any claims, proceedings, or suits against CITY relating to any such

1794 lockout. Compliance with this Section 25.02 shall in no way prevent the imposition of liquidated
1795 damages pursuant to Article 24 hereof.

1796 **ARTICLE 26. SEVERABILITY**

1797 26.01 If any provision of this Contract or the application of it to any Person or situation
1798 shall to any extent be held invalid or unenforceable, the remainder of this Contract and the
1799 application of such provisions to persons or situations other than those as to which it shall have
1800 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,
1801 and shall be enforced to the fullest extent permitted by law.

1802 **ARTICLE 27. RIGHT TO REQUIRE PERFORMANCE**

1803 27.01 The failure of CITY at any time to require performance by CONTRACTOR of any
1804 provision hereof shall in no way affect the right of CITY thereafter to enforce same. Nor shall
1805 waiver by CITY of any breach of any provision hereof be taken or held to be a waiver of any
1806 succeeding breach of such provision or as a waiver of any provision itself.

1807 **ARTICLE 28. ALL PRIOR CONTRACTS SUPERSEDED**

1808 28.01 This document incorporates and includes all prior negotiations, correspondence,
1809 conversations, agreements and understandings applicable to the matters contained in this
1810 Contract and the parties agree that there are no commitments, agreements or understandings
1811 concerning the subject matter of this Contract that are not contained in this document or in the
1812 Collection Service Contracts which are being executed simultaneously with this document.
1813 Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated
1814 upon any prior representations or agreements, whether oral or written.

1815 **ARTICLE 29. HEADINGS**

1816 29.01 Headings in this document are for convenience of reference only and are not to
1817 be considered in any interpretation of this Contract.

1818 **ARTICLE 30. EXHIBITS**

1819 30.01 Each Exhibit referred to in this Contract forms an essential part of this Contract.
1820 Each such Exhibit is a part of this Contract and each is incorporated by this reference.

1821 **ARTICLE 31. EFFECTIVE DATE**

1822 31.01 This Contract shall become effective at such time as it is properly executed by
1823 CITY and CONTRACTOR and CONTRACTOR shall begin Disposal Services, as covered
1824 herein, as of July 1, 2015.

1825

1826

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1827 IN WITNESS WHEREOF, CITY and CONTRACTOR have duly authorized execution of this
1828 Contract, and have executed the Contract as of the dates set forth below.

1829

1830 CITY OF OAKLAND [Contractor Company Name]

1831

1832 By: _____ By: _____

1833 [Name, Title] [Name, Title]

1834

1835 _____

1836 Date Date

1837

1838

1839 APPROVED AS TO FORM:

1840 _____

1841 [Name, Title]

1842

1843 **EXHIBITS**

1844

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1846

1847 EXHIBIT 1 APPROVED PER TON DISPOSAL TIPPING FEES

1848 City of Oakland

1849 July 1, 2015

1850

| | Mixed Materials, Garbage or Residue |
|---|---|
| Disposal Element (\$/Ton) | |
| Government Fee Element (\$/Ton) | |
| Total Disposal Tipping Fee (\$/Ton) | |

1851

1852

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| Exhibit 1 (Cont) Governmental Fees | | | | |
|--|--|--|--|--|
| Agency | Mixed Materials, Garbage or Residue | | | |
| Alameda County "Measure D" Fee | \$ | | | |
| Alameda County Waste Management Authority Facilities Fee | \$ | | | |
| Alameda County Waste Management Authority HHW Fee | \$ | | | |
| State of California (AB 939/6 1220) Fee | \$ | | | |
| County Open Space Fee | \$ | | | |
| Local Enforcement Agency Fee | | | | |
| City/County Business License Fee | \$ | | | |
| County Planning Department Fee | \$ | | | |
| Other Fee: | \$ | | | |
| Other Fee | \$ | | | |
| Total Government Fee Element | \$ | | | |

1853

1854 EXHIBIT 2 DISPOSAL TIPPING FEE ADJUSTMENT METHODOLOGY

1855 City of Oakland

1856 The annual adjustment to the Disposal Fee Element of the Disposal Tipping Fee shall be
1857 calculated in the following manner:

1858 **To be completed based on methodology negotiated with selected proposer.**

1859 .

1860

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1862

1863 EXHIBIT 3 GUARANTY AGREEMENT

1864 City of Oakland

1865 This Guaranty, made as of the date written below by CONTRACTOR, to and for the benefit of
1866 the City of Oakland (CITY)

1867 WHEREAS, CONTRACTOR, and the CITY, entered into a CONTRACT BETWEEN THE CITY
1868 AND CONTRACTOR FOR provision of Disposal Services, dated as of **insert date**, (the
1869 “**Contract**”), which Contract is incorporated in this Guaranty by reference and by this Guaranty
1870 made part of this Agreement; and

1871 WHEREAS, the CITY is willing to enter into the Contract only upon the condition that Guarantor
1872 execute this Guaranty; and

1873 WHEREAS, in the event the CONTRACTOR fails to timely and fully perform its obligations,
1874 including the payment of moneys, pursuant to the Contract and as it may hereafter be amended
1875 or modified by CONTRACTOR and the CITY, the Guarantor is willing to guaranty
1876 CONTRACTOR’S timely and full performance thereof.

1877 NOW, THEREFORE, as an inducement to the CITY to enter into the Contract as described
1878 above, the Guarantor agrees as follows:

1879 Capitalized terms used in the Contract and not otherwise defined in this Agreement, will have
1880 the meaning assigned to them in the Contract.

- 1881 1. **Guaranty of CONTRACTOR’S Performance Under Contract.** Guarantor by this
1882 Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and
1883 full performance of CONTRACTOR’S obligations under the Contract in accordance with
1884 the terms and conditions contained therein or to cause the timely and full performance.
1885 Within thirty (30) days’ written request therefore by the CITY, Guarantor will honor the
1886 Guaranty. Notwithstanding the unconditional nature of the Guarantor’s payment
1887 obligations set forth in this Agreement, the Guarantor may assert the defenses provided
1888 in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims
1889 made under this Guaranty.
- 1890 2. **Governing law; consent to jurisdiction; service of process.** This Guaranty is
1891 governed by the laws of the State of California. The Guarantor by this Guaranty agrees
1892 to the service of process in the State for any claim or controversy arising out of the
1893 Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the
1894 courts of the State and to the extent permitted by law, the United States District Court for
1895 the Northern District of California, will have the exclusive jurisdiction of all suits, actions,
1896 and other proceedings involving itself and to which the CITY may be party for the
1897 adjudication of any claim or controversy arising out of this Guaranty or relating to any
1898 breach of this Guaranty, waives any objections that it might otherwise have to the venue
1899 of any Court for the trial of any suit, action, or proceeding, any consents to the service of
1900 process in any suit, action, or proceeding by prepaid registered mail return receipt
1901 required.
- 1902 3. **Enforceability; no assignment.** This Guaranty is binding upon and enforceable against
1903 Guarantor, its successors, assigns, and lawful representatives. It is for the benefit of the
1904 CITY, its successors and assigns. The Guarantor may not assign or delegate the
1905 performance of the Guaranty without the prior written consent of the CITY in its sole
1906 discretion. Any assignment made without the prior written consent of the CITY is

1907 voidable by the CITY in its sole discretion. Together with its request for CITY consent,
 1908 Guarantor will pay CITY \$10,000 for its reasonable expenses for private attorney’s fees
 1909 and investigation costs (“assignment expenses”) necessary to investigate the suitability
 1910 of any proposed assignee, and to review and finalize any documentation required as a
 1911 condition for approving any assignment. CITY will reimburse Guarantor the excess, if
 1912 any, over those assignment expenses it incurs. Contrariwise, Guarantor will pay CITY
 1913 the excess assignment expenses, if any, over \$10,000 CITY incurs within thirty (30)
 1914 days’ of CITY’S request therefore. Guarantor will further pay the CITY the CITY’S
 1915 reimbursement costs for fees of attorneys who are not CITY employees and
 1916 investigation costs necessary to enjoin the assignment or to otherwise enforce this
 1917 provision within thirty (30) days of the CITY’S request therefore (“injunction costs”).
 1918 Guarantor’s obligation to pay CITY assignment expenses and injunction costs will not
 1919 exceed \$35,000 in the aggregate, excluding any costs that the CITY may recover under
 1920 applicable law, including court costs paid to a prevailing party.

1921 For purposes of the Guaranty “assign” and “assignment” means:

- 1922 a) selling, exchanging or otherwise transferring effective control of management of the
- 1923 Guarantor (through sale, exchange or other transfer of outstanding stock or
- 1924 otherwise);
- 1925 b) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the
- 1926 then outstanding common stock of the Guarantor;
- 1927 c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock
- 1928 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,
- 1929 liquidation or other transaction which results in a change of ownership or control of
- 1930 Guarantor;
- 1931 d) any assignment by operation of law, including insolvency or bankruptcy, making
- 1932 assignment for the benefit of creditors, writ of attachment of an execution, being
- 1933 levied against Guarantor, appointment of a receiver taking possession of any of
- 1934 Guarantor’s tangible or intangible property; and,
- 1935 e) any combination of the foregoing (whether or not in related or contemporaneous
- 1936 transactions) which has the effect of any transfer or change of Ownership or control
- 1937 of Guarantor.

1938 For purposes of determining “Ownership”, the constructive ownership provisions of
 1939 Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, will
 1940 apply, provided that (1) 10 percent is substituted for 50 percent in Section 318(a)(2)(C)
 1941 and in section 218(a)(3)(C) thereof; and (2) Section 218(a)(5)(C) is disregarded. For
 1942 proposes of determining ownership under this paragraph and constructive or indirect
 1943 ownership under Section 318(a), ownership interest of less than 20 percent is
 1944 disregarded and percentage interests is determined on the basis of the percentage of
 1945 voting interest or value which the ownership interest represents, whichever is greater.

1946 4. **Guarantor absolute and unconditional.** The undertakings of Guarantor set forth in this
 1947 Guaranty are absolute and unconditional, and the CITY is entitled to enforce any or all of
 1948 those undertakings against Guarantor without being first required to enforce any
 1949 remedies or to seek to compel the CONTRACTOR to perform its obligations under the
 1950 Contract or to seek, or obtain recourse against any other party or parties, including but
 1951 not limited to the CONTRACTOR or any assignee of the CONTRACTOR, who are, or

1952 may be, liable therefore in whole or in part, irrespective of any cause or state of facts
 1953 whatever. Without limiting the generality of the foregoing, the Guarantor expressly
 1954 agrees that its state of facts or the happening from time to time of an event, other than
 1955 the payment of the terms of the Contract, including, without limitation, any of the
 1956 following, each of which is by this Guaranty expressly waived as a defense to its liability
 1957 under this Guaranty, except to the extent those defenses would be available to the
 1958 CONTRACTOR and release, discharge or otherwise offset CONTRACTOR'S obligations
 1959 under the Agreement:

1960 a) the invalidity, irregularity, illegality or unenforceability, of or any defect in or
 1961 objections to the Contract;

1962 b) any modification or amendment or compromise of or waiver of compliance with or
 1963 consent to variation from any of the provisions of the Contract by the
 1964 CONTRACTOR;

1965 c) any release of any collateral or lien thereof, including, without limitation, any
 1966 performance bond, or performance security;

1967 d) any defense based upon the election of any remedies against the Guarantor of the
 1968 CONTRACTOR, or both, including without limitation, any consequential loss by the
 1969 Guarantor of its right to recover any deficiency, by the way of subrogation or
 1970 otherwise, from the CONTRACTOR or any other Person or entity;

1971 e) the recovery of any judgment against the CONTRACTOR to enforce any of that
 1972 collateral, performance bond or performance security;

1973 f) the CITY or its assigns taking or omitting to take any of the actions which it or any of
 1974 that assign is required to take under the Contract; any failure, omission or delay on
 1975 the part of the CITY or its assignees to enforce, assert or exercise any right, power
 1976 or remedy conferred on it or its assigns by the Contract, except to the extent that
 1977 failure, omission or delay gives rise to an applicable statute of limitations defense by
 1978 the CONTRACTOR with respect to a specific obligation;

1979 g) the default or failure of the Guarantor to fully perform any of its obligations set forth in
 1980 the Guaranty;

1981 h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the
 1982 CONTRACTOR or the CITY, or any order or decree of a court, trustee or receiver in
 1983 any proceeding;

1984 i) in addition to those circumstances described in item (h), any other circumstance
 1985 which might otherwise constitute a legal or equitable discharge of a guarantor or limit
 1986 the recourse of the CITY to the Guarantor;

1987 j) the existence or absence of any action to enforce the Contract;

1988 k) subject to the provisions of the Contract relating to uncontrollable circumstances, any
 1989 present or future law or order of any government or any agency thereof, purporting to
 1990 reduce, amend or otherwise affect the Contract or to vary any terms of payment or
 1991 performance under the Contract;

1992 Providing that, notwithstanding the forgoing, Guarantor will not be required to pay any
 1993 monetary obligation of CONTRACTOR to CITY from which CONTRACTOR would be
 1994 discharged, released or otherwise excused under the provisions of the Contract.

- 1995 5. **Waivers.** Guarantor by the Guaranty waives:
- 1996 a) notice of acceptance of the Guaranty and of the creation, renewal, extension and
- 1997 accrual of the limited financial obligations Guaranteed under this Guaranty;
- 1998 b) notice that any Person has relied on this Guaranty;
- 1999 c) diligence, demand of payment and notice of default or nonpayment under this
- 2000 Guaranty or the Contract, and any and all other notices required under the Contract;
- 2001 d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy
- 2002 of the CONTRACTOR;
- 2003 e) any right to require a proceeding first against the CONTRACTOR or with respect to
- 2004 any collateral or lien, including, without limitation, any performance bond, or any
- 2005 other requirement that the CITY exercise any remedy or take any other action
- 2006 against the CONTRACTOR or any other Person, or in respect of any collateral or
- 2007 lien, before proceeding under this Guaranty;
- 2008 f) (i) any demand for performance or observance of, or (ii) any enforcement of any
- 2009 provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any
- 2010 security (including, with limitation, any performance bond) for the obligations of the
- 2011 CONTRACTOR under the Contract; any pursuit of exhaustion of remedies against
- 2012 the CONTRACTOR or any other obligor or guarantor of the obligations; and any
- 2013 requirement of promptness or diligence on the part of any Person in connection
- 2014 therewith;
- 2015 g) to the extent that it lawfully may do so, any and all demands or notices of every kind
- 2016 and description with respect to the foregoing or which may be required to be given by
- 2017 any statute or rule of law, and any defense of any kind which it may now or hereafter
- 2018 have with respect to this Guaranty or the obligations of the CONTRACTOR under the
- 2019 Contract, *except* any Notice to the CONTRACTOR required pursuant to the Contract
- 2020 or applicable law which Notice preconditions the CONTRACTOR'S obligation or the
- 2021 defenses listed in Section 8 below.
- 2022 To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to
- 2023 waive, and does by this Guaranty absolutely and irrevocably waive and relinquish, the
- 2024 benefit and advantage of, and does by this Guaranty covenant not to assert, any
- 2025 appraisement, valuation, stay extension, redemption or similar laws, now or any time
- 2026 hereafter in force, which might delay, prevent or otherwise impede the due performance
- 2027 or proper enforcement of the Guaranty, the Contract, or the obligations of the
- 2028 CONTRACTOR under the Contract and by this Guaranty expressly agrees that the right
- 2029 of the CITY under this Guaranty may be enforced notwithstanding any partial
- 2030 performance by the CONTRACTOR or the Guarantor, or the foreclosure upon any
- 2031 security (including, with limitation, any performance bond, or performance security) given
- 2032 by the CONTRACTOR for its performance of any of its obligations under the Contract.
- 2033 6. **Agreements between CITY and CONTRACTOR; Waivers by CITY.** The Guarantor
- 2034 agrees that, without the necessity for any additional endorsement or Guaranty by or any
- 2035 reservation of rights against Guarantor and without any further assent by Guarantor, by
- 2036 mutual agreement between the CITY and CONTRACTOR, the CITY and
- 2037 CONTRACTOR may, from time to time:

- 2038 a) renew, modify or compromise the liability of the CONTRACTOR for or upon any of
2039 the obligations by the Guaranty Guaranteed; or
- 2040 b) consent to any amendment or change of an terms of the Contract; or
- 2041 c) accept, release, or surrender any security (including, without limitation, any
2042 performance bond), or
- 2043 d) grant any extensions or renewals of the obligations of the CONTRACTOR under the
2044 Contract, and any other indulgence with respect thereto, and to affect any release,
2045 compromise or settlement with respect thereto, all without releasing or discharging
2046 the liability of Guarantor under this Guaranty.
- 2047 The Guarantor further agrees that the CITY or any of its assigns will have and may
2048 exercise full power in its uncontrolled discretion, without in any way affecting the liability
2049 of the Guarantor under this Guaranty, to waive compliance with and any default of the
2050 CONTRACTOR under, the Contract.
- 2051 7. **Continuing Guaranty.** This Guaranty is a continuing Guaranty and will continue to be
2052 effective or be reinstated, as applicable, if at any time any payment of any of the
2053 obligations under this Guaranty is rescinded or is otherwise required to be returned upon
2054 reorganization, insolvency or bankruptcy of the CONTRACTOR or Guarantor or
2055 otherwise, all as though payment had not been made.
- 2056 8. **Defenses.** Notwithstanding any provision in the Guaranty to the contrary, the Guarantor
2057 may exercise or assert any and all legal or equitable rights, defenses, counter claims or
2058 affirmative defenses under the Contract or applicable law which the CONTRACTOR
2059 could assert against any party seeking to enforce the Contract against the
2060 CONTRACTOR, and nothing in the Guaranty will constitute a waiver thereof by the
2061 Guarantor.
- 2062 9. **Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses
2063 and fees, including all reasonable attorney's fees, which may be incurred by the CITY in
2064 enforcing the Guaranty following the default on the part of the Guarantor under this
2065 Guaranty whether the same is enforced by suit or otherwise.
- 2066 10. **Enforcement.** The terms of this Guaranty may be enforced as to any one or more
2067 breaches either separately or cumulatively.
- 2068 11. **Remedies cumulative.** No remedy in this Guaranty conferred upon or reserved to the
2069 CITY under this Guaranty is intended to be exclusive or any other available remedy or
2070 remedies, but each and every remedy is cumulative and is in addition to every other
2071 remedy given under the Guaranty and the Contract or in this Guaranty after existing at
2072 law or in equity or by statute.
- 2073 12. **Severability.** The invalidity or unenforceability of any one or more phrases, sentences or
2074 clauses in the Guaranty contained will not affect the validity or enforceability of the
2075 remaining portions of this Guaranty, or any part thereof.
- 2076 13. **Amendments.** No amendment, change, modification or termination of this Guaranty is
2077 made except upon the written consent of Guarantor and the CITY.
- 2078 14. **Term.** The obligations of the Guarantor under this Guaranty will remain in full force and
2079 effect until (i) all monetary obligations of the CONTRACTOR under the Contract will
2080 have been fully performed or provided for in accordance with the Contract, or (ii) the

2081 discharge, release or other excuse of those obligations in accordance with the terms of
2082 the Contract.

2083 15. **No set-off, etc.**

2084 **By Guarantor.** The obligation of Guarantor under this Guaranty will not be affected by
2085 any set-off, counterclaim, recoupment, defense or other right that Guarantor may have
2086 against the CITY on account of any claim of the Guarantor against the CITY; *provided*
2087 that Guarantor reserves the right to bring independent claims not arising from the
2088 Contract again the CITY so long as any claim will not be used to set-off or deduct from
2089 any claims which the CITY may have against the Guarantor arising from this Guaranty.

2090 **By CONTRACTOR.** The obligation of Guarantor under this Guaranty is subject to any
2091 set-off, counterclaim, recoupment, defense or other right that the CONTRACTOR may
2092 assert pursuant to the Contract, if any, but the obligation of Guarantor under this
2093 Guaranty will not be subject to any set-off counterclaim, recoupment, defense or other
2094 right that the CONTRACTOR may assert independently of and outside the Contract.

2095 16. **Warranties and representations.** The Guarantor warrants and represents that as of
2096 date of execution of this Guaranty:

2097 a) The Guarantor has the power, authority and legal right to enter into this Guaranty
2098 and to perform its obligations and undertakings under this Guaranty, and the
2099 execution, delivery and performance of this Guaranty by the Guarantor (i) have been
2100 duly authorized by all necessary corporate and shareholder action on the part of the
2101 Guarantor, (ii) have the requisite approval of all federal, State and local governing
2102 bodies having jurisdiction or authority with respect thereto, (iii) do not violate any
2103 judgment, order, law or regulation applicable to the Guarantor, (iv) do not conflict
2104 with or constitute a default under any agreement or instrument to which the
2105 Guarantor is a party or by which the Guarantor or its assets may be bound or
2106 affected; and (v) do not violate any provision of the Guarantor's articles or certificate
2107 of incorporation or by-laws.

2108 b) This Guaranty has been duly executed and delivered by the Guarantor and
2109 constitutes the legal, valid and binding obligation of the Guarantor, enforceable
2110 against the Guarantor in accordance with its terms; and

2111 c) There are no pending or, to the knowledge of the Guarantor, threatened actions or
2112 proceedings before any court administrative agency which would have a material
2113 adverse affect on financial condition of the Guarantor, or the ability of the Guarantor
2114 to perform its obligations or undertakings under this Guaranty.

2115 17. **No merger; no conveyance of assets.** Guarantor agrees that during the term of this
2116 Guaranty in accordance with Section 14 Guarantor will not consolidate with or merge
2117 into any other corporation where the shareholders of the Guarantor yield control of the
2118 Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or
2119 convey, transfer or lease all or substantially all of its properties and assets to any
2120 person, firm, joint venture, corporation, and other entity, unless the CITY consents
2121 thereto in accordance with Section 3 above.

2122 18. **Counterparts.** This Guaranty may be executed in any number of counterparts, some of
2123 which may not bear the signatures of all parties to the Guaranty. Each counterpart, when
2124 so executed and delivered, is deemed to be an original and all counterparts, taken
2125 together, will constitute one and the same instrument; *provided, however,* that in

2126 pleading or proving this Guaranty, it will not be necessary to produce more than one copy
2127 (or sets of copies) bearing the signature of the Guarantor.

2128 19. **Notices.** All notices, instructions and other communications required or permitted to be
2129 given to or made upon any party to this Guaranty shall be given in writing, deposited in
2130 the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:
2131

2132 City Administrator
2133 Office of the City Administrator
2134 City of Oakland
2135 1 Frank Ogawa Plaza, 3rd Floor
2136 Oakland, CA 94612
2137 Telephone: (510) 238-3301
2138 E-mail: cityadministrator@oaklandnet.com

2139 With copies to:

2140
2141 Director of Public Works
2142 Public Works Agency
2143 City of Oakland
2144 250 Frank Ogawa Plaza, Suite 4314
2145 Oakland, CA 94612
2146 Telephone: (510) 238-4470
2147 E-mail: vtroyan@oaklandnet.com
2148

2149 City Attorney
2150 Office of the City Attorney
2151 City of Oakland
2152 1 Frank Ogawa Plaza, 6th Floor
2153 Oakland, CA 94612
2154 Telephone: (510) 238-3601
2155 E-mail: info@oaklandcityattorney.org
2156

2157 Director of Finance and Management
2158 Finance and Management Agency
2159 City of Oakland
2160 150 Frank Ogawa Plaza, Suite 5215
2161 Oakland, CA 94612
2162 Telephone: (510) 238-2220
2163 E-mail: sjohnson@oaklandnet.com
2164

2165 As to the GUARANTOR:

2166 [Title]
2167 [Company]
2168 [Street Address]
2169 [City, State, Zip]
2170 Telephone: xxx-xxx-xxx

2171 E-mail: xxx@xxx.xxx

2172 With a copy to:

2173 [Title]

2174 [Company]

2175 [Street Address]

2176 [City, State, Zip]

2177 Telephone: xxx-xxx-xxx

2178 E-mail: xxx@xxx.xxx

2179 20. **Separate Suits.** Each and every payment default by CONTRACTOR under the Contract
2180 will give rise to a separate cause of action under this Guaranty, and separate suits may
2181 be brought under this Guaranty by the CITY or its assigns as each cause of action
2182 arises.

2183 21. **Headings.** The Section headings appearing in this Guaranty are for convenience only
2184 and will not govern, limit, modify or in any manner affect the scope, meaning or intent of
2185 the provisions of this Guaranty.

2186 22. **Entire Agreement.** This Guaranty constitutes the entire Guaranty between the parties to
2187 this Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in
2188 this Guaranty is intended to confer on any Person other than the Guarantor, the CITY
2189 and their permitted successors and assigns under this Guaranty any rights or remedies
2190 under or by reason of this Guaranty.

2191 23. **Personal Liability.** It is understood and agreed to by the CITY that nothing contained in
2192 the Guaranty will create any obligation or right to look to any director, officer, employee
2193 or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any
2194 obligations under this Guaranty, and no judgment, order or execution with respect to or
2195 in connection with this Guaranty is taken against any director, officer, employee or
2196 stockholder.

2197 24. **Events of Default.** Each of the following will constitute an event of default under this
2198 Guaranty:

2199 a) **Failure to fulfill payment of guaranty.** Guarantor fails to fulfill full and timely
2200 payment of any guaranty under this Guaranty, including Section 1, and the failure
2201 continues for five (5) days after Notice (which is deemed given upon receipt of
2202 registered or certified mailing by U.S. Postal Service or of invoiced commercial
2203 service) (hereinafter defined as "**Notice**") has been given to the Guarantor by the
2204 CITY, fails to perform any of its obligations under this Guaranty or engages in any
2205 acts prohibited under this Guaranty other than failures itemized below, and fails to
2206 cure that failure or conduct within thirty (30) days;

2207 b) **Breach of Guaranty.** The Guarantor fails to observe and perform any covenant,
2208 condition or agreement of this Guaranty, other than any failures listed explicitly in this
2209 section, and that failure continues for more than thirty (30) days after Notice has
2210 been given the Guarantor by the CITY;

2211 c) **Failure to give Notice of proposed assignment, etc.** The Guarantor fails to give
2212 CITY Notice in accordance with Section 19 within ten (10) days of the first to occur of

- 2213 (i) CONTRACTOR or any Affiliate issuing a press release as to any proposed
- 2214 assignment, (within the meaning of Section 3), or consolidation, merger,
- 2215 conveyance, transfer or lease described in paragraph (e) of this Section (24)
- 2216 or
- 2217 (ii) The filing with the Securities and Exchange Commission of a Form 8-K or
- 2218 other filing with respect to a memorandum of intent or an agreement and plan
- 2219 therefore

2220 (paragraph (i) and (ii) together defined as, “**Change Notice**”);

2221 d) **Consolidation, merger; conveyance of assets.** The Guarantor consolidates,

2222 merges or conveys, transfers or leases assets in violation of Section 17 despite CITY

2223 Council action following Change Notice in preceding paragraph c) withholding or

2224 denying CITY consent, and on or before 15 days thereafter does not provide CITY

2225 with a substitute Guarantor satisfaction to CITY in CITY’S sole discretion;

2226 e) **Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt

2227 relief under any applicable bankruptcy, on solvency, debtor relief, or other similar law

2228 now or hereafter in effect or will consent to the appointment of or taking of

2229 possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or

2230 similar official) of Guarantor for any substantial part of Guarantor’s operating assets

2231 or any substantial part of Guarantor’s property, or will make any general assignment

2232 for the benefit of Guarantor’s creditors, or will fail generally to pay Guarantor’s debts

2233 as they become due or will take any action in furtherance of any of the foregoing.

2234 A court having jurisdiction enters a decree or order for relief in respect of the

2235 Agreement, in any involuntary case brought under any bankruptcy, insolvency,

2236 debtor relief, or similar law now or hereafter in effect, or Guarantor consents to or

2237 fails to oppose any proceeding, or any court enters a decree or order appointing a

2238 receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of

2239 the Guarantor or for any substantial part of the Guarantor’s operating equipment or

2240 assets, or orders the winding up or liquidation of the affairs of the Guarantor.

2241 f) **Breach of Representations or Warranties.** Any representation or warranty of

2242 Guarantor is untrue as of the date thereof, Guarantor knowingly makes, causes to be

2243 made or condones the making of any false entry in its books, and accounts, records

2244 and reports under this Guaranty.

2245 Upon any Event of Default the CITY may to proceed first and directly against the

2246 Guarantor under Guaranty without proceeding against or exhausting any other

2247 remedies, which it may have. The Guarantor acknowledges that any CONTRACTOR

2248 default comprises a default under the Agreement.

2249 IN WITNESS WHEREOF Guarantor has executed this instrument the day and year

2250 first above written.

2251 By: _____ Date: _____

2252

2253 Attest: _____ Date: _____

2254

2255 Proper notarial acknowledgement of execution by Guarantor must be attached.

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2256 (1) Chairman, president or vice-president, and (2) secretary, assistant secretary,
2257 CFO or assistant treasurer, must sign for corporations. Otherwise, the corporation
2258 must attach a resolution certified by the secretary or assistant secretary under
2259 corporate seal empowering the officer(s) signing to bind the corporation.

2260 **IN WITNESS WHEREOF**, the CITY and Guarantor have executed this Guaranty as of the day
2261 and year first written above.

2262

2263 CITY OF OAKLAND [Contractor Company]

2264 By:_____ By:_____

2265 [Name, Title] [Name, Title]

2266 [Name, Title] [Name, Title]

2267

2268 Approved as to Form:

2269 _____

2270 [Name, Title]

2271

2272 EXHIBIT 4 CITY OF OAKLAND REQUIRED FORMS
2273
2274
2275
2276
2277
2278

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2279 EXHIBIT 5 EMPLOYEE AND LABOR RELATIONS PLAN
2280
2281

2282

EXHIBIT 6 REVENUE SHARING PLAN

2283

Redline Version of November 16, 2012

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|---|
| 1 Amended by Addendum No. 4 September 28, 2012 – Question No. 8 |
| 2 Amended by Addendum No. 3 September 21, 2012 – Question No. 32 |
| 3 Amended by Addendum No. 6 November 16, 2012 – Cover Memo Item No. 4 |
| 4 Amended by Addendum No. 6 November 16, 2012 – Cover Memo Item No. 5 |
| 5 Amended by Addendum No. 3 September 21, 2012 – Question No. 40 |
| 6 Amended by Addendum No. 3 September 21, 2012 – Question No. 5 |

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| ¹ Amended by Addendum No. 11 on November 16, 2012 |
| ² Amended by Addendum No. 2 September 4, 2012 |
| ³ Amended by Addendum No. 1 August 13, 2012 |
| ⁴ Amended by Addendum No. 1 August 13, 2012 |
| ⁵ Amended by Addendum No. 3 September 21, 2012 – Question No. 5 |
| ⁶ Amended by Addendum No. 3 September 21, 2012 – Question No. 12 |
| ⁷ Amended by Addendum No. 3 September 21, 2012 – Question No. 12 |
| ⁸ Amended by Addendum No. 3 September 21, 2012 – Question No. 16 |
| ⁹ Amended by Addendum No. 3 September 21, 2012 – Question No. 20 |
| ¹⁰ Amended by Addendum No. 3 September 21, 2012 – Question No. 21 |
| ¹¹ Amended by Addendum No. 3 September 21, 2012 – Question No. 11 |
| ¹² Amended by Addendum No. 3 September 21, 2012 – Question No. 5 |
| ¹³ Amended by Addendum No. 2 September 4, 2012 |
| ¹⁴ Amended by Addendum No. 3 September 21, 2012 |
| ¹⁵ Form 14 added by Addendum No. 2 September 4, 2012 |