

# City of Oakland

## Request for Proposals for Zero Waste Services

### Disposal Services - Service Group 3



Proposals Due: December 12 , 2012 2:00 PM

Released: August 3, 2012

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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** 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 15, 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
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

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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, 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](mailto: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](mailto: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 3<sup>rd</sup> 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
<b>Tons Collected - Garbage</b>		
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
<b>Total</b>	<b>185,815</b>	<b>184,891</b>
<b>Tons Collected – Organic Material</b>		
Single Family / Multi-Family	37,063	35,824
Commercial	0	0
<b>Total</b>	<b>37,063</b>	<b>35,824</b>
<b>Tons Collected – Recyclable Material</b>		
Single Family / Multi-Family/Small Business	37,090	35,676
<b>Total</b>	<b>37,090</b>	<b>35,676</b>
<b>Tons Collected – Bulky Goods</b>		
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)		
<b>Total</b>	<b>1,690</b>	<b>1,607</b>

---

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 not 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 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 15<sup>th</sup> 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](mailto: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 at the office listed below.**

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

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

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

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

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

### 598 **4.22.2 Pre-Proposal Meeting**

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

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

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

612 1. Items only requiring clarification, interpretation, or explanation; and,

613 2. Items requiring an addition, deletion, or change to the proposal documents. (The  
614 appropriate amended portion of the RFP document will accompany answers to items in  
615 this category).

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

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

#### 621 **4.22.3 Preparation of Proposals**

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

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

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

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

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

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

#### 645 **4.23 PROPOSAL CONTENT**

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

652 The proposers shall provide the information as requested and as applicable to the proposed  
653 services. Headings and section numbering utilized in the proposal shall be the same as those  
654 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

655

656

657

658

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

659

**4.23.1.1 Cover Letter:**

660

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

661

662

1. The name, addresses, telephone number, and email address of proposer's key contact person.

663

664

2. Description of the type of organization (e.g. corporation, partnership, including joint venture teams and subcontractors) submitting proposals.

665

666

3. Name of the entity that will sign the Disposal Services Contract, in the event one is awarded.

667

668

4. A written statement certifying that the proposer has examined, understood, and agreed to all requirements set forth in the Disposal Services Contract.

669

670

5. A written statement warranting that the requirements of the Disposal Services Contract as described in this RFP document, its enclosures, attachments, and all addenda, by listing all addenda and dates received, have been thoroughly reviewed and the proposer has conducted all due diligence necessary to confirm material facts upon which the proposal is based.

671

672

673

674

- 675 6. A written statement acknowledging that, should the City award the Disposal Services  
676 Contract to the proposer, a payment in the amount set forth in Section 3.1.10.1 of this  
677 RFP will be paid by the proposer to the City for reimbursement of the cost of this  
678 procurement within thirty (30) days of execution of the Disposal Services Contract.  
679 Failure to provide this statement or taking exception to this requirement will result in  
680 disqualification.
- 681 7. A written statement acknowledging the validity of the proposal contents including the  
682 proposed Disposal Tipping Fee through June 30, 2016.

#### 683 **4.23.1.2 Proposal Surety**

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

#### 687 **4.23.1.3 Performance Security Commitment Letter**

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

#### 692 **4.23.1.4 Receipt of Addenda**

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

#### 696 **4.23.1.5 Table of Contents**

### 697 **4.23.2 Executive Summary (Technical Proposal: Section 2)**

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

### 701 **4.23.3 Qualifications (Technical Proposal: Section 3)**

#### 702 **4.23.3.1 Key Staff Persons**

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

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

#### 707 **4.23.3.2 References**

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

711 **4.23.3.3 Conflict of Interest Statement**

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

716 **4.23.3.4 Litigation History**

717 The proposer must provide a history for the last ten (10) years of all claims settlements,  
718 arbitrations, litigation proceedings, and civil actions involving One Hundred Thousand Dollars  
719 (\$100,000) or more, and all criminal actions in which the company, its parent company,  
720 subsidiaries, all partners, or principals were involved. For each case, the proposer must provide  
721 the following:

- 722     ▪ The name of the claim, arbitration, litigation or action;
- 723     ▪ The amount at issue or the criminal charges alleged; and
- 724     ▪ The resolution of the case.

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

- 731     ▪ The name of the action;
- 732     ▪ The court in which the action is pending;
- 733     ▪ The action number; and
- 734     ▪ The amount at issue.

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

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

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

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

752 **4.23.4 Statement of Financial Qualifications (Technical Proposal:**  
753 **Section 4)**

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

761 

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

766 

- 767 ■ If the entity that will sign the Disposal Services Contract has been in existence less than  
768 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.

769 

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

774 

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

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

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

787 **4.23.4.1 Labor Agreements**

788 If Disposal Services will be provided under existing labor agreements, the proposer must  
789 provide a copy of each agreement. If the proposer intends to enter into any labor agreements  
790 related to the provision of Disposal Services, the proposer must describe the nature of the  
791 agreements and when they will be implemented.



792 **4.23.5 Disposal Services Technical Proposal (Technical Proposal:**  
793 **Section 5)**

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

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

800 **4.23.5.1 Disposal Operations Plan**

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

806 **4.23.5.1.1. Facilities**

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

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

#### 860 **4.23.5.1.2. Safety**

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

867 **4.23.5.1.3. Reporting**

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

872 **4.23.5.1.4. Operations**

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

880 **4.23.6 Forms (Technical Proposal: Section 6)**

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

890 **4.23.7 Appendix (Technical Proposal: Section 7)**

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

894 **4.24 PROPOSAL ALTERNATIVES AND EXCEPTIONS**

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

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

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

## 915 **4.25 EVALUATION OF PROPOSAL**

### 916 **4.25.1 General**

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

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

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

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

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

### 935 **4.25.2 Disqualification**

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

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

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

950                               **4.25.3 Non-Conforming Proposal**

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

955                               **4.25.4 Required Documents**

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

959                               **4.25.5 Proposal Evaluation**

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

965  
966       Evaluation Criteria.  
967       1. Cost. The cost evaluation is intended to provide an equitable basis for cost comparison  
968       between proposals and an evaluation of the effect of those costs on residential and  
969       commercial customer rates, including additional administrative costs due to the award of  
970       multiple Contracts for Collection and Disposal Services. All cost information to be used  
971       in this evaluation will be as stated in the proposal. The proposals will be reviewed to  
972       verify that the proposed costs are consistent with the activities described in the proposal  
973       and the proposer’s work plans. Cost evaluation criteria to be considered will include  
974       without limitation:

- 975       ▪ Disposal Tipping Fee;

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

#### 1004                           **4.25.6 Announcement of Award**

1005       The City will inform all proposers of its intent to award a Disposal Services Contract in writing.

#### 1006                           **4.25.7 Protest Procedure**

1007       If an unsuccessful proposer wants to dispute the City's proposal ranking determination, the  
1008       protest must be submitted in writing to the City Administrator appointed Protest Hearing Officer  
1009       no later than five (5) City business days after announcement of the City's determination,  
1010       detailing the grounds and factual basis and providing all supporting information. Protests will not  
1011       be considered for disputes of proposal requirements and specifications, which must be  
1012       addressed in accordance with Section 4.4 of the RFP. Failure to submit a timely written protest  
1013       to the Protest Hearing Officer will bar consideration of the protest.

1014 The address for submitting protests is:

1015 City Administrator  
1016 Office of the City Administrator  
1017 City of Oakland  
1018 1 Frank Ogawa Plaza, 3<sup>rd</sup> Floor  
1019 Oakland, CA 94612

1020 **4.25.8 Contract Award**

1021 After the RFP evaluation process is completed, the City Administrator will recommend the top  
1022 ranked proposer to the City Council for authorization to enter into negotiations. After completion  
1023 of negotiations to the satisfaction of the City, the City Administrator will request authorization  
1024 from the City Council to enter into a contract with the proposer. City Council will then make a  
1025 decision whether to authorize the City Administrator to execute a contract with the proposer.

1026 **4.26 PROPOSAL FORMS**


1027 The City will receive written and sealed proposals to furnish all labor and equipment to provide  
1028 the services as required in the Disposal Services Contract. **Disposal Services Forms 1**  
1029 **through 2 and 4 through 12 on the following pages are the required forms that must be**  
1030 **completed by Disposal Services proposers as part of the proposal.**

1031 Proposers may use Form 3 or may provide the required proposal surety through the use of a  
1032 proposal bond that is substantially the same as that provided in Form 3 or through the use of a  
1033 letter of credit.

1034 Proposers who propose the use of a “delivery” facility must complete Disposal Services Form  
1035 13.

1036 The forms are set up **with expandable text boxes** to allow proposers to input their information  
1037 directly into **Disposal Services Forms 1 through 13**. Answers to questions that are not  
1038 applicable should be included and marked “Not Applicable.”

1039 **Instructions:**

1040 Open the fill-in form document and fill in the form using Microsoft Word. Enter information in the  
1041 shaded  “fields” of the form. To move from field to field, use your mouse, the arrow keys  
1042 or press Tab. Use your mouse or the spacebar to mark and unmark a checkbox.

1043 Be sure to sign and date your forms where applicable.

1044 The purpose of the forms contained herein is not intended in any way to limit the type, quality or  
1045 quantity of data and information supplied by the proposer. Required Forms not completed in full  
1046 may result in disqualification.

1047

**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:**

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.

1048

**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	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 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.	<b>Total Governmental Fee Elements</b>	<u>\$0.00</u>	
	Tipping Fee Element	Disposal/Ton	
12.	Disposal Fee Element	<u>\$0.00</u>	<u>\$0.00</u>
13.	<b>Total Disposal Tipping Fee (Governmental Fee Element Plus Tipping Fee Element)</b>	<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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(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)**

	<b>Proposal BOND</b>				to CITY OF OAKLAND A Municipal Corporation	Dated _____, 2012	
--	----------------------	--	--	--	--	-------------------	--

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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 5**  
**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 \$11.35 per hour with health benefits, or \$13.05 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) 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://222.cbpp.or/eic/2010).
- (c) 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
- (d) 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?	_____	_____
(4) Number of compensated days off per employee? (Refer to item "a" above.)	_____	_____
(5) Number of trainees in your company?	_____	_____

DISPOSAL SERVICES FORM 5 SCHEDULE N DECLARATION OF COMPLIANCE - LIVING WAGE ORDINANCE		
(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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<b>DISPOSAL SERVICES FORM 6</b> <b>SCHEDULE N-1 EQUAL BENEFITS - DECLARATION OF NONDISCRIMINATION/EQUAL ACCESS</b> Completed by the Prime Contractor ONLY	
<b>Section A. Vendor / Contractor / Consultant / CFAR<sup>1</sup> Information</b>	
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) _____	
<b>Section B. Compliance</b>	
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 <sup>2</sup> ? ( <i>please check one</i> )	
Yes <input type="checkbox"/> No <input type="checkbox"/>	

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<sup>1</sup> CFAR is a City Financial Recipient.

<sup>2</sup> 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 \_\_\_\_\_, 2012

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_

Notary Public, State of California

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**DISPOSAL SERVICES FORM 11  
EXCEPTIONS TO CONTRACT**

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

- The exceptions are to be presented on a separate paper titled, "Form Exceptions to Contract".
- Each exception must be presented separately by stating: the specific exception, the page and line numbers of the exception, the suggested changes to the program related to the exception, the suggested changes in the Contract language related to the exception, 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 was accepted by the City.
- The exceptions 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 are taken, all required information as set forth above must be submitted. Exceptions 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									
<b>19.</b> Remaining Current Capacity as of January 1, 2012	_____								
<b>20.</b> Projected Capacity in 2035	_____								
<b>21.</b> 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: 70%; text-align: center;">Amount</th> <th style="width: 30%; 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								
_____	_____								
_____	_____								
_____	_____								
<b>22.</b> Planned Expansions, if any, to twenty (20) years and beyond	_____								
<b>23.</b> Current Environmental Status (Include any historical violation of permit provisions or legal actions at the proposed Disposal Facility)	_____								
<b>24.</b> 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.)	_____								
<b>25.</b> Form of Closure/Post-Closure Maintenance Financial Assurance Provided Under Current Regulations (trust fund, corporate guarantee, etc.)	_____								
<b>26.</b> Status of Current Permits and Regulatory Approvals for the Disposal Facility	_____								
<b>27.</b> Required Permit Revision Mitigations, Fees (including host fees) and Approvals Necessary to Accept the City's Waste	_____								

<b>DISPOSAL SERVICES FORM 12</b> <b>DISPOSAL FACILITY</b> Provide One Form Per Disposal Facility Site	
<b>28.</b> Method of Transportation Required for Landfill Access (e.g. transfer truck and trailer, rail car, etc.)	_____
<b>29.</b> Tipping Method for Incoming Load	_____
<b>30.</b> 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									
<b>17. Current Major Customers (including Tonnage commitments)</b>	<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								
_____	_____								
_____	_____								
_____	_____								
<b>18. Planned Expansions, if any, to twenty (20) years and beyond</b>	_____								
<b>19. Current Environmental Status (Include any historical violation of permit provisions or legal actions at the proposed Disposal Facility)</b>	_____								
<b>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.)</b>	_____								
<b>21. Status of Current Permits and Regulatory Approvals for the Delivery Facility</b>	_____								
<b>22. Required Permit Revision Mitigations, Fees (including host fees) and Approvals Necessary to Accept the City's Waste</b>	_____								
<b>23. Method of Transportation Provided for Facility Access (e.g. transfer truck and trailer, rail car, et.)</b>	_____								
<b>24. Tipping Method for Incoming Load</b>	_____								
<b>25. Environmental Impact on Host Community</b>	_____								

1068    **Section 5    DISPOSAL SERVICES CONTRACT**

1069

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# **Disposal Services Contract**

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

July 1, 2015





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**CITY OF OAKLAND**

1  
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").

**RECITALS**

5  
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)

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

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.

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

348 2.04.3 Will result in the creation or imposition of any lien, charge, or  
349 encumbrance of any nature whatsoever upon any of the properties or assets of CONTRACTOR  
350 which will interfere materially with CONTRACTOR'S performance hereunder.

351 2.05 No Litigation. There is no action, suit, proceeding or action at law or equity, or to  
352 the best of CONTRACTOR'S knowledge, any investigation before or by any court or  
353 governmental entity, pending or threatened against CONTRACTOR or otherwise affecting  
354 CONTRACTOR, wherein an unfavorable decision, ruling or finding, in any single case or in the  
355 aggregate, would materially adversely affect CONTRACTOR'S performance hereunder, or  
356 which in any way would adversely affect the validity or enforceability of this Contract, or which  
357 would have a material adverse effect on the financial condition of CONTRACTOR or its parent  
358 company.

359 2.06 Financial Ability, Disclosures, No Material Change. CONTRACTOR has sufficient  
360 financial resources to perform all aspects of its obligations hereunder. CONTRACTOR has  
361 provided CITY with audited financial statements that present fairly, in accordance with generally  
362 accepted accounting principles, the financial resources of CONTRACTOR. There has been no  
363 material adverse change in CONTRACTOR'S or CONTRACTOR'S parent company's financial  
364 circumstances since the date of the most recent financial statements.

365 2.07 Expertise. CONTRACTOR has the expert, professional, and technical capability  
366 to perform all of its obligations under this Contract.

367 2.08 CONTRACTOR'S Statements. CONTRACTOR'S proposal and any other  
368 supplementary information submitted to CITY that CITY has relied on in negotiations and  
369 entering into this Contract, do not: (i) contain any untrue statement of a material fact, or (ii) omit  
370 to state a material fact that is necessary in order to make the statements made, in light of the  
371 circumstances in which they were made, not misleading.

372 2.09 CONTRACTOR'S Investigation. CONTRACTOR has made an independent  
373 investigation (satisfactory to it) of the conditions and circumstances surrounding this Contract  
374 and the work to be performed by CONTRACTOR under the Contract, and enters into this  
375 Contract on the basis of that independent investigation.

### 376 **ARTICLE 3. TERM OF CONTRACT**

377 3.01 Initial Term. The term of this Contract shall be for a twenty (20) year term  
378 beginning on July 1, 2015 and terminating on June 30, 2035. CITY, in its sole discretion, shall  
379 have an option to extend the Contract for up to two (2) additional five (5) year periods.

380 3.01.1 First Extension. On or about April 1, 2033, CITY, at its sole discretion  
381 may extend this Contract by five (5) years by notifying CONTRACTOR of its intension to do so  
382 in writing.

383 3.01.2 Second Extension. On or about April 1, 2038, CITY, at its sole  
384 discretion may extend this Contract by five (5) years by notifying CONTRACTOR of its intension  
385 to do so in writing.

386 3.01.3 No Right to Extension. Nothing in the foregoing paragraphs or  
387 otherwise set forth in this Contract is intended to create a right in favor of CONTRACTOR to  
388 obtain either the first or second extension.

### 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                         5.02.1.1 CONTRACTOR shall keep CITY fully informed, in a timely  
432 manner, of its progress in securing permits, or renewals of permits that occur during the term of  
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 1<sup>st</sup>,  
477 Thanksgiving Day, and December 25<sup>th</sup>.

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  
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  
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.

621                   5.11.4 Notification. In the event CONTRACTOR is not the Collection  
622 Contractor(s) and CONTRACTOR rejects delivered materials, CONTRACTOR shall  
623 immediately notify the Collection Contractor(s) verbally and then follow such verbal notification  
624 with written notice. The written notice will identify: the date and time of occurrence; material  
625 type; material weight or volume; characterization of material; and CONTRACTOR'S reason for  
626 rejection of the delivered material.

627                   5.12 Reservation of Disposal Capacity. CONTRACTOR guarantees its ability to  
628 accept and Dispose all Mixed Materials, Garbage and Mixed Material Residue delivered to the  
629 Disposal Facility by, or on behalf of, CITY, and CITY'S MM&O Collection Contractor, or  
630 successor for thirty (30) years from July 1, 2015. CONTRACTOR shall be responsible for  
631 reasonably estimating the quantity of capacity that it shall be required to provide to accept and  
632 Dispose of all Mixed Materials, Garbage and Mixed Materials Residue generated in CITY over  
633 the term of the Contract. CITY makes no representations, and is under no obligation, regarding  
634 the quantity or composition of the Mixed Material, Garbage and Mixed Material Residue to be  
635 delivered to the Disposal Facility by, or on behalf of, CITY and CITY'S MM&O Collection  
636 Contractor or successor.

637                   5.13 Alternate Disposal Facility.

638                   5.13.1 If CONTRACTOR becomes unable to accept Mixed Material, Garbage  
639 and Mixed Materials Residue generated in CITY at the Disposal Facility because it did not use  
640 reasonable business efforts in resisting changes, alterations and amendments to permits, or  
641 due to reasons within its control and which could have been avoided by the exercise of due  
642 care, or as the result of any labor unrest, including but not limited to, strike, work stoppage or  
643 slowdown, sick-out, lockout, picketing, or other concerted job action conducted by  
644 CONTRACTOR, CONTRACTOR'S employees or subcontractors, then and only if, and to the  
645 extent, CONTRACTOR is actually prevented from accepting, Processing and/or transferring  
646 Mixed Materials, Garbage and Mixed Materials Residue at the Disposal Facility because of a  
647 concerted labor action, CONTRACTOR shall (i) accept, and Dispose of such Mixed Materials,  
648 Garbage and Mixed Materials Residue at another Disposal Facility owned by it (or by another  
649 company which is owned and controlled, directly or indirectly, by CONTRACTOR), at the then-  
650 current Disposal Tipping Fees in effect under this Contract, and shall pay any additional  
651 transportation costs incurred by the MM&O Collection Contractor in delivering the Mixed  
652 Materials, Garbage and Mixed Materials Residue to the other Disposal Facility, or (ii) shall  
653 arrange for all Mixed Materials, Garbage and Mixed Materials Residue to be accepted, and  
654 Disposed at a disposal facility not owned by it or an affiliated company, in which case  
655 CONTRACTOR shall pay any difference in the fees charged at such disposal facility plus any  
656 additional transportation costs incurred in delivering Mixed Materials, Garbage and Mixed  
657 Materials Residue to the disposal facility, and the then-current Disposal Tipping Fees in effect  
658 under this Contract. If as a result of a labor action directed at CONTRACTOR, CONTRACTOR  
659 makes arrangements that allow for continued operation of the Disposal Facility during the labor  
660 action, then it shall not be obligated to provide an alternative Disposal Facility and CITY shall be  
661 required to direct all Mixed Materials, Garbage and Mixed Materials Residue to the Disposal  
662 Facility, providing operations at the Disposal Facility are consistent with the requirements under  
663 this Contract.

664                   5.13.2 If CONTRACTOR, despite using reasonable business efforts to resist  
665 changes, alterations and amendments to permits under Section 5.02, becomes unable to accept  
666 and Dispose of Mixed Materials, Garbage and Mixed Materials Residue generated in CITY at  
667 the Disposal Facility, or if CONTRACTOR becomes unable to accept and Dispose of Mixed  
668 Materials, Garbage and Mixed Materials Residue at the Disposal Facility as the result of an

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

678           5.14 Monthly Report. Beginning on July 1, 2015, and monthly during the term of this  
679 Contract, CONTRACTOR shall provide a complete and accurate monthly report no later than  
680 twenty (20) calendar days after the end of the reporting month. Therefore, the first report will be  
681 due no later than August 20, 2015 for the reporting month of July 2015. The report shall be  
682 prepared in an electronic format in a form approved by the Contract Manager and shall, if  
683 requested by CITY, include data that can be uploaded by CITY. The report shall include the  
684 total Tonnage of Mixed Materials, Garbage and Residue generated in the CITY that was  
685 accepted and Disposed at the Disposal Facility and shall also list other applicable information,  
686 including date of receipt, inbound and outbound time, inbound and outbound weights of  
687 vehicles, Disposal Tipping Fee charged, vehicle identification number, vehicle type, type of  
688 material, hauler identification; type, and weight, separately for each of the following categories  
689 for material Collected by the Collection Contractor(s) within CITY: residential Garbage, Mixed  
690 Materials, Mixed Materials Residue, residential Organic Materials Residue, or residential  
691 Recyclable Materials Residue, commercial Garbage, Mixed Materials, or Residue, and CITY  
692 Garbage, Mixed Materials, or Residue. In addition, the report shall include Tonnage information  
693 for materials generated in the CITY delivered by other companies, small vehicles, CITY hauled  
694 materials, and other self-haulers, Recovered Materials and destination of outbound materials.  
695 The monthly report shall also include the following using an allocation methodology, where  
696 appropriate, that is acceptable to CITY:

697           5.14.1       Tonnage information by material type for material accepted at the  
698 Disposal Facility;

699           5.14.2       Gross revenue from the sale of each Revenue Producing Resource;

700           5.14.3       Number and nature of rejected loads during the month;

701           5.14.4       In addition CONTRACTOR shall maintain and make the following  
702 information available to CITY upon request:

703                       5.14.4.1   Number and nature of occurrences in which CONTRACTOR  
704 identified Hazardous Waste inadvertently accepted; and

705                       5.14.4.2   Number and nature of any notices of violation.

706           5.15 Annual Report of Disposal Facility Activity. Beginning February 15, 2016 and  
707 annually thereafter during the term of this Contract, CONTRACTOR shall submit a complete  
708 and accurate annual report of Disposal Facility activity to CITY. Annual reports shall be  
709 submitted no later than forty-five (45) calendar days after the end of each full or partial calendar  
710 year. Therefore, the first report will be due no later than February 15, 2016, for the partial  
711 calendar year of July 2015 through December 2015. The report shall be prepared in an  
712 electronic format in a form approved by the Contract Manager and shall, if requested by CITY,  
713 include data that can be uploaded by CITY. This report shall contain all items required by  
714 Section 5.14 in addition to the following: a list of parties that CONTRACTOR has guaranteed

715 capacity to through written agreements, the annual estimated Tonnage to be delivered by each  
716 party, and the term of CONTRACTOR'S capacity commitment. In the event CONTRACTOR  
717 has agreements with private companies, the name of the party may be withheld from the list;  
718 however, the annual Tonnage estimate and term of the commitment must be provided.

719           5.15.1     The annual report shall include information on amounts of Mixed  
720 Materials, Garbage and/or Residue delivered to the Disposal Facility and Disposed, Recycled or  
721 Diverted and other information that CITY may request in order to meet its related federal, State  
722 and local solid waste obligations.

723           5.16     Correction of Reports. In the event CONTRACTOR is notified in writing by CITY  
724 of the need to resubmit a corrected monthly or annual report, as set forth in Section 5.14 or 5.15  
725 above, CONTRACTOR shall submit the corrected report within three (3) Work Days of the  
726 written notification.

727           5.17     Closure and Post-Closure of Landfill. CONTRACTOR shall safely manage the  
728 Disposal Facility in full regulatory compliance not only during normal Disposal Facility operating  
729 period but also during the Disposal Facility closure and Post-Closure periods. CONTRACTOR  
730 acknowledges that it is solely responsible for: (i) the appropriate closure and Post-Closure  
731 activities of the Disposal Facility; and, (ii) the establishment and funding of any reserve funds  
732 required by applicable law for the purposes of providing funds for the payment of costs of  
733 closure of the Disposal Facility (or any Landfill cell within the Disposal Facility) or Post-Closure  
734 activities relating to the Disposal Facility. Without limitation, in no event shall CITY or Collection  
735 Contractor(s) be responsible for paying any deficiencies in such required reserves. In addition,  
736 CITY or Collection Contractors(s) shall have no responsibility to make any payments in the  
737 event that actual closure and Post-Closure costs relating to the Disposal Facility exceed the  
738 amounts upon which CONTRACTOR'S Disposal Tipping Fee was based on and the amount  
739 reserved by CONTRACTOR for such purposes.

740           5.18     Right to Enter Disposal Facility and Observe Operations. Upon reasonable  
741 written notice of not less than twenty-four (24) hours, CITY and its designated representative(s)  
742 shall have the right to enter, observe and inspect the Disposal Facility at any time during  
743 operations; conduct studies or surveys of the Disposal Facility; meet with the Disposal Facility  
744 manager(s) or their representatives at any time; and meet with other employees upon request,  
745 which request shall not be unreasonably denied by CONTRACTOR, provided that CITY and its  
746 representatives comply with CONTRACTOR'S reasonable safety and security rules and shall  
747 not interfere with the work of CONTRACTOR or its subcontractors. Upon CITY request,  
748 CONTRACTOR shall make personnel available to accompany CITY employees on inspections.  
749 CONTRACTOR shall ensure that its employees cooperate with CITY and respond to CITY'S  
750 reasonable inquiries.

751           5.19     Provision of Emergency Services. CONTRACTOR shall provide emergency  
752 services, at CITY'S request, in the event of major accidents, disruptions, or natural calamities.  
753 CONTRACTOR shall be capable of providing emergency services within twenty-four (24) hours  
754 of notification by CITY, or as soon thereafter as is reasonably practical, in light of the  
755 circumstances. Emergency services that exceed CONTRACTOR'S obligations under this  
756 Contract including, but not limited to, obligations related to facility receiving hours, the types and  
757 quantities of permitted materials accepted at the Disposal Facility, and the nature of resource  
758 recovery activities, shall be compensated through a modification to the scope of services using  
759 procedures set forth on Section 5.20.

760           5.20     Modifications to Scope of Service.

761                    5.20.1    General.    CITY may direct CONTRACTOR to perform additional  
762 services (including, but not limited to, performance of resource recovery activities) or modify the  
763 manner in which CONTRACTOR performs existing services (including, but not limited to, the  
764 modifications to or elimination of services).    CONTRACTOR'S Disposal Tipping Fee shall be  
765 increased or decreased, as appropriate, to give effect to these adjustments.

766                    5.20.2    Proposal for Modification of Services.    Within sixty (60) calendar days  
767 of CITY request for a proposal, CONTRACTOR shall present its proposal to modify existing  
768 services.    At a minimum, the proposal shall contain a complete description of the following:

769                                    5.20.2.1    Program objectives and goals to be used in measuring the  
770 success of the program as discussed in Section 5.20.5 below;

771                                    5.20.2.2    Methodology to be employed (changes to equipment, staffing,  
772 etc.);

773                                    5.20.2.3    Equipment to be utilized (equipment number, types, capacity,  
774 age, etc.);

775                                    5.20.2.4    Labor requirements (changes in number of employees by  
776 classification);

777                                    5.20.2.5    Provision for program publicity, education, and marketing (if  
778 appropriate);

779                                    5.20.2.6    Estimate of the impact of the service modification (increased  
780 Diversion Tonnage, reduced costs, increased public service, etc.); and

781                                    5.20.2.7    Five (5) year projection of the financial results of the program's  
782 operations in an operating statement format including documentation of the key assumptions  
783 underlying the projections and the support for those assumptions, giving full effect to the  
784 savings or costs to existing services.

785                    5.20.3    CITY'S Review.    Within ninety (90) calendar days of receiving  
786 CONTRACTOR'S proposal, CITY shall review and comment on, and approve or disapprove of  
787 the modification to the scope of services.    CITY and CONTRACTOR may mutually agree to  
788 extend the time period for review due to the complexity of the scope of service modification  
789 under consideration, the time needed for the review or approval, or for other reasonable  
790 reasons.

791                                    5.20.3.1    CITY may request the assistance of an independent third party  
792 to review the proposal.    The reasonable costs of such review shall be paid by CONTRACTOR if  
793 the modification to the scope of services is initiated by CONTRACTOR or, by CITY if the  
794 modification to the scope of services is initiated by CITY.    CONTRACTOR'S refusal to pay the  
795 reasonable cost of review of a CONTRACTOR-initiated proposal shall be grounds for CITY  
796 rejection of such proposal.

797                                    5.20.3.2    CITY may request copies of, or access to, CONTRACTOR'S  
798 operating and business records reasonably required to verify the reasonableness and accuracy  
799 of the impacts associated with a modification to the scope of services.    CONTRACTOR shall  
800 fully cooperate with CITY'S request and provide CITY and its agent(s) copies of or access to  
801 CONTRACTOR'S records.

802                    5.20.4    Approval of Modification to Scope of Services.    Upon CITY approval  
803 or determination, CITY will issue a notice approving the modification to the scope of service and  
804 documenting any change to CONTRACTOR'S Disposal Tipping Fees, and approved change to

805 CONTRACTOR'S obligations hereunder. The parties shall prepare a written amendment to the  
806 Contract documenting any and all changes resulting from the modification to the scope of  
807 services. No adjustment in CONTRACTOR'S Disposal Tipping Fees, change in  
808 CONTRACTOR'S obligations, or change in scope of services shall become effective absent  
809 such written approval or determination from CITY.

810           5.20.5       Termination for Cause. CITY shall have the right to terminate a  
811 program for cause, at no cost to CITY or CITY'S ratepayers if CONTRACTOR is not achieving  
812 the program's agreed to and defined goals and objectives as approved by CITY in accordance  
813 with Section 5.20.3. Prior to such termination CITY shall meet and confer with CONTRACTOR  
814 for a period of up to ninety (90) calendar days to resolve CITY'S concerns. Thereafter, CITY  
815 may terminate the program if CITY reasonably believes CONTRACTOR cannot meet or is not  
816 meeting the agreed to and defined project goals and objectives. Notwithstanding these  
817 changes, CONTRACTOR shall continue the program during the ninety (90) day period unless  
818 instructed in writing by CITY to discontinue the program.

819           5.20.6       Termination without Cause. CITY shall also have the right to  
820 terminate a program without cause. Prior to such termination, and as a condition of the  
821 termination, CITY shall reimburse CONTRACTOR for all costs incurred for implementation and  
822 performance of the program that were identified in the program proposal prepared and  
823 submitted by CONTRACTOR and agreed to by CITY which will have not been funded or  
824 otherwise recovered through program compensation at the time the program is terminated.

825           5.21       Recovered Materials. CONTRACTOR shall use reasonable efforts to operate  
826 the Disposal Facility so as to segregate Recoverable Materials. CONTRACTOR shall document  
827 the quantity of Recovered Materials removed from the Garbage, Mixed Materials or Residue  
828 delivered by the MM&O Collection Contractor and the quantity of such material Diverted from  
829 Disposal. CONTRACTOR shall calculate the quantity of Recovered Materials Diverted from  
830 Disposal on a monthly basis using a methodology acceptable to CITY and shall report thereon  
831 in accordance with reporting requirements set forth herein. CONTRACTOR shall provide  
832 resource recovery programs as may be agreed between CITY and CONTRACTOR to Divert  
833 Recoverable Materials from Disposal.

834           5.22       Revenue Generating Resources. (Note: This section will be added to reflect the  
835 revenue sharing terms agreed to with the selected proposer.)

836           5.23       Other Services. CONTRACTOR shall provide additional services not otherwise  
837 contemplated under this Contract at a price to be mutually agreed upon between CITY and  
838 CONTRACTOR. In the event CONTRACTOR and CITY cannot agree on terms, conditions and  
839 price of such service or program CITY shall have the right to procure the service of other  
840 vendors or contractors to provide the requested service or program at a location other than  
841 CONTRACTOR'S Disposal Facility.

842           5.24       CITY Delivered Materials. CONTRACTOR shall dispose of dirt and debris, Bulky  
843 Goods, and tires with or without rims if offered for Disposal as Mixed Materials or Garbage  
844 which are collected by CITY crews and delivered by CITY vehicles to the Disposal Facility.

845           5.25       Non-Permitted Companies. CONTRACTOR recognizes that collection of  
846 Construction and Demolition Debris in CITY is regulated by CITY, and in most cases may only  
847 be performed by companies that have obtained permits from CITY for Construction and  
848 Demolition Debris collection. For those commercial; loads containing materials that are  
849 identified by the individual delivering the materials as being generated in CITY, CONTRACTOR  
850 shall provide a monthly statement as part of the monthly report, listing the date and weight of

851 each load, and the name of the company delivering each load. CONTRACTOR shall also post,  
852 on a sign in clear view of all customers, CITY'S requirement that a permit is required for  
853 companies delivering Construction and Demolition Debris generated in the CITY in Roll-Off  
854 Boxes to the Disposal Facility.

855 5.26 Notification of Non-Payment. CONTRACTOR shall notify the Contract Manager  
856 in writing or by email in the event the MM&O Contractor fails to pay invoices submitted by  
857 CONTRACTOR for the provision of Disposal Services within thirty (30) days of the due date.

858 5.27 Cessation of Disposal Services to MM&O Contractor. CONTRACTOR may  
859 cease to provide Disposal Services to CITY'S MM&O Contractor, only after giving CITY thirty  
860 (30) calendar days advance written notice, to be served as provided in Article 21, upon the  
861 happening of the following event

862 5.27.1 CONTRACTOR has provided written notice to CITY and CITY'S MM&O  
863 Contractor that CITY'S MM&O Contractor has failed to pay CONTRACTOR for Disposal  
864 Services for a period of two (2) months and said non-payment has not been cured within thirty  
865 (30) calendar days of receipt of written notice by CITY.

## 866 **ARTICLE 6. DISPOSAL TIPPING FEE**

867 6.01 Disposal Tipping Fee. The Disposal Tipping Fee established under this Section  
868 6.01 includes all costs associated with complying with all federal and State statutes, and CITY  
869 and County ordinances concerning public health, safety and environmental issues and all laws,  
870 regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any  
871 governmental agency having jurisdiction over the disposition of Mixed Materials, Garbage or  
872 Residue that are in force on the effective date of this Contract, including any current provisions  
873 that become effective on or which require compliance by a date after the effective date of this  
874 Contract. The Disposal Tipping Fee comprises two (2) elements: 1) a Disposal Fee Element,  
875 and 2) a Government Fee Element.

876 6.01.1 Annual Adjustments to the Disposal Fee Element. Except as provided  
877 in this Article 6, the Disposal Fee Element shall not be adjusted over the term of this Contract.

878 6.01.1.1 Annual Disposal Fee Element Adjustment Through July 1,  
879 2024. Beginning on July 1, 2016 and annually thereafter through July 1, 2024, the Disposal Fee  
880 Element of the Disposal Tipping Fee shall be adjusted by the (methodology to be inserted) as  
881 set forth in Exhibit 2 except that the Disposal Fee Element adjustment shall never increase or  
882 decrease by more than five (5) percent in any year regardless of the calculated adjustment. If  
883 the five (5) percent limit is applied to adjustments in the Disposal Fee Element of the Disposal  
884 Tipping Fee in any year, the difference between five (5) percent and the percentage by which  
885 Disposal Fee Element of the Disposal Tipping Fee would have been increased or decreased in  
886 the absence of the five (5) percent limit will not be considered in any future year.

887 6.01.1.2 Disposal Fee Element Adjustment for July 1, 2025. Prior to  
888 March 1, 2025 CITY shall conduct a survey of posted Disposal Tipping Fees at all disposal  
889 facilities within a fifty (50) mile radius of CONTRACTOR'S Disposal Facility. In addition,  
890 CONTRACTOR shall provide CITY with on-site access to documentation of tipping fees  
891 charged to its twenty (20) largest current customers. The July 1, 2025 Disposal Fee Element  
892 shall be set at an amount that is based on the average of the three (3) lowest tipping fees found  
893 in the tipping fee survey and the two (2) lowest tipping fees charged by CONTRACTOR to its  
894 twenty (20) largest customers as of January 1, 2025, adjusted to compensate for potential  
895 differences in required governmental and regulatory fees (Governmental Fee Elements).

896 However, such adjustment to the Disposal Fee Element, whether positive or negative, shall be  
897 limited to no more than fifteen (15) percent of CONTRACTOR'S July 1, 2024 Disposal Fee  
898 Element regardless of the calculated adjustment.

899 6.01.1.3 Disposal Fee Element Adjustment From July 1, 2026 Through  
900 July 1, 2034. Beginning on July 1, 2026 and annually thereafter through July 1, 2034, the  
901 Disposal Fee Element of the Disposal Tipping Fee shall be adjusted by the (methodology to be  
902 inserted) as set forth in Exhibit 2 except that the adjustment shall never increase or decrease by  
903 more than five (5) percent in any year regardless of the calculated adjustment. If the five (5)  
904 percent limit is applied to adjustments in the Disposal Fee Element of the Disposal Tipping Fee  
905 in any year, the difference between five (5) percent and the percentage by which Disposal Fee  
906 Element of the Disposal Tipping Fee would have been increased or decreased in the absence  
907 of the five (5) percent limit will not be considered in any future year.

908 6.01.1.4 Disposal Fee Element Adjustment for July 1, 2035. In the  
909 event CITY elects to extend this Contract as set forth in Sections 3.01.1 and 3.01.2, CITY may  
910 at its sole discretion negotiate an alternative methodology to adjust the Disposal Fee Element  
911 over the term of the extension(s). In the event City elects not to negotiate an alternative  
912 methodology for adjusting the Disposal Fee Element or CITY and CONTRACTOR cannot agree  
913 on an alternative methodology within thirty (30) calendar days of beginning negotiations, the  
914 Disposal Fee Element for July 1, 2035 shall be adjusted as follows. Prior to March 1, 2035  
915 CITY shall conduct a survey of posted Disposal tipping fees at all disposal facilities within a fifty  
916 (50) mile radius of CONTRACTOR'S Disposal Facility. In addition, CONTRACTOR shall  
917 provide CITY with on-site access to documentation of tipping fees charged to its twenty (20)  
918 largest current customers. The July 1, 2035 Disposal Fee Element shall be set at an amount  
919 that is based on the average of the three (3) lowest tipping fees found in the tipping fee survey  
920 and the two (2) lowest tipping fees charged by CONTRACTOR to its twenty (20) largest  
921 customers as of January 1, 2035, adjusted to compensate for potential differences in required  
922 governmental and regulatory fees (Governmental Fee Elements). However, such adjustment to  
923 the Disposal Fee Element whether positive or negative shall be limited to no more than fifteen  
924 (15) percent of CONTRACTOR'S July 1, 2034 Disposal Fee Element regardless of the  
925 calculated adjustment.

926 6.01.1.5 Disposal Fee Element Adjustment From July 1, 2036 Through  
927 the End of the Extended Contract Term. Except as set forth below, beginning on July 1, 2036  
928 and annually thereafter through the end of the extended Contract term the Disposal Fee  
929 Element of the Disposal Tipping Fee shall be adjusted by the (methodology to be inserted) as  
930 set forth in Exhibit 2 except that the adjustment shall never increase or decrease by more than  
931 five (5) percent in any year regardless of the calculated adjustment. If the five (5) percent limit is  
932 applied to adjustments in the Disposal Fee Element of the Disposal Tipping Fee in any year, the  
933 difference between five (5) percent and the percentage by which Disposal Fee Element of the  
934 Disposal Tipping Fee would have been increased or decreased in the absence of the five (5)  
935 percent limit will not be considered in any future year. In the event CITY and CONTRACTOR  
936 negotiate an alternative methodology to adjust the Disposal Element beginning July 1, 2036 in  
937 accordance with Section 6.01.1.4 above, that methodology shall be utilized to adjust the  
938 Disposal Fee Element from July 1, 2036 through the end of the Contact term.

939 6.02 Government Fees. The Disposal Tipping Fee includes the Government Fee  
940 Elements set forth in Exhibit 1.

941 6.02.1 Changes in Government Fee Elements. Government Fee Elements  
942 shall be adjusted each July 1<sup>st</sup> as needed, so that they equal the then current government fees



943 required to be paid by CONTRACTOR. However, no governmental fees or charges to which  
944 CONTRACTOR agrees contractually or negotiates shall be passed through to customers unless  
945 agreed to in writing by CITY.

946           6.02.2   Payment of Governmental Fees. CONTRACTOR shall pay, when  
947 and as due, any and all governmental fees to the appropriate federal, State, regional, or local  
948 governmental entities that levied the fees, and shall provide CITY with proof of such payments  
949 promptly upon request.

950           6.03   Annual Adjustment. The annual Disposal Tipping Fee adjustment shall comprise  
951 the changes in the Disposal Fee Element, subject to the limitations set forth above, and the  
952 changes in the Governmental Fee Elements. (Note: once the actual methodology is known the  
953 Contract will be amended to provide specific language and an example)

954           6.04   Changes in Disposal Fee Element Due To Changes in Law.

955           6.04.1   The Disposal Fee Element in Exhibit 1 includes all costs associated  
956 with complying with all existing laws, governmental regulations and permits applicable to the  
957 Disposal Facility as of the date of this Contract and including requirements that may be imposed  
958 on permits for which CONTRACTOR has applied for including amendments to permits, as of the  
959 effective date of this Contract. The purposes of this Section 6.04 are (a) to specify the costs of  
960 compliance with laws and governmental regulations that is included in the Disposal Fee  
961 Element, as well as other similar costs, whose increase may not result in an increase in the  
962 Disposal Fee Element, (b) to identify those laws and governmental regulations that may be  
963 enacted in the future, a proportionate share of the cost of which may be the basis for an  
964 increase in the Disposal Fee Element, and (c) to specify the method by which CITY'S  
965 proportionate share of such costs will be determined.

966           6.04.2   The Disposal Fee Element will not be increased as a result of any of  
967 the following:

968                   6.04.2.1   Costs to comply with all laws and governmental regulations  
969 existing as of the Effective Date, if any, which become effective, or which require compliance by  
970 a date, after the Effective Date of this Contract, including but not limited to, all closure and Post-  
971 Closure cost regulations.

972                   6.04.2.2   Costs due to CONTRACTOR'S negligence, active or passive,  
973 or intentional misconduct, or fines or penalties for violations of law.

974                   6.04.2.3   Costs for which CONTRACTOR is already responsible under  
975 other provisions of this Contract.

976                   6.04.2.4   Costs attributable to the classification of the Disposal Facility  
977 that are only necessary in order to allow CONTRACTOR to accept material other than Garbage  
978 or Residue at the Disposal Facility.

979                   6.04.2.5   Costs attributable to permits and amendments to permits, (i)  
980 which have been issued to CONTRACTOR, or (ii) for which CONTRACTOR has applied for by  
981 the effective date of this Contract (attached as Exhibit 7 - to be added if appropriate).

982           6.04.3   The Disposal Fee Element may be increased to reflect CITY'S  
983 proportionate share, determined as provided in Section 6.04.4, of the net increase in the  
984 Disposal Fee Element attributable to the following, to the extent mandated by Changes in Laws:  
985 (1) costs of making improvements or modifications at the Disposal Facility, (2) costs of  
986 performing closure/Post-Closure monitoring at the Disposal Facility, and/or (3) costs caused

987 directly by, or directly necessary for operations at the Disposal Facility, including costs of site-  
988 specific record keeping and reporting, if such costs (in items (1), (2), and/or (3)) are necessary  
989 to comply with changes to the existing laws and governmental regulations enacted or  
990 promulgated after the effective date of this Contract, and not otherwise excluded by virtue of  
991 Section 6.04.2.1, with new laws and governmental regulations enacted or promulgated after the  
992 effective date of this Contract and not otherwise excluded by virtue of Section 6.04.2, with new  
993 permits and changes to the terms and conditions contained in existing permits (except as  
994 provided in Section 6.04.2) applicable to the Disposal Facility.

995                   6.04.3.1 This Article is not intended to allow the Disposal Fee Element  
996 to be increased to cover increased overhead and general or administrative expenses unless  
997 they can be specifically identified and related to disposal of Mixed Materials, Garbage or  
998 Residue Collected in CITY, e.g., a laboratory technician added at the regional level, and which  
999 are attributable to Changes in Law.

1000                   6.04.4     Proportionate Share of Disposal Facility Costs. To the extent that the  
1001 net increase in costs of complying with Changes in Law are attributable to material already in  
1002 place at the Disposal Facility at the time such Change in Law occurs, then CITY'S proportionate  
1003 share of the present value of such increases in costs shall be determined by multiplying such  
1004 increase in costs by a fraction, the numerator of which is the amount of material as of the time of  
1005 increase is computed that is deposited at the Disposal Facility which was delivered from CITY  
1006 and the denominator of which is the total amount of material then deposited at the Disposal  
1007 Facility from all sources. CONTRACTOR represents that these amounts as of January 1, 2015  
1008 are approximately (to be inserted based on Contract award) Tons and (to be inserted based on  
1009 contract award) Tons, respectively. The costs of compliance with Changes in Law described in  
1010 this section shall be calculated on a "per Ton" basis, amortized over the useful life of the  
1011 facilities constructed, and the annual amortization incorporated in the Disposal Tipping Fee over  
1012 the remaining term of this Contract. The annual increase in the Disposal Fee Element  
1013 attributable to the amortization of such costs shall be determined by dividing CITY'S aggregate  
1014 proportionate share of such costs by (i) the remaining term of this Contract and (ii) the average  
1015 number of Tons of Mixed Materials and Garbage collected from within CITY'S boundaries  
1016 during the preceding year. The annual amortization described in the prior sentence shall be  
1017 added to the Disposal Fee Element after said Disposal Fee Element is otherwise adjusted for  
1018 said year as set forth in Section 6.01.1, adjustments to reflect changes in the Governmental  
1019 Fees Element as described below, and adjustments to the Disposal Fee Element described in  
1020 the following section.

1021                   6.04.4.1 To the extent that the costs of complying with Changes in Law  
1022 are attributable to material not yet in place at the Disposal Facility at the time such Change in  
1023 Law occurs, then CITY'S proportionate share of such costs shall be determined by multiplying  
1024 the present value of such costs by a fraction, the numerator of which is the average number of  
1025 Tons of material from CITY Disposed of at the Disposal Facility during the preceding three (3)  
1026 years multiplied by the number of years remaining in the term of this Contract and the  
1027 denominator of which is the total remaining permitted air space available for Disposal at the  
1028 Disposal Facility as of the date of the change. As of the effective date of this Contract, the  
1029 remaining air space is approximately (to be completed based on Contract Award) Tons. The  
1030 costs of compliance with Changes in Law shall be calculated on a "per Ton" basis and  
1031 amortized over the remaining life of the Disposal Facility and the annual amortization  
1032 incorporated in the Disposal Fee Element over the remaining term of this Contract by adding  
1033 CITY'S proportionate share of such increases to the Disposal Fee Element. The annual  
1034 amortization described in the prior sentence shall be added to the Disposal Fee Element after

1035 said Disposal Fee Element is otherwise adjusted for said year as set forth in Section 6.01.1, and  
1036 to reflect changes in the Governmental Fees Element as described in the preceding paragraph  
1037 above. In all cases in which CONTRACTOR requests an increase in the Disposal Fee Element  
1038 above that provided for in Section 6.01.1 based on the costs of compliance with a Change in  
1039 Law, CONTRACTOR shall provide CITY, on an annual basis, evidence showing (1) that the  
1040 work required by the Change in Law has been performed, (2) the amount of costs actually  
1041 incurred, and (3) that the costs incurred were necessary to comply with the Change in Law.

1042           6.04.5   Procedures for Sharing in Cost of Changes in Laws. If  
1043 CONTRACTOR believes that complying with Changes in Law will increase the costs of  
1044 operating the Disposal Facility, and that it is entitled, under this Article to an increase in the  
1045 Disposal Fee Element to reflect the costs of compliance, then it must follow the procedures in  
1046 this Article before the Disposal Fee Element will be increased.

1047           6.04.5.1   CONTRACTOR shall give CITY prompt notice (in no case less  
1048 than ninety (90) days before their effective date, if possible) of the regulations, specifically  
1049 identifying them and describing what changes in operations at the Disposal Facility are required,  
1050 when compliance is required, and whether CONTRACTOR or the Disposal Facility is eligible for  
1051 any exemptions or variances.

1052           6.04.5.2   CONTRACTOR shall thereafter submit to CITY for review and  
1053 comment, its proposed method for complying with the regulations, the estimated cost of  
1054 compliance, CITY'S proportionate share thereof, and the associated increase necessary in the  
1055 Disposal Fee Element. CITY will act promptly on the submission.

1056           6.04.5.3   CONTRACTOR shall thereafter submit its proposed method of  
1057 compliance to the appropriate regulatory agency. If the regulatory agency approves that method  
1058 without conditions, the proportionate share of the costs necessary to implement that method of  
1059 compliance will be the amount by which the Disposal Fee Element may be increased.

1060           6.04.6   No fees or charges to which CONTRACTOR agrees contractually or  
1061 negotiates shall be passed through to customers unless agreed to in writing by CITY.

1062           6.05   Payment of Taxes. CONTRACTOR shall pay, when and as due, any and all  
1063 governmental assessments, or taxes incurred as a result of CONTRACTOR'S provision of  
1064 services under this Contract, including estimated taxes, and shall provide CITY with proof of  
1065 such payments promptly upon request.

1066           6.06   Disposal Facility Closure/Post Closure Funding. CITY and CONTRACTOR  
1067 agree that CITY shall not be liable for any Disposal Facility closure/Post-Closure costs for waste  
1068 Disposal prior to July 1, 2015.

1069           6.06.1   CONTRACTOR acknowledges and agrees that from July 1, 2015  
1070 going forward, the Disposal Tipping Fee adequately funds CITY'S liability for Disposal Facility  
1071 closure/Post -Closure costs.

1072           6.07   CONTRACTOR'S Payments to CITY. CONTRACTOR shall make payment to  
1073 CITY of a Franchise Fee, and such other fees as may be specified in Section 6.07.

1074           6.07.1   Franchise Fee. The Franchise Fee for the fiscal year July 1, 2015  
1075 through June 30, 2016 shall be Three Hundred Sixty Thousand Dollars (\$360,000). The  
1076 Franchise Fee for the next fiscal year and each subsequent fiscal year shall be adjusted  
1077 annually by the same percentage as the percentage used to adjust the Disposal Fee Element  
1078 for that fiscal year as set forth in Section 6.01.1. The Franchise Fee for each fiscal year shall be  
1079 divided into 12 equal payments, and paid monthly no later than the 15<sup>th</sup> of each month for that

1080 month. The Franchise Fee payments will begin no later than July 15<sup>th</sup>, 2015 and will continue  
1081 each month throughout the term of the Contract.

1082                   6.07.2     Proposal Development Fee. No later than thirty (30) calendar days  
1083 after the execution of this Contract by CITY and CONTRACTOR, CONTRACTOR shall submit a  
1084 one-time proposal development fee to CITY in the amount of Two Hundred Fifty Thousand  
1085 Dollars (\$250,000).

## 1086                   **ARTICLE 7. INDEMNITY AND INSURANCE,**

1087                   7.01     CONTRACTOR'S Duty to Indemnify CITY. CONTRACTOR shall and does  
1088 indemnify and hold harmless CITY, its agents (for purposes of this Article, including attorneys  
1089 and consultants), officers, employees, volunteers, successors, assigns, and appointed and  
1090 elected officials (collectively "Indemnitees") from and against any and all losses, liabilities,  
1091 claims, suits, allegations, actions, damages, interest, penalties, fines, forfeitures, demands  
1092 and/or causes of action (collectively "claims") arising from or in connection with  
1093 CONTRACTOR'S performance hereunder, including but not limited to closure/Post-Closure  
1094 costs associated with a Change in Law related to Tonnage received prior to the Change in Law,  
1095 except to the extent such claims arise out of the negligence or willful misconduct of CITY, in  
1096 which case CONTRACTOR'S indemnification shall be reduced in proportion to CITY'S degree  
1097 of comparative fault. CONTRACTOR shall indemnify and hold harmless the Indemnitees from  
1098 and against all costs of investigation, litigation, negotiation or alternative dispute resolution;  
1099 counsel fees; expenses incurred in obtaining expert testimony and the attendance of witnesses;  
1100 and all other expenses and liabilities incurred in connection with the defense of any action or  
1101 proceedings brought thereon, and from and against any orders, judgments, or decrees which  
1102 may be entered therein. CITY shall provide CONTRACTOR with prompt notice of any claims,  
1103 and CONTRACTOR shall assume the defense of any claim, with counsel reasonably  
1104 acceptable to the Indemnitees, and CONTRACTOR shall have authority to settle any claim, with  
1105 CITY'S consent which may not be unreasonably withheld and provided such settlement fully  
1106 releases and extinguishes Indemnitees' alleged liability under the claim. Where a conflict of  
1107 interest exists between the Indemnitees and CONTRACTOR with respect to a claim,  
1108 CONTRACTOR shall provide the Indemnitees with independent legal counsel of the  
1109 Indemnitees' choice, at CONTRACTOR'S expense. Without limiting the generality of the  
1110 foregoing, CONTRACTOR'S indemnification shall include: personal injury, death or damage to  
1111 property (including contamination); product liability, violation of federal, State, or local law; or  
1112 any other claim whatsoever connected with the activities of CONTRACTOR, its subcontractors,  
1113 agents, and/or employees under this Contract or on account of the performance of character of  
1114 the work performed hereunder, including unforeseen difficulties, accidents, occurrence, or  
1115 omissions, including but not limited to, any failure to exclude Hazardous Waste from Collection  
1116 or Processing; any claim that CONTRACTOR, or its agents, subcontractors, directors, officers,  
1117 employees or representatives, has breached an express or implied warranty of merchantability  
1118 or fitness for particular use or any other warranty relating to any materials marketed pursuant to  
1119 this Contract; or any claim that any of them has violated any license, copyright, or other  
1120 limitation on CONTRACTOR'S use of computer software in connection with CONTRACTOR'S  
1121 performance of services under this Contract. Notwithstanding the foregoing, CONTRACTOR  
1122 shall not be required to indemnify the Indemnitees for: (i) claims resulting entirely from the acts  
1123 or omissions of independent (not affiliated with Contractor) third party owners or operators of  
1124 facilities approved by CITY under this Contract, where such third party acts or omissions are  
1125 beyond CONTRACTOR'S control; (ii) third party claims based solely on CONTRACTOR'S  
1126 delivery of the de minimis amounts of materials excluded from the definition of Hazardous

1127 Waste under this Contract to a facility approved by CITY under this Contract, and (iii) any claim  
1128 that CITY set or approved Disposal Tipping Fees in violation of applicable law. Approval of  
1129 insurance coverage or acceptance of work or services by CITY under this Contract does not  
1130 relieve CONTRACTOR or its agents, subcontractors, directors, officers, employees, or  
1131 representatives of liability under this Article.

1132           7.02 Hazardous Material Indemnification. CONTRACTOR shall indemnify, defend  
1133 with counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and  
1134 expense, CITY, its City Council, officers, officials, employees, volunteers and agents, and the  
1135 Collection Contractor(s) (collectively, "Indemnitees") from and against any and all claims,  
1136 damages, injuries, costs (including and without limit any and all response, remediation and  
1137 removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or  
1138 administrative proceedings, interest, fines, charges, penalties, and expenses (including  
1139 reasonable attorneys' and expert witness fees, expenditures for investigation and remediation)  
1140 and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered by or asserted  
1141 against any of the Indemnitees by reason of, or arising from, the presence, Disposal, escape,  
1142 migration, leakage spillage, discharge, emission, release, handling or transportation of  
1143 Hazardous Materials in, on, at, or under the Disposal Facility (collectively, "environmental  
1144 events"), any personal injury, death, or property damage, arising out of or related to any of the  
1145 environmental events; any lawsuit brought or threatened, settlement reached, or government  
1146 hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Materials or any  
1147 of the environmental events.

1148           7.02.1 Such indemnification shall apply to all events arising from or  
1149 attributable to the acts or omissions of CONTRACTOR, its officers, directors, employees,  
1150 whether or not negligent or otherwise culpable, in connection with or related to  
1151 CONTRACTOR'S performance of this Contract, including without limit damages arising from or  
1152 attributable to any operations, repair, clean-up or detoxification, or preparation and  
1153 implementation of any removal, remedial, response, closure, Post-Closure or other plan  
1154 (regardless of whether undertaken due to governmental action) concerning any Hazardous  
1155 Materials at the Disposal Facility. For the avoidance of doubt, the foregoing indemnity is  
1156 intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental  
1157 Response, Compensation and Liability Act, CERCLA, 42 U.S.C. §9607(e) and California Health  
1158 and Safety Code §25364, to defend, protect, hold harmless, and indemnify CITY from liability  
1159 thereunder.

1160           7.02.2 This provision is in addition to all other provisions in this Contract  
1161 and is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall  
1162 extend to the indemnification obligation hereunder.

1163           7.03 Environmental Indemnification. CONTRACTOR shall indemnify, defend with  
1164 counsel acceptable to CITY, and hold harmless, at CONTRACTOR'S sole cost and expense,  
1165 CITY, its City Council, officers, officials, employees, volunteers and agents, and the Collection  
1166 Contractor (collectively, "Indemnitees") from and against any and all claims, damages, injuries,  
1167 costs (including and without limit any and all response, remediation and removal costs), losses,  
1168 demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings,  
1169 interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert  
1170 witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever,  
1171 paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by any  
1172 lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry,  
1173 proceeding, or order relating to, or arising from, directly or indirectly, CONTRACTOR'S alleged  
1174 failure or actual failure to comply with the environmental laws and regulations. This

1175 indemnification will not extend to environmental claims to the extent they are caused by the sole  
1176 or joint or contributory negligence or intentional misconduct or omission of CITY, its officers,  
1177 employees or agents, or the Collection Contractor(s).

1178           7.03.1       This provision is in addition to all other provisions in this Contract and  
1179 is intended to survive the end of the term of this Contract. CONTRACTOR'S Guaranty shall  
1180 extend to the indemnification obligation hereunder.

1181           7.04   Insurance. CONTRACTOR shall secure and maintain throughout the course of  
1182 the Contract, insurance against claims for injuries to persons or damages to property which may  
1183 arise from or in connection with the performance of the work hereunder by CONTRACTOR, its  
1184 agents, representatives, employees or subcontractors.

1185           7.04.1       Commercial General Liability Insurance. CONTRACTOR, at its own  
1186 expense, shall maintain liability and property damage insurance for the period covered by this  
1187 Contract in the amount of Five Million Dollars (\$5,000,000) per occurrence. If such CGL  
1188 insurance contains an aggregate limit, either the general aggregate limit shall apply separately  
1189 to this project/location or the general aggregate limit shall be twice the required occurrence limit.  
1190 The scope of such coverage shall be at least as broad as Insurance Services Office  
1191 Commercial General Liability Coverage (occurrence form CG0001). CITY and CONTRACTOR  
1192 shall review coverage within sixty (60) days of the end of calendar year 2020. Such coverage  
1193 shall include, but not be limited to, protection against claims arising from: bodily and personal  
1194 injury, including death resulting therefrom; damage to property resulting from activities  
1195 contemplated under this Contract; product liability; and claims relating to completed operations.  
1196 Any failure to comply with reporting or other provisions of the policies including breaches of  
1197 warranties, shall not affect coverage provided to the additional insured parties. The policy shall  
1198 stipulate that this insurance is primary insurance and that no other insurance carried by CITY  
1199 will be called upon to contribute to a loss suffered by CONTRACTOR hereunder, except where  
1200 indemnity from CITY applies. The policy shall stipulate that this insurance shall apply separately  
1201 to each of the insured parties against whom a claim is made, except with respect to the limits of  
1202 the insurer's liability. Such insurance shall be with insurers and under forms of policies  
1203 reasonably satisfactory in all respects to CITY and shall provide that written notice must be  
1204 given to CITY thirty (30) days prior to policy cancellation by certified mail, return receipt  
1205 requested. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge of or any  
1206 material change in coverage that impacts this Contract.

1207           7.04.2       Motor Vehicle Liability Insurance. CONTRACTOR, at its own  
1208 expense, shall maintain motor vehicle liability insurance for the period covered by this Contract  
1209 in the amount of Five Million Dollars (\$5,000,000) per occurrence combined single limit  
1210 coverage for personal and bodily injury and property damage. The scope of such coverage shall  
1211 be at least as broad as Insurance Services Office form number CA 0001 Covering Automobile  
1212 Liability, Code (any auto). CITY and CONTRACTOR shall review coverage within sixty (60)  
1213 days of the end of calendar year 2020. CITY may require reasonable changes in the amount of  
1214 the insurance coverage set forth herein based on documented changes in industry standards  
1215 during the five (5) year period ended June 30, 2020. Such insurance shall be with insurers and  
1216 under forms of policies reasonably satisfactory in all respects to CITY and shall provide that  
1217 written notice must be given to CITY thirty (30) days prior to policy cancellation by certified mail,  
1218 return receipt requested. CONTRACTOR shall notify CITY within thirty (30) days of its  
1219 knowledge or any material change in coverage that impacts this Contract.

1220           7.04.3       Worker Compensation Insurance. CONTRACTOR, at its own  
1221 expense, shall carry and maintain full Worker Compensation Insurance, as required by the

1222 California Labor Code and Employer's Liability insurance with limits not less than Five Million  
1223 Dollars (\$5,000,000) for each employee per accident or disease. The scope of such coverage  
1224 shall be at least as broad as the Worker's Compensation insurance required by the State of  
1225 California and Employer's Liability insurance. Such insurance shall be with insurers and under  
1226 forms of policies reasonably satisfactory in all respects to CITY, unless CONTRACTOR is self-  
1227 insured and complies with the requirements of Section 7.04.5. Such policies shall provide that  
1228 written notice must be given to CITY thirty (30) days prior to cancellation by certified mail, return  
1229 receipt requested. CONTRACTOR shall notify CITY within thirty (30) days of its knowledge or  
1230 any material change in coverage that impacts this Contract. The Workers Compensation policy  
1231 shall be endorsed with a waiver of subrogation in favor of CITY for all work performed by  
1232 CONTRACTOR, its employees, agents, and subcontractors.

1233                   7.04.4     Environmental Impairment and Pollution Liability. CONTRACTOR, at  
1234 its own expense, shall carry and maintain environmental impairment and pollution liability  
1235 insurance for the term, including any extensions thereto, in the amount of Ten Million Dollars  
1236 (\$10,000,000) per loss and in annual aggregate, covering liability arising from the release of  
1237 waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if  
1238 commercially available, without involvement of CITY, automatically broaden in its form of  
1239 coverage to include legislative changes in the definition of waste materials and/or irritants,  
1240 contaminants or pollutants. The policy shall stipulate this insurance is primary insurance and no  
1241 other insurance carried by CITY will be called upon to contribute to a loss suffered by  
1242 CONTRACTOR hereunder and waive subrogation against CITY and other additional insureds.

1243                   7.04.5     Other Insurance Provisions. The liability policies are to contain, or be  
1244 endorsed to contain, the following provisions:

1245                   7.04.5.1   CITY may require reasonable changes in the amount of the  
1246 insurance coverage set forth herein based on documented changes in industry standards during  
1247 the five (5) year period ended June 30, 2020.

1248                   7.04.5.2   CITY, its Councilmembers, directors, officers, agents,  
1249 employees, and volunteers are to be covered as respects: liability arising out of activities  
1250 performed by or on behalf of CONTRACTOR, products and completed operations of  
1251 CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or vehicles owned,  
1252 leased, hired, or borrowed by CONTRACTOR. The coverage shall contain no special limitations  
1253 on the scope of protection afforded to CITY, its Councilmembers, directors, officers, agents,  
1254 employee's agents (including attorneys and consultants) or volunteers.

1255                   7.04.5.3   For any claims related to this Contract, CONTRACTOR'S  
1256 insurance coverage shall be primary insurance as respects CITY, its Councilmembers,  
1257 directors, officers, agents, employees, and volunteers. Any insurance or self-insurance  
1258 maintained by CITY, its officers, officials, employees, agents, or volunteers shall be excess of  
1259 CONTRACTOR'S insurance and shall not contribute with it.

1260                   7.04.5.4   Any failure to comply with reporting or other provisions of the  
1261 policies including breaches of warranties shall not affect coverage provided to CITY, its  
1262 Councilmembers, directors, officers, agents, employees, or volunteers.

1263                   7.04.5.5   CONTRACTOR'S insurance shall apply separately to each  
1264 insured against whom claim is made or suit is brought, except with respect to the limits of the  
1265 insurer's liability. CONTRACTOR shall monitor its insurance contracts and coverage at all times  
1266 to provide the minimum coverage specified by this Article.

1267 7.04.5.6 Each insurance policy required by this Article shall be  
1268 occurrence based (except as provided in Section 7.04.5.11), shall be endorsed to state  
1269 coverage, shall not be canceled by either party or changed materially except after thirty (30)  
1270 days' prior written notice by certified mail, return receipt requested, has been given to CITY.

1271 7.04.5.7 CITY, its Councilmembers, directors, officers, agents,  
1272 employees, and volunteers shall be named as additional insured on all policies. In the event of  
1273 cancellation, or material change in coverage, thirty (30) days prior written notice thereof shall be  
1274 given to CITY. Notice shall be sent by certified mail to the parties designated in Section 21.01.:

1275 7.04.5.8 CONTRACTOR shall furnish CITY with original certificates  
1276 affecting coverage required by this clause. The certificates are to be signed by a Person  
1277 authorized by that insurer to bind coverage on its behalf. All endorsements are to be received  
1278 and approved by CITY before work commences. The insurance information required by this  
1279 provision shall be provided to CITY by May 15, 2015.

1280 7.04.5.9 Insurance is to be placed with insurers with a current A.M.  
1281 Best's rating of no less than A:VII or a rating which is acceptable to CITY.

1282 7.04.5.10 CONTRACTOR and insurer agree to waive all rights of  
1283 subrogation against CITY for losses arising from work performed by CONTRACTOR for CITY.  
1284 CONTRACTOR shall deliver the insurer's consent to such waiver within thirty (30) days of the  
1285 Effective Date of this Contract.

1286 7.04.5.11 The Comprehensive General Liability Insurance and  
1287 Automobile Liability insurance shall be written on an occurrence basis and kept in force during  
1288 the entire term of this Contract; Environmental Impairment and Pollution Liability Insurance is  
1289 written on a claims-made basis and shall be maintained through continuous renewals so as to  
1290 provide the same levels of coverage after the expiration of this Contract as might be necessary  
1291 to protect CITY from any and all liability during all applicable statutes of limitation which might  
1292 apply to claims of third parties arising out of the activities of CONTRACTOR during the term of  
1293 this Contract. The deductibles or self-insured retention with respect to any Environmental  
1294 Impairment and Pollution Liability Insurance, including any renewals as set forth herein, shall  
1295 not exceed Five Million Dollars (\$5,000,000). Hazardous Waste and Environmental Impairment  
1296 Liability will include coverage for all operations of CONTRACTOR under this Contract. If  
1297 coverage is on a claims made basis, the retroactive date must be shown, and must be before  
1298 the date of the Contract or the beginning of the Contract work. Insurance must be maintained  
1299 and evidence of insurance must be provided for at least five (5) years after completion of the  
1300 Contract of work. If coverage is cancelled or non-renewed, and not replaced with another  
1301 claims-made policy form with a retroactive date prior the contract effective date, CONTRACTOR  
1302 must purchase "extended reporting" coverage for a minimum of five (5) years after completion of  
1303 work.

1304 7.04.5.12 CONTRACTOR shall comply with all requirements of the  
1305 insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any  
1306 obligation under this Contract. If any claim exceeding the amount of any deductibles or self-  
1307 insured reserves is made by any third Person against CONTRACTOR or any subcontractor on  
1308 account of any occurrence related to this Contract, CONTRACTOR shall promptly report the  
1309 facts in writing to the insurance carrier and to CITY.

1310 7.04.5.13 The limits of insurance are the minimum required limits and if  
1311 CONTRACTOR maintains higher limits, CITY shall be entitled to coverage for the higher limits  
1312 maintained by CONTRACTOR.



1313 7.05 Subcontractors. CONTRACTOR shall include subcontractors as insureds under  
1314 its policies or shall furnish separate certificates and endorsements for each subcontractor.  
1315 Coverage for subcontractors shall be subject to all requirements stated herein.

1316 7.06 Non-renewal or Cancellation. Upon notification of receipt by CITY of a notice of  
1317 cancellation, material change in coverage, or expiration of policy(ies), CONTRACTOR shall file  
1318 with CITY a certified copy of a new or renewal policy(ies) and certificates for such policy(ies),  
1319 satisfactory to CITY.

1320 7.07 Failure to Comply. If at any time during the term of the Contract, CONTRACTOR  
1321 fails to comply with the provisions of Section 7.04 CITY may, in addition to any other remedy  
1322 available to CITY, take out and maintain, at CONTRACTOR'S expense, such insurance as  
1323 CITY may deem proper and charge the cost thereof to CONTRACTOR.

1324 7.08 Deductibles and Self-Insured Retentions. The level of deductibles and amounts  
1325 of self-insured retention shall be subject to the approval by CITY and CITY may require  
1326 additional financial assurances in the event that deductibles or self-insured retention exceed  
1327 CITY's approved levels. Except as set forth in Section 7.04.5.11 above, any deductibles or self-  
1328 insured retentions shall be for the account of CONTRACTOR and shall be the sole responsibility  
1329 of CONTRACTOR.

1330 **ARTICLE 8. PERFORMANCE SECURITY**

1331 8.01 Performance Bond. A performance bond must be furnished by CONTRACTOR  
1332 within fifteen (15) calendar days of notification to CONTRACTOR that that the Contract has  
1333 been executed. CONTRACTOR shall furnish to CITY, and keep current, a performance bond in  
1334 a form with language that is acceptable to CITY, for the faithful performance of this Contract and  
1335 all obligations arising hereunder in an amount of Five Million Dollars (\$5,000,000). The  
1336 performance bond must be executed by a surety company that is acceptable to CITY; an  
1337 admitted surety company licensed to do business in the State of California; has an "A:VII" or  
1338 better rating by A. M. Best or Standard and Poors; and is included on the list of surety  
1339 companies approved by the Treasurer of the United States

1340 8.02 Renewal. Beginning July 1, 2016, and each July 1<sup>st</sup> thereafter, CONTRACTOR  
1341 shall have the performance bond renewed annually and be executed by a surety company that  
1342 is acceptable to CITY; an admitted surety company licensed to do business in the State of  
1343 California; has an "A:VII" or better rating by A. M. Best or Standard and Poors; and is included  
1344 on the list of surety companies approved by the Treasurer of the United States.

1345 8.03 Letter of Credit. As an alternative to the performance bond required by Section  
1346 8.01, at CITY'S option, CONTRACTOR may deposit with CITY an irrevocable letter of credit in  
1347 an amount as set forth in Section 8.01 or such other amount as may be agreed to between  
1348 CITY and CONTRACTOR. If allowed, the letter of credit must be issued by an FDIC insured  
1349 banking institution chartered to business in the State of California, (consistent with the Uniform  
1350 Customs and Practice for Documentary Credits, then current revision or similar uniform  
1351 convention approved by CITY), in CITY's name, and be callable at the discretion of CITY.  
1352 Nothing in this Article shall, in any way, obligate CITY to accept a letter of credit in lieu of the  
1353 performance bond.

1354 **ARTICLE 9. CORPORATE GUARANTY**

1355 9.01 In addition to the performance security required in Article 8, CONTRACTOR is  
 1356 required to obtain a Guaranty, and Guarantor has agreed to guarantee CONTRACTOR'S  
 1357 performance of this Contract, including CONTRACTOR'S indemnification obligations hereunder  
 1358 pursuant to a Guaranty in substantially the form attached as Exhibit 3. The Guaranty is being  
 1359 provided concurrently with CONTRACTOR'S execution of this Contract.

1360 **ARTICLE 10. FORCE MAJEURE**

1361 10.01 CONTRACTOR shall not be in default of its obligations under this Contract in the  
 1362 event, and for so long as, it is impossible or extremely impracticable for it to perform its  
 1363 obligations due to an "act of Force Majeure" which is not the fault of, and is beyond the  
 1364 reasonable control of, the party claiming excuse from performance. Any labor unrest, including  
 1365 but not limited to, strike, work stoppage or slowdown, lockout, sick-out, picketing, or other  
 1366 concerted job action conducted by CONTRACTOR, CONTRACTOR'S employees or  
 1367 subcontractor or directed at CONTRACTOR is not an excuse from performance under this  
 1368 provision and CONTRACTOR shall be obligated to continue to accept and Dispose of Mixed  
 1369 Materials, Garbage and Mixed Materials Residue, notwithstanding the occurrence of any or all  
 1370 of such events. To claim excuse under this Article CONTRACTOR must: (i) have taken  
 1371 reasonable precautions, if possible, to avoid being affected by the cause, including, in the case  
 1372 of impossibility of performance based on inability to obtain a governmental permit, compliance  
 1373 with the requirement of Section 5.02, and (ii) notify CITY in writing within five (5) Work Days  
 1374 after the occurrence of the event specifying the nature of the event, the expected length of time  
 1375 that CONTRACTOR expects to be prevented from performing, and the steps which  
 1376 CONTRACTOR intends to take to restore its ability to perform.

1377 10.02 The interruption or discontinuance of CONTRACTOR'S ability to accept and  
 1378 Dispose Mixed Materials, Garbage and Mixed Materials Residue caused by one or more of the  
 1379 events described in this Article shall not constitute a default by CONTRACTOR under this  
 1380 Contract. Notwithstanding the foregoing, however, if CONTRACTOR is excused from  
 1381 performing its obligations hereunder for any of the causes listed in this Article for a period of  
 1382 thirty (30) calendar days or more, upon expiration of the thirty (30) calendar days, CITY shall  
 1383 have the right, in its sole discretion, to terminate this Contract by giving ten (10) calendar days'  
 1384 notice, except that such termination may be effective two (2) Work Days after receiving notice  
 1385 by certified mail if such event(s) result in CONTRACTOR'S failure to accept and Dispose Mixed  
 1386 Materials, Garbage or Mixed Materials Residue.

1387 **ARTICLE 11. DEFAULT OF CONTRACT**

1388 11.01 Termination By CITY. CITY may cancel this Contract, except as otherwise  
 1389 provided below in this Article, by giving CONTRACTOR thirty (30) calendar days advance  
 1390 written notice, to be served as provided in Article 21, upon the happening of any one of the  
 1391 following events:

1392 11.01.1 CONTRACTOR shall take the benefit of any present or future  
 1393 insolvency statute, or shall make a general assignment for the benefit of creditors, or file a  
 1394 voluntary petition in bankruptcy court or a petition or answer seeking an arrangement for its  
 1395 reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or  
 1396 under any other law or statute of the United States or any state thereof, or consent to the  
 1397 appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

1398                   11.01.2 By order or decree of a court, CONTRACTOR shall be adjudged  
1399 bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of  
1400 the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its  
1401 indebtedness under the federal bankruptcy laws or under any law or statute of the United States  
1402 or of any state thereof, provided that if any such judgment or order is stayed or vacated within  
1403 sixty (60) calendar days after the entry thereof, any notice of default shall be and become null,  
1404 void and of no effect; unless such stayed judgment or order is reinstated in which case, said  
1405 default shall be deemed immediate; or

1406                   11.01.2.1 By, or pursuant to, or under the authority of any legislative act,  
1407 resolution or rule or any order or decree of any court or governmental board, agency or officer  
1408 having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or  
1409 substantially all of the property of CONTRACTOR, and such possession or control shall  
1410 continue in effect for a period of sixty (60) calendar days; or

1411                   11.01.3 CONTRACTOR has defaulted, by failing or refusing to pay in a timely  
1412 manner the franchise fees, liquidated damages or other monies due CITY and said default is not  
1413 cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

1414                   11.01.4 CONTRACTOR has defaulted by allowing any final judgment for the  
1415 payment of money related to performance under this Contract to stand against it unsatisfied and  
1416 said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do  
1417 so; or

1418                   11.01.5 In the event that the monies due CITY under Section 11.01.3 above or  
1419 an unsatisfied final judgment under Section 11.01.4 above is the subject of a judicial  
1420 proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds  
1421 shall be in the form acceptable to the CITY Attorney; or

1422                   11.01.6 CONTRACTOR has defaulted, by failing or refusing to perform or  
1423 observe the terms, conditions or covenants in this Contract or any of the rules and regulations  
1424 promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the  
1425 instructions of the Contract Manager relative thereto and said default is not cured within thirty  
1426 (30) calendar days of receipt of written notice by CITY to do so, or if by reason of the nature of  
1427 such default, the same cannot be remedied within thirty (30) calendar days following receipt by  
1428 CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the  
1429 remedy of such default within said thirty (30) calendar days following such written notice or  
1430 having so commenced shall fail thereafter to continue with diligence the curing thereof with  
1431 CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured  
1432 within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default,  
1433 and such default will be cured within a reasonable period of time; or

1434                   11.01.7 CONTRACTOR fails to perform its obligations under this Contract,  
1435 and: (i) if the failure or refusal of CONTRACTOR to perform Disposal Services required by this  
1436 Contract has created an imminent threat to public health and is not cured within (2) Work Days  
1437 after receiving written notice from CITY specifying the breach; or (ii) in the case of any other  
1438 breach of the Contract, the breach continues for more than thirty (30) calendar days after  
1439 receiving written notice from CITY for the correction thereof, provided that where such breach  
1440 cannot be cured within such thirty (30) calendar day period, CONTRACTOR shall not be in  
1441 default of this Contract if CONTRACTOR shall have commenced such action required to cure  
1442 the particular breach within ten (10) calendar days after such notice, and it continues such  
1443 performance diligently until completed. However, if CONTRACTOR has complied with its

1444 obligations to arrange and pay for Disposal of Mixed Materials, Garbage and Residue at an  
1445 alternative disposal facility as set forth in Section 5.13, it shall not be in default of this Contract.

1446 11.02 Effective Date of Termination. In the event of the aforesaid events specified  
1447 above, and except as otherwise provided in said subsections, termination shall be effective  
1448 upon the date specified in CITY’S written notice to CONTRACTOR and upon said date this  
1449 Contract shall be deemed immediately terminated and upon such termination all liability of CITY  
1450 under this Contract to CONTRACTOR shall cease, and CITY shall have the right to call the  
1451 performance security instrument and shall be free to negotiate with other contractors for the  
1452 operation of the herein specified services.

1453 11.03 Right to Perform. If this Contract is suspended and/or terminated due to  
1454 CONTRACTOR default, CITY shall have the right to perform and complete, by contract or  
1455 otherwise, the work herein or such part thereof as it may deem necessary and incur all  
1456 expenses necessary for completion of the work, including, but not limited to, Disposal of Mixed  
1457 Materials, Garbage and Residue at an alternative disposal facility, but not including any right to  
1458 operate the Disposal Facility. If such expenses (including, but not limited to, the actual fees  
1459 charged for Disposal) exceed the amounts which would have been paid to CONTRACTOR  
1460 under this Contract, if it had been fully performed by CONTRACTOR, then CONTRACTOR shall  
1461 pay for the remaining term of this Contract, the amount of such excess costs to CITY within  
1462 thirty (30) calendar days of CONTRACTOR’S receipt of a claim for reimbursement, and  
1463 evidence of costs incurred, from CITY.

1464 11.04 Immediate Termination. CITY may terminate this Contract immediately upon  
1465 written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the  
1466 performance security as required by this Contract, CONTRACTOR fails to obtain or maintain  
1467 insurance policies endorsements as required by this Contract, or CONTRACTOR fails to  
1468 provide the proof of insurance as required by this Contract.

1469 11.05 Termination Cumulative. CITY’S right to terminate this Contract is cumulative to  
1470 any other rights and remedies provided by law or by this Contract.

1471 **ARTICLE 12. LEGAL REPRESENTATION**

1472 12.01 Acknowledgement. It is acknowledged that each party was, or had the  
1473 opportunity to be, represented by counsel in the preparation of and contributed equally to the  
1474 terms and conditions of this Contract and, accordingly, the rule that a Contract shall be  
1475 interpreted strictly against the party preparing the same shall not apply herein due to the joint  
1476 contributions of both parties.

1477 **ARTICLE 13. FINANCIAL INTEREST**

1478 13.01 Representation. CONTRACTOR warrants and represents that no elected official,  
1479 officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Contract  
1480 the compensation to be paid under it and, further, that no CITY employee who acts in the CITY  
1481 as a “purchasing agent” as defined in the appropriate section of California Statutes, nor any  
1482 elected or appointed officer of CITY, nor any spouse or child of such purchasing agent,  
1483 employee or elected or appointed officer, is a partner, officer, director or proprietor of  
1484 CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or  
1485 appointed officer, or the spouse or child of any of them, alone or in combination, has a material  
1486 interest in CONTRACTOR. Material interest means direct or indirect ownership of more than  
1487 five (5) percent of the total assets or capital stock of CONTRACTOR.

1488

## **ARTICLE 14. INDEPENDENT CONTRACTOR**

1489           14.01 In the performance of services pursuant to this Contract, CONTRACTOR shall be  
1490 an independent contractor and not an officer, agent, servant or employee of CITY.  
1491 CONTRACTOR shall have exclusive control of the details of the services and work performed  
1492 and over all persons performing such services and work. CONTRACTOR shall be solely  
1493 responsible for the acts and omissions of its officers, agents, employees, contractors and  
1494 subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors  
1495 or subcontractors shall obtain any right to retirement benefits, Workers Compensation benefits,  
1496 or any other benefits which accrued to CITY employees and CONTRACTOR expressly waives  
1497 any claim it may have or acquire to such benefits.

1498

## **ARTICLE 15. LAWS TO GOVERN**

1499           15.01 The law of the State of California shall govern the rights, obligations, duties and  
1500 liabilities of CITY and CONTRACTOR under this Contract and shall govern the interpretation of  
1501 this Contract.

1502

## **ARTICLE 16. CONSENT TO JURISDICTION**

1503           16.01 The parties agree that any litigation between CITY and CONTRACTOR  
1504 concerning or arising out of this Contract shall be filed and maintained exclusively in the  
1505 Municipal or Superior Courts of Alameda County, State of California, or in the United States  
1506 Court for the Northern District of California to the fullest extent permissible by law. Each party  
1507 consents to service of process in any manner authorized by California law.

1508

## **ARTICLE 17. ASSIGNMENT**

1509           17.01 CITY Right to Terminate in Event of Assignment. CONTRACTOR acknowledges  
1510 that this Contract involves rendering a vital service to CITY'S residents and businesses, and  
1511 that CITY has selected CONTRACTOR to perform the services specified herein based on (1)  
1512 CONTRACTOR'S experience, skill and reputation for conducting its operations in a safe,  
1513 effective and responsible fashion, at all times in keeping with applicable environmental laws,  
1514 regulations and best management practices for Disposal of Mixed Materials, Garbage and  
1515 Residue and (2) CONTRACTOR'S financial resources to maintain the required equipment and  
1516 to support its indemnity obligations to CITY under this Contract. CITY has relied on each of  
1517 these factors, among others, in choosing CONTRACTOR to perform the services to be  
1518 rendered by CONTRACTOR under this Contract. Any assignment by CONTRACTOR, either  
1519 directly or indirectly, in whole or in part, of its rights or any interest it may have in this Contract  
1520 including any transfer of its stock or assets to a third party shall give CITY, in its sole discretion,  
1521 the basis for terminating this Contract in whole or in part upon the giving of a thirty (30) day  
1522 written notice to CONTRACTOR. In the event such notice of termination is given as authorized  
1523 by this Article, CONTRACTOR shall continue, for up to six (6) months following notice of  
1524 termination, to provide any or all of the services it is obligated to perform under this Contract if  
1525 requested by CITY in writing. CITY'S right to terminate the Contract in whole or in part shall  
1526 expire unless exercised within sixty (60) days of receiving written notice from CONTRACTOR as  
1527 provided herein of an assignment by CONTRACTOR. "Assignment" or "Assign" as used in this  
1528 Contract shall include, but not be limited to, (i) a sale, exchange or other transfer of substantially  
1529 all of CONTRACTOR'S assets dedicated to any or all of the services to be provided under this  
1530 Contract to a third party (ii) a sale, exchange or other transfer of outstanding common stock of

1531 CONTRACTOR to a third party provided said sale, exchange or transfer results in a change of  
1532 control of CONTRACTOR or any sale, exchange or transfer of the common stock of  
1533 CONTRACTOR which results in the effective transfer of control of substantially all of  
1534 CONTRACTOR'S assets dedicated to any or all of the services to be provided under this  
1535 Contract to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-  
1536 capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow  
1537 arrangement, liquidation or other transaction to which results in a change of ownership or  
1538 control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or  
1539 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution  
1540 being levied against this Contract, appointment of a receiver taking possession of  
1541 CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v)  
1542 any combination of the foregoing (whether or not in related or contemporaneous transactions)  
1543 which has the effect of any such transfer or change of ownership, or change of control of  
1544 CONTRACTOR, or substantially all of the assets used for providing any of the services under  
1545 this Contract to a third party.

1546 17.02 Procedure for CITY Evaluation of Proposed Assignment. If CONTRACTOR  
1547 requests CITY'S consideration of and consent to an assignment, CONTRACTOR shall meet the  
1548 following preliminary requirements:

1549 17.02.1 CONTRACTOR shall pay CITY its reasonable expenses for attorney's  
1550 fees, consultant's fees and investigation costs necessary to investigate the suitability of any  
1551 proposed assignee, and to review and finalize any documentation required as a condition for  
1552 approving any such assignment;

1553 17.02.2 CONTRACTOR shall furnish CITY with audited financial statements of  
1554 the proposed assignee's operations for the immediately preceding three (3) operating years;

1555 17.02.3 CONTRACTOR shall furnish CITY with satisfactory proof that: (1) the  
1556 proposed assignee has at least ten (10) years of Mixed Materials, Garbage and Residue  
1557 Disposal experience on a scale equal to or exceeding the scale of operations conducted by  
1558 CONTRACTOR under this Contract; (2) in the last five (5) years, the proposed assignee has not  
1559 suffered any significant citations or other censure from any federal, State or local agency having  
1560 jurisdiction over its Mixed Materials, Garbage and Residue Disposal operations due to any  
1561 significant failure to comply with State, federal or local environmental laws and the assignee has  
1562 provided CITY with a complete list of such citations and censures; (3) the proposed assignee  
1563 has at all times conducted its operations in an environmentally safe and conscientious fashion;  
1564 (4) the proposed assignee conducts its Mixed Materials, Garbage and Residue Disposal  
1565 practices in accordance with sound management practices in full compliance with all federal,  
1566 State and local laws regulating the Disposal of Mixed Materials, Garbage and Residue including  
1567 hazardous substances; and, (5) of any other information required by CITY to ensure the  
1568 proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

1569 17.03 CONTRACTOR Default. Under no circumstances shall CITY be obliged to  
1570 consider any proposed assignment if CONTRACTOR is in default at any time during the period  
1571 of consideration.

1572 17.04 CITY Discretion to Accept or Reject Assignment. CITY, in its sole discretion,  
1573 may accept, reject or conditionally accept the proposed assignment. If CITY accepts a partial  
1574 assignment, the corporate guaranty provided in Section 1.23 and Exhibit 3 and the performance  
1575 security provided in Article 8 shall remain in effect unless CITY in its sole discretion consents to  
1576 adequate substitutes by the assignee or to a novation, and absent a novation CONTRACTOR  
1577 shall not be released from liability under this Contract.

1578           17.05 Subcontractor. The use of a subcontractor to perform services under this  
1579 Contract shall not constitute delegation of CONTRACTOR'S duties provided that  
1580 CONTRACTOR has received prior written authorization from CITY to subcontract such services  
1581 and the Contract Manager has approved a subcontractor who will perform such services.  
1582 CONTRACTOR shall be responsible for directing the work of CONTRACTOR'S subcontractors  
1583 and any compensation due or payable to CONTRACTOR'S subcontractor shall be the sole  
1584 responsibility of CONTRACTOR. CITY shall have the right to require the removal of any  
1585 approved subcontractor for reasonable cause. No subcontractors have been approved by CITY.

1586   **ARTICLE 18. COMPLIANCE WITH LAWS**

1587           18.01 In the performance of this Contract, CONTRACTOR shall comply with all  
1588 applicable laws, regulations, ordinances and codes of the federal, State and local governments,  
1589 including without limitation those of CITY.

1590           18.02 CITY shall provide written notice to CONTRACTOR of any planned amendment  
1591 to the CITY Ordinances that would substantially affect the performance of CONTRACTOR'S  
1592 services pursuant to this Contract. Such notice shall be provided at least thirty (30) calendar  
1593 days prior to the Oakland City Council's approval of such an amendment.

1594   **ARTICLE 19. WAIVER**

1595           19.01 Waiver by CITY or CONTRACTOR of any breach for violation of any term  
1596 covenant or condition of this Contract shall not be deemed to be a waiver of any other term,  
1597 covenant or condition or any subsequent breach or violation of the same or of any other term,  
1598 covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other  
1599 monies which may become due from CONTRACTOR to CITY shall not be deemed to be a  
1600 waiver by CITY of any breach for violation of any term, covenant or condition of this Contract.

1601   **ARTICLE 20. POINT OF CONTACT**

1602           20.01 The day-to-day dealings between CONTRACTOR and CITY shall be between  
1603 CONTRACTOR and the Contract Manager.

1604   **ARTICLE 21. NOTICES**

1605           21.01 Except as provided herein, whenever either party desires to give notice to the  
1606 other, it must be given by written notice by registered or certified mail, or by other methods  
1607 designated for next day delivery with proof of receipt, addressed to the party for whom it is  
1608 intended, at the place last specified and to the place for giving of notice in compliance with the  
1609 provisions of this paragraph. For the present, the parties designate the following as the  
1610 respective persons and places for giving of notice:

1611 As to CITY:

1612 City Administrator  
1613 Office of the City Administrator  
1614 City of Oakland  
1615 1 Frank Ogawa Plaza, 3<sup>rd</sup> Floor  
1616 Oakland, CA 94612  
1617 Telephone: (510) 238-3301  
1618 E-mail: cityadministrator@oaklandnet.com

1619 With copies to:  
1620  
1621 Director of Public Works  
1622 Public Works Agency  
1623 City of Oakland  
1624 250 Frank Ogawa Plaza, Suite 4314  
1625 Oakland, CA 94612  
1626 Telephone(510) 238-4470  
1627 E-mail: vtroyan@oaklandnet.com  
1628  
1629 City Attorney  
1630 Office of the City Attorney  
1631 City of Oakland  
1632 1 Frank Ogawa Plaza, 6<sup>th</sup> Floor  
1633 Oakland, CA 94612  
1634 Telephone: (510) 238-3601  
1635 E-mail: info@oaklandcityattorney.org  
1636  
1637 Director of Finance and Management  
1638 Finance and Management Agency  
1639 City of Oakland  
1640 150 Frank Ogawa Plaza, Suite 5215  
1641 Oakland, CA 94612  
1642 Telephone: (510) 238-2220  
1643 E-mail: sjohnson@oaklandnet.com  
1644

1645 As to CONTRACTOR:  
1646 [Title]  
1647 [Company]  
1648 [Street Address]  
1649 [City, State, Zip]  
1650 Telephone: (xxx) xxx-xxxx  
1651 E-mail: [xxx@xxx.xxx](mailto:xxx@xxx.xxx)

1652 and  
1653 [Title]  
1654 [Company]  
1655 [Street Address]  
1656 [City, State, Zip]  
1657 Telephone: (xxx) xxx-xxxx  
1658 E-mail: [xxx@xxx.xxx](mailto:xxx@xxx.xxx)

1659 21.02 Notices shall be effective when received at the address as specified above.  
1660 Changes in the respective address to which such notice is to be directed may be made by  
1661 written notice with a courtesy copy provided by email. . The original of items that are  
1662 transmitted by email must also be mailed as required herein.



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## ARTICLE 22. NONDISCRIMINATION

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

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## ARTICLE 23. CONTRACTOR'S RECORDS

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

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

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

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## ARTICLE 24. QUALITY OF PERFORMANCE OF CONTRACTOR

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

1707 party has had ample opportunity to consult with legal counsel and obtain an explanation of the  
 1708 liquidated damage provisions at the time that the Contract was made.

1709 CITY Initial Here \_\_\_\_\_ CONTRACTOR Initial Here \_\_\_\_\_

1710 24.01.1 CONTRACTOR agrees to pay (as liquidated damages and not as  
 1711 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 <sup>th</sup> 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.

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 1713 24.02 CITY may determine the occurrence of events giving rise to liquidated damages  
 1714 through the observation of its own employees or representative or investigation of complaints by  
 1715 Collection Contractor(s).

1716 24.03 Procedure for Review of Liquidated Damages. The Contract Manager may  
 1717 assess liquidated damages pursuant to this Article 24 on a monthly basis. At the end of each  
 1718 month during the term of this Contract, the Contract Manager may issue a written notice to  
 1719 CONTRACTOR (“Notice of Assessment”) of the liquidated damages assessed and the basis for  
 1720 each assessment.

1721 24.03.1 The assessment shall become final unless, within thirty (30) calendar  
1722 days of the date of the notice of assessment, CONTRACTOR provides a written request for a  
1723 meeting with the Contract Manager to present evidence that the assessment should not be  
1724 made.

1725 24.03.2 The Contract Manager shall schedule a meeting between  
1726 CONTRACTOR and the CITY Administrator or the CITY Administrator's designee as soon as  
1727 reasonably possible after timely receipt of CONTRACTOR'S request.

1728 24.03.3 The CITY Administrator or the CITY Administrator's designee shall  
1729 review CONTRACTOR'S evidence and render a decision sustaining or reversing the liquidated  
1730 damages as soon as reasonably possible after the meeting. Written notice of the decision shall  
1731 be provided to CONTRACTOR.

1732 24.03.4 In the event CONTRACTOR does not submit a written request for a  
1733 meeting within thirty (30) calendar days of the date of the Notice of Assessment, the Contract  
1734 Manager's determination shall be final and CONTRACTOR shall submit payment to CITY no  
1735 later than ten (10) Work Days following final determination. If CITY does not receive  
1736 CONTRACTOR'S payment within the ten (10) Work Day period, CITY may proceed against the  
1737 letter of credit required by Section 24.04 of this Contract

1738 24.03.5 CITY'S assessment or Collection of liquidated damages shall not  
1739 prevent CITY from exercising any other right or remedy, including the right to terminate this  
1740 Contract, for CONTRACTOR'S failure to perform the work and services in the manner set forth  
1741 in this Contract.

1742 24.04 Security for Liquidated Damages. In order to insure the ability of CITY to collect  
1743 liquidated damages assessed against CONTRACTOR, CONTRACTOR shall deposit with CITY  
1744 an irrevocable letter of credit in an amount of Twenty Thousand Dollars (\$20,000). The letter of  
1745 credit must be issued by an FDIC insured banking institution chartered to business in the State  
1746 of California, (consistent with the Uniform Customs and Practice for Documentary Credits, then  
1747 current revision or similar uniform convention approved by CITY), in CITY'S name, and be  
1748 callable at the discretion of CITY. The letter of credit shall be structured so that in the event  
1749 funds are drawn by CITY the balance of Twenty Thousand Dollars (\$20,000) is restored within  
1750 two (2) Work Days.

1751 **ARTICLE 25. LABOR PEACE**

1752 25.01 General. CITY has determined that the level of vulnerability of the proposed  
1753 Contract to labor disputes is sufficient to warrant that labor peace is essential to the proprietary  
1754 interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of  
1755 CONTRACTOR'S Employee and Labor Relations Plan set forth in Exhibit 5 to this Contract.

1756 25.02 Lockouts. Because it is the intent of this Contract that CONTRACTOR shall  
1757 consistently provide the highest level of services to the residents of Oakland, CONTRACTOR  
1758 shall never institute a lockout of any or all of its employees unless CONTRACTOR has  
1759 previously provided an alternate plan of continuing the highest level of services during the entire  
1760 possible period of such a lockout with ample fully trained substitutes for all such locked out  
1761 employees, and CITY has approved such alternate plan in writing prior to such lockout being  
1762 instituted by CONTRACTOR. In addition, CONTRACTOR shall fully defend, indemnify and hold  
1763 harmless CITY against anything whatsoever related to any such lockout including but not limited  
1764 to any claims, proceedings, or suits against CITY relating to any such lockout. Compliance with

1765 this Section 25.02 shall in no way prevent the imposition of liquidated damages pursuant to  
1766 Article 24 hereof.

1767 **ARTICLE 26. SEVERABILITY**

1768 26.01 If any provision of this Contract or the application of it to any Person or situation  
1769 shall to any extent be held invalid or unenforceable, the remainder of this Contract and the  
1770 application of such provisions to persons or situations other than those as to which it shall have  
1771 been held invalid or unenforceable, shall not be affected, shall continue in full force and effect,  
1772 and shall be enforced to the fullest extent permitted by law.

1773 **ARTICLE 27. RIGHT TO REQUIRE PERFORMANCE**

1774 27.01 The failure of CITY at any time to require performance by CONTRACTOR of any  
1775 provision hereof shall in no way affect the right of CITY thereafter to enforce same. Nor shall  
1776 waiver by CITY of any breach of any provision hereof be taken or held to be a waiver of any  
1777 succeeding breach of such provision or as a waiver of any provision itself.

1778 **ARTICLE 28. ALL PRIOR CONTRACTS SUPERSEDED**

1779 28.01 This document incorporates and includes all prior negotiations, correspondence,  
1780 conversations, agreements and understandings applicable to the matters contained in this  
1781 Contract and the parties agree that there are no commitments, agreements or understandings  
1782 concerning the subject matter of this Contract that are not contained in this document or in the  
1783 Collection Service Contracts which are being executed simultaneously with this document.  
1784 Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated  
1785 upon any prior representations or agreements, whether oral or written.

1786 **ARTICLE 29. HEADINGS**

1787 29.01 Headings in this document are for convenience of reference only and are not to  
1788 be considered in any interpretation of this Contract.

1789 **ARTICLE 30. EXHIBITS**

1790 30.01 Each Exhibit referred to in this Contract forms an essential part of this Contract.  
1791 Each such Exhibit is a part of this Contract and each is incorporated by this reference.

1792 **ARTICLE 31. EFFECTIVE DATE**

1793 31.01 This Contract shall become effective at such time as it is properly executed by  
1794 CITY and CONTRACTOR and CONTRACTOR shall begin Disposal Services, as covered  
1795 herein, as of July 1, 2015.

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1798 IN WITNESS WHEREOF, CITY and CONTRACTOR have duly authorized execution of this  
1799 Contract, and have executed the Contract as of the dates set forth below.

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1801 CITY OF OAKLAND

[Contractor Company Name]

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1803 By: \_\_\_\_\_  
1804 [Name, Title]

By: \_\_\_\_\_  
[Name, Title]

1805

1806 \_\_\_\_\_  
1807 Date

\_\_\_\_\_   
Date

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1810 APPROVED AS TO FORM:

1811 \_\_\_\_\_  
1812 [Name, Title]

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1814 EXHIBITS

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1818 Exhibit 1 Approved Per Ton Disposal Tipping Fees

1819 City of Oakland

1820 July 1, 2015

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

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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 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	\$			

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1825 EXHIBIT 2 DISPOSAL TIPPING FEE ADJUSTMENT METHODOLOGY

1826 City of Oakland

1827 The annual adjustment to the Disposal Fee Element of the Disposal Tipping Fee shall be  
1828 calculated in the following manner:

1829 **To be completed based on methodology negotiated with selected proposer.**

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## 1834 EXHIBIT 3 GUARANTY AGREEMENT

1835 City of Oakland

1836 This Guaranty, made as of the date written below by CONTRACTOR, to and for the benefit of  
1837 the City of Oakland (CITY)

1838 WHEREAS, CONTRACTOR, and the CITY, entered into a CONTRACT BETWEEN THE CITY  
1839 AND CONTRACTOR FOR provision of Disposal Services, dated as of **insert date**, (the  
1840 “**Contract**”), which Contract is incorporated in this Guaranty by reference and by this Guaranty  
1841 made part of this Agreement; and

1842 WHEREAS, the CITY is willing to enter into the Contract only upon the condition that Guarantor  
1843 execute this Guaranty; and

1844 WHEREAS, in the event the CONTRACTOR fails to timely and fully perform its obligations,  
1845 including the payment of moneys, pursuant to the Contract and as it may hereafter be amended  
1846 or modified by CONTRACTOR and the CITY, the Guarantor is willing to guaranty  
1847 CONTRACTOR’S timely and full performance thereof.

1848 NOW, THEREFORE, as an inducement to the CITY to enter into the Contract as described  
1849 above, the Guarantor agrees as follows:

1850 Capitalized terms used in the Contract and not otherwise defined in this Agreement, will have  
1851 the meaning assigned to them in the Contract.

- 1852 1. **Guaranty of CONTRACTOR’S Performance Under Contract.** Guarantor by this  
1853 Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and  
1854 full performance of CONTRACTOR’S obligations under the Contract in accordance with  
1855 the terms and conditions contained therein or to cause the timely and full performance.  
1856 Within thirty (30) days’ written request therefore by the CITY, Guarantor will honor the  
1857 Guaranty. Notwithstanding the unconditional nature of the Guarantor’s payment  
1858 obligations set forth in this Agreement, the Guarantor may assert the defenses provided  
1859 in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims  
1860 made under this Guaranty.
- 1861 2. **Governing law; consent to jurisdiction; service of process.** This Guaranty is  
1862 governed by the laws of the State of California. The Guarantor by this Guaranty agrees  
1863 to the service of process in the State for any claim or controversy arising out of the  
1864 Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the  
1865 courts of the State and to the extent permitted by law, the United States District Court for  
1866 the Northern District of California, will have the exclusive jurisdiction of all suits, actions,  
1867 and other proceedings involving itself and to which the CITY may be party for the  
1868 adjudication of any claim or controversy arising out of this Guaranty or relating to any  
1869 breach of this Guaranty, waives any objections that it might otherwise have to the venue  
1870 of any Court for the trial of any suit, action, or proceeding, any consents to the service of  
1871 process in any suit, action, or proceeding by prepaid registered mail return receipt  
1872 required.
- 1873 3. **Enforceability; no assignment.** This Guaranty is binding upon and enforceable against  
1874 Guarantor, its successors, assigns, and lawful representatives. It is for the benefit of the  
1875 CITY, its successors and assigns. The Guarantor may not assign or delegate the  
1876 performance of the Guaranty without the prior written consent of the CITY in its sole  
1877 discretion. Any assignment made without the prior written consent of the CITY is

1878 voidable by the CITY in its sole discretion. Together with its request for CITY consent,  
1879 Guarantor will pay CITY \$10,000 for its reasonable expenses for private attorney's fees  
1880 and investigation costs ("assignment expenses") necessary to investigate the suitability  
1881 of any proposed assignee, and to review and finalize any documentation required as a  
1882 condition for approving any assignment. CITY will reimburse Guarantor the excess, if  
1883 any, over those assignment expenses it incurs. Contrariwise, Guarantor will pay CITY  
1884 the excess assignment expenses, if any, over \$10,000 CITY incurs within thirty (30)  
1885 days' of CITY'S request therefore. Guarantor will further pay the CITY the CITY'S  
1886 reimbursement costs for fees of attorneys who are not CITY employees and  
1887 investigation costs necessary to enjoin the assignment or to otherwise enforce this  
1888 provision within thirty (30) days of the CITY'S request therefore ("injunction costs").  
1889 Guarantor's obligation to pay CITY assignment expenses and injunction costs will not  
1890 exceed \$35,000 in the aggregate, excluding any costs that the CITY may recover under  
1891 applicable law, including court costs paid to a prevailing party.

1892 For purposes of the Guaranty "assign" and "assignment" means:

- 1893 a) selling, exchanging or otherwise transferring effective control of management of the  
1894 Guarantor (through sale, exchange or other transfer of outstanding stock or  
1895 otherwise);
- 1896 b) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the  
1897 then outstanding common stock of the Guarantor;
- 1898 c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock  
1899 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,  
1900 liquidation or other transaction which results in a change of ownership or control of  
1901 Guarantor;
- 1902 d) any assignment by operation of law, including insolvency or bankruptcy, making  
1903 assignment for the benefit of creditors, writ of attachment of an execution, being  
1904 levied against Guarantor, appointment of a receiver taking possession of any of  
1905 Guarantor's tangible or intangible property; and,
- 1906 e) any combination of the foregoing (whether or not in related or contemporaneous  
1907 transactions) which has the effect of any transfer or change of Ownership or control  
1908 of Guarantor.

1909 For purposes of determining "Ownership", the constructive ownership provisions of  
1910 Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, will  
1911 apply, provided that (1) 10 percent is substituted for 50 percent in Section 318(a)(2)(C)  
1912 and in section 218(a)(3)(C) thereof; and (2) Section 218(a)(5)(C) is disregarded. For  
1913 purposes of determining ownership under this paragraph and constructive or indirect  
1914 ownership under Section 318(a), ownership interest of less than 20 percent is  
1915 disregarded and percentage interests is determined on the basis of the percentage of  
1916 voting interest or value which the ownership interest represents, whichever is greater.

1917 4. **Guarantor absolute and unconditional.** The undertakings of Guarantor set forth in this  
1918 Guaranty are absolute and unconditional, and the CITY is entitled to enforce any or all of  
1919 those undertakings against Guarantor without being first required to enforce any  
1920 remedies or to seek to compel the CONTRACTOR to perform its obligations under the  
1921 Contract or to seek, or obtain recourse against any other party or parties, including but  
1922 not limited to the CONTRACTOR or any assignee of the CONTRACTOR, who are, or  
1923 may be, liable therefore in whole or in part, irrespective of any cause or state of facts

1924 whatever. Without limiting the generality of the foregoing, the Guarantor expressly  
 1925 agrees that its state of facts or the happening from time to time of an event, other than  
 1926 the payment of the terms of the Contract, including, without limitation, any of the  
 1927 following, each of which is by this Guaranty expressly waived as a defense to its liability  
 1928 under this Guaranty, except to the extent those defenses would be available to the  
 1929 CONTRACTOR and release, discharge or otherwise offset CONTRACTOR'S obligations  
 1930 under the Agreement:

- 1931 a) the invalidity, irregularity, illegality or unenforceability, of or any defect in or  
 1932 objections to the Contract;
- 1933 b) any modification or amendment or compromise of or waiver of compliance with or  
 1934 consent to variation from any of the provisions of the Contract by the  
 1935 CONTRACTOR;
- 1936 c) any release of any collateral or lien thereof, including, without limitation, any  
 1937 performance bond, or performance security;
- 1938 d) any defense based upon the election of any remedies against the Guarantor of the  
 1939 CONTRACTOR, or both, including without limitation, any consequential loss by the  
 1940 Guarantor of its right to recover any deficiency, by the way of subrogation or  
 1941 otherwise, from the CONTRACTOR or any other Person or entity;
- 1942 e) the recovery of any judgment against the CONTRACTOR to enforce any of that  
 1943 collateral, performance bond or performance security;
- 1944 f) the CITY or its assigns taking or omitting to take any of the actions which it or any of  
 1945 that assign is required to take under the Contract; any failure, omission or delay on  
 1946 the part of the CITY or its assignees to enforce, assert or exercise any right, power  
 1947 or remedy conferred on it or its assigns by the Contract, except to the extent that  
 1948 failure, omission or delay gives rise to an applicable statute of limitations defense by  
 1949 the CONTRACTOR with respect to a specific obligation;
- 1950 g) the default or failure of the Guarantor to fully perform any of its obligations set forth in  
 1951 the Guaranty;
- 1952 h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the  
 1953 CONTRACTOR or the CITY, or any order or decree of a court, trustee or receiver in  
 1954 any proceeding;
- 1955 i) in addition to those circumstances described in item (h), any other circumstance  
 1956 which might otherwise constitute a legal or equitable discharge of a guarantor or limit  
 1957 the recourse of the CITY to the Guarantor;
- 1958 j) the existence or absence of any action to enforce the Contract;
- 1959 k) subject to the provisions of the Contract relating to uncontrollable circumstances, any  
 1960 present or future law or order of any government or any agency thereof, purporting to  
 1961 reduce, amend or otherwise affect the Contract or to vary any terms of payment or  
 1962 performance under the Contract;

1963 Providing that, notwithstanding the forgoing, Guarantor will not be required to pay any  
 1964 monetary obligation of CONTRACTOR to CITY from which CONTRACTOR would be  
 1965 discharged, released or otherwise excused under the provisions of the Contract.

1966 5. **Waivers.** Guarantor by the Guaranty waives:

- 1967 a) notice of acceptance of the Guaranty and of the creation, renewal, extension and  
1968 accrual of the limited financial obligations Guaranteed under this Guaranty;
- 1969 b) notice that any Person has relied on this Guaranty;
- 1970 c) diligence, demand of payment and notice of default or nonpayment under this  
1971 Guaranty or the Contract, and any and all other notices required under the Contract;
- 1972 d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy  
1973 of the CONTRACTOR;
- 1974 e) any right to require a proceeding first against the CONTRACTOR or with respect to  
1975 any collateral or lien, including, without limitation, any performance bond, or any  
1976 other requirement that the CITY exercise any remedy or take any other action  
1977 against the CONTRACTOR or any other Person, or in respect of any collateral or  
1978 lien, before proceeding under this Guaranty;
- 1979 f) (i) any demand for performance or observance of, or (ii) any enforcement of any  
1980 provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any  
1981 security (including, with limitation, any performance bond) for the obligations of the  
1982 CONTRACTOR under the Contract; any pursuit of exhaustion of remedies against  
1983 the CONTRACTOR or any other obligor or guarantor of the obligations; and any  
1984 requirement of promptness or diligence on the part of any Person in connection  
1985 therewith;
- 1986 g) to the extent that it lawfully may do so, any and all demands or notices of every kind  
1987 and description with respect to the foregoing or which may be required to be given by  
1988 any statute or rule of law, and any defense of any kind which it may now or hereafter  
1989 have with respect to this Guaranty or the obligations of the CONTRACTOR under the  
1990 Contract, *except* any Notice to the CONTRACTOR required pursuant to the Contract  
1991 or applicable law which Notice preconditions the CONTRACTOR'S obligation or the  
1992 defenses listed in Section 8 below.
- 1993 To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to  
1994 waive, and does by this Guaranty absolutely and irrevocably waive and relinquish, the  
1995 benefit and advantage of, and does by this Guaranty covenant not to assert, any  
1996 appraisement, valuation, stay extension, redemption or similar laws, now or any time  
1997 hereafter in force, which might delay, prevent or otherwise impede the due performance  
1998 or proper enforcement of the Guaranty, the Contract, or the obligations of the  
1999 CONTRACTOR under the Contract and by this Guaranty expressly agrees that the right  
2000 of the CITY under this Guaranty may be enforced notwithstanding any partial  
2001 performance by the CONTRACTOR or the Guarantor, or the foreclosure upon any  
2002 security (including, with limitation, any performance bond, or performance security) given  
2003 by the CONTRACTOR for its performance of any of its obligations under the Contract.
- 2004 6. **Agreements between CITY and CONTRACTOR; Waivers by CITY.** The Guarantor  
2005 agrees that, without the necessity for any additional endorsement or Guaranty by or any  
2006 reservation of rights against Guarantor and without any further assent by Guarantor, by  
2007 mutual agreement between the CITY and CONTRACTOR, the CITY and  
2008 CONTRACTOR may, from time to time:
- 2009 a) renew, modify or compromise the liability of the CONTRACTOR for or upon any of  
2010 the obligations by the Guaranty Guaranteed; or
- 2011 b) consent to any amendment or change of an terms of the Contract; or

- 2012 c) accept, release, or surrender any security (including, without limitation, any  
 2013 performance bond), or
- 2014 d) grant any extensions or renewals of the obligations of the CONTRACTOR under the  
 2015 Contract, and any other indulgence with respect thereto, and to affect any release,  
 2016 compromise or settlement with respect thereto, all without releasing or discharging  
 2017 the liability of Guarantor under this Guaranty.
- 2018 The Guarantor further agrees that the CITY or any of its assigns will have and may  
 2019 exercise full power in its uncontrolled discretion, without in any way affecting the liability  
 2020 of the Guarantor under this Guaranty, to waive compliance with and any default of the  
 2021 CONTRACTOR under, the Contract.
- 2022 7. **Continuing Guaranty.** This Guaranty is a continuing Guaranty and will continue to be  
 2023 effective or be reinstated, as applicable, if at any time any payment of any of the  
 2024 obligations under this Guaranty is rescinded or is otherwise required to be returned upon  
 2025 reorganization, insolvency or bankruptcy of the CONTRACTOR or Guarantor or  
 2026 otherwise, all as though payment had not been made.
- 2027 8. **Defenses.** Notwithstanding any provision in the Guaranty to the contrary, the Guarantor  
 2028 may exercise or assert any and all legal or equitable rights, defenses, counter claims or  
 2029 affirmative defenses under the Contract or applicable law which the CONTRACTOR  
 2030 could assert against any party seeking to enforce the Contract against the  
 2031 CONTRACTOR, and nothing in the Guaranty will constitute a waiver thereof by the  
 2032 Guarantor.
- 2033 9. **Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses  
 2034 and fees, including all reasonable attorney’s fees, which may be incurred by the CITY in  
 2035 enforcing the Guaranty following the default on the part of the Guarantor under this  
 2036 Guaranty whether the same is enforced by suit or otherwise.
- 2037 10. **Enforcement.** The terms of this Guaranty may be enforced as to any one or more  
 2038 breaches either separately or cumulatively.
- 2039 11. **Remedies cumulative.** No remedy in this Guaranty conferred upon or reserved to the  
 2040 CITY under this Guaranty is intended to be exclusive or any other available remedy or  
 2041 remedies, but each and every remedy is cumulative and is in addition to every other  
 2042 remedy given under the Guaranty and the Contract or in this Guaranty after existing at  
 2043 law or in equity or by statute.
- 2044 12. **Severability.** The invalidity or unenforceability of any one or more phrases, sentences or  
 2045 clauses in the Guaranty contained will not affect the validity or enforceability of the  
 2046 remaining portions of this Guaranty, or any part thereof.
- 2047 13. **Amendments.** No amendment, change, modification or termination of this Guaranty is  
 2048 made except upon the written consent of Guarantor and the CITY.
- 2049 14. **Term.** The obligations of the Guarantor under this Guaranty will remain in full force and  
 2050 effect until (i) all monetary obligations of the CONTRACTOR under the Contract will  
 2051 have been fully performed or provided for in accordance with the Contract, or (ii) the  
 2052 discharge, release or other excuse of those obligations in accordance with the terms of  
 2053 the Contract.
- 2054 15. **No set-off, etc.**



2055 **By Guarantor.** The obligation of Guarantor under this Guaranty will not be affected by  
2056 any set-off, counterclaim, recoupment, defense or other right that Guarantor may have  
2057 against the CITY on account of any claim of the Guarantor against the CITY; *provided*  
2058 that Guarantor reserves the right to bring independent claims not arising from the  
2059 Contract again the CITY so long as any claim will not be used to set-off or deduct from  
2060 any claims which the CITY may have against the Guarantor arising from this Guaranty.

2061 **By CONTRACTOR.** The obligation of Guarantor under this Guaranty is subject to any  
2062 set-off, counterclaim, recoupment, defense or other right that the CONTRACTOR may  
2063 assert pursuant to the Contract, if any, but the obligation of Guarantor under this  
2064 Guaranty will not be subject to any set-off counterclaim, recoupment, defense or other  
2065 right that the CONTRACTOR may assert independently of and outside the Contract.

2066 16. **Warranties and representations.** The Guarantor warrants and represents that as of  
2067 date of execution of this Guaranty:

2068 a) The Guarantor has the power, authority and legal right to enter into this Guaranty  
2069 and to perform its obligations and undertakings under this Guaranty, and the  
2070 execution, delivery and performance of this Guaranty by the Guarantor (i) have been  
2071 duly authorized by all necessary corporate and shareholder action on the part of the  
2072 Guarantor, (ii) have the requisite approval of all federal, State and local governing  
2073 bodies having jurisdiction or authority with respect thereto, (iii) do not violate any  
2074 judgment, order, law or regulation applicable to the Guarantor, (iv) do not conflict  
2075 with or constitute a default under any agreement or instrument to which the  
2076 Guarantor is a party or by which the Guarantor or its assets may be bound or  
2077 affected; and (v) do not violate any provision of the Guarantor's articles or certificate  
2078 of incorporation or by-laws.

2079 b) This Guaranty has been duly executed and delivered by the Guarantor and  
2080 constitutes the legal, valid and binding obligation of the Guarantor, enforceable  
2081 against the Guarantor in accordance with its terms; and

2082 c) There are no pending or, to the knowledge of the Guarantor, threatened actions or  
2083 proceedings before any court administrative agency which would have a material  
2084 adverse affect on financial condition of the Guarantor, or the ability of the Guarantor  
2085 to perform its obligations or undertakings under this Guaranty.

2086 17. **No merger; no conveyance of assets.** Guarantor agrees that during the term of this  
2087 Guaranty in accordance with Section 14 Guarantor will not consolidate with or merge  
2088 into any other corporation where the shareholders of the Guarantor yield control of the  
2089 Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or  
2090 convey, transfer or lease all or substantially all of its properties and assets to any  
2091 person, firm, joint venture, corporation, and other entity, unless the CITY consents  
2092 thereto in accordance with Section 3 above.

2093 18. **Counterparts.** This Guaranty may be executed in any number of counterparts, some of  
2094 which may not bear the signatures of all parties to the Guaranty. Each counterpart, when  
2095 so executed and delivered, is deemed to be an original and all counterparts, taken  
2096 together, will constitute one and the same instrument; *provided, however,* that in  
2097 pleading or proving this Guaranty, it will not be necessary to produce more than one coy  
2098 (or sets of copies) bearing the signature of the Guarantor.

2099 19. **Notices.** All notices, instructions and other communications required or permitted to be  
2100 given to or made upon any party to this Guaranty shall be given in writing, deposited in  
2101 the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:  
2102

2103 City Administrator  
2104 Office of the City Administrator  
2105 City of Oakland  
2106 1 Frank Ogawa Plaza, 3<sup>rd</sup> Floor  
2107 Oakland, CA 94612  
2108 Telephone: (510) 238-3301  
2109 E-mail: cityadministrator@oaklandnet.com

2110 With copies to:

2111  
2112 Director of Public Works  
2113 Public Works Agency  
2114 City of Oakland  
2115 250 Frank Ogawa Plaza, Suite 4314  
2116 Oakland, CA 94612  
2117 Telephone(510) 238-4470  
2118 E-mail: vtroyan@oaklandnet.com  
2119

2120 City Attorney  
2121 Office of the City Attorney  
2122 City of Oakland  
2123 1 Frank Ogawa Plaza, 6<sup>th</sup> Floor  
2124 Oakland, CA 94612  
2125 Telephone: (510) 238-3601  
2126 E-mail: info@oaklandcityattorney.org  
2127

2128 Director of Finance and Management  
2129 Finance and Management Agency  
2130 City of Oakland  
2131 150 Frank Ogawa Plaza, Suite 5215  
2132 Oakland, CA 94612  
2133 Telephone: (510) 238-2220  
2134 E-mail: sjohnson@oaklandnet.com  
2135

2136 As to the GUARANTOR:

2137 [Title]  
2138 [Company]  
2139 [Street Address]  
2140 [City, State, Zip]  
2141 Telephone: xxx-xxx-xxx  
2142 E-mail: [xxx@xxx.xxx](mailto:xxx@xxx.xxx)

2143 With a copy to:

2144 [Title]  
2145 [Company]  
2146 [Street Address]  
2147 [City, State, Zip]  
2148 Telephone: xxx-xxx-xxx  
2149 E-mail: [xxx@xxx.xxx](mailto:xxx@xxx.xxx)

2150 20. **Separate Suits.** Each and every payment default by CONTRACTOR under the Contract  
2151 will give rise to a separate cause of action under this Guaranty, and separate suits may  
2152 be brought under this Guaranty by the CITY or its assigns as each cause of action  
2153 arises.

2154 21. **Headings.** The Section headings appearing in this Guaranty are for convenience only  
2155 and will not govern, limit, modify or in any manner affect the scope, meaning or intent of  
2156 the provisions of this Guaranty.

2157 22. **Entire Agreement.** This Guaranty constitutes the entire Guaranty between the parties to  
2158 this Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in  
2159 this Guaranty is intended to confer on any Person other than the Guarantor, the CITY  
2160 and their permitted successors and assigns under this Guaranty any rights or remedies  
2161 under or by reason of this Guaranty.

2162 23. **Personal Liability.** It is understood and agreed to by the CITY that nothing contained in  
2163 the Guaranty will create any obligation or right to look to any director, officer, employee  
2164 or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any  
2165 obligations under this Guaranty, and no judgment, order or execution with respect to or  
2166 in connection with this Guaranty is taken against any director, officer, employee or  
2167 stockholder.

2168 24. **Events of Default.** Each of the following will constitute an event of default under this  
2169 Guaranty:

2170 a) **Failure to fulfill payment of guaranty.** Guarantor fails to fulfill full and timely  
2171 payment of any guaranty under this Guaranty, including Section 1, and the failure  
2172 continues for five (5) days after Notice (which is deemed given upon receipt of  
2173 registered or certified mailing by U.S. Postal Service or of invoiced commercial  
2174 service) (hereinafter defined as “**Notice**”) has been given to the Guarantor by the  
2175 CITY, fails to perform any of its obligations under this Guaranty or engages in any  
2176 acts prohibited under this Guaranty other than failures itemized below, and fails to  
2177 cure that failure or conduct within thirty (30) days;

2178 b) **Breach of Guaranty.** The Guarantor fails to observe and perform any covenant,  
2179 condition or agreement of this Guaranty, other than any failures listed explicitly in this  
2180 section, and that failure continues for more than thirty (30) days after Notice has  
2181 been given the Guarantor by the CITY;

2182 c) **Failure to give Notice of proposed assignment, etc.** The Guarantor fails to give  
2183 CITY Notice in accordance with Section 19 within ten (10) days of the first to occur of

2184 (i) CONTRACTOR or any Affiliate issuing a press release as to any proposed  
2185 assignment, (within the meaning of Section 3), or consolidation, merger,  
2186 conveyance, transfer or lease described in paragraph (e) of this Section (24)  
2187 or

2188 (ii) The filing with the Securities and Exchange Commission of a Form 8-K or  
2189 other filing with respect to a memorandum of intent or an agreement and plan  
2190 therefore

2191 (paragraph (i) and (ii) together defined as, "**Change Notice**");

2192 d) **Consolidation, merger; conveyance of assets.** The Guarantor consolidates,  
2193 merges or conveys, transfers or leases assets in violation of Section 17 despite CITY  
2194 Council action following Change Notice in preceding paragraph c) withholding or  
2195 denying CITY consent, and on or before 15 days thereafter does not provide CITY  
2196 with a substitute Guarantor satisfaction to CITY in CITY'S sole discretion;

2197 e) **Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt  
2198 relief under any applicable bankruptcy, on solvency, debtor relief, or other similar law  
2199 now or hereafter in effect or will consent to the appointment of or taking of  
2200 possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or  
2201 similar official) of Guarantor for any substantial part of Guarantor's operating assets  
2202 or any substantial part of Guarantor's property, or will make any general assignment  
2203 for the benefit of Guarantor's creditors, or will fail generally to pay Guarantor's debts  
2204 as they become due or will take any action in furtherance of any of the foregoing.

2205 A court having jurisdiction enters a decree or order for relief in respect of the  
2206 Agreement, in any involuntary case brought under any bankruptcy, insolvency,  
2207 debtor relief, or similar law now or hereafter in effect, or Guarantor consents to or  
2208 fails to oppose any proceeding, or any court enters a decree or order appointing a  
2209 receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of  
2210 the Guarantor or for any substantial part of the Guarantor's operating equipment or  
2211 assets, or orders the winding up or liquidation of the affairs of the Guarantor.

2212 f) **Breach of Representations or Warranties.** Any representation or warranty of  
2213 Guarantor is untrue as of the date thereof, Guarantor knowingly makes, causes to be  
2214 made or condones the making of any false entry in its books, and accounts, records  
2215 and reports under this Guaranty.

2216 Upon any Event of Default the CITY may to proceed first and directly against the  
2217 Guarantor under Guaranty without proceeding against or exhausting any other  
2218 remedies, which it may have. The Guarantor acknowledges that any CONTRACTOR  
2219 default comprises a default under the Agreement.

2220 IN WITNESS WHEREOF Guarantor has executed this instrument the day and year  
2221 first above written.

2222 By: \_\_\_\_\_ Date: \_\_\_\_\_

2223  
2224 Attest: \_\_\_\_\_ Date: \_\_\_\_\_

2225  
2226 Proper notarial acknowledgement of execution by Guarantor must be attached.

2227 (1) Chairman, president or vice-president, and (2) secretary, assistant secretary,  
2228 CFO or assistant treasurer, must sign for corporations. Otherwise, the corporation  
2229 must attach a resolution certified by the secretary or assistant secretary under  
2230 corporate seal empowering the officer(s) signing to bind the corporation.

2231 **IN WITNESS WHEREOF**, the CITY and Guarantor have executed this Guaranty as of the day  
2232 and year first written above.

2233

2234 CITY OF OAKLAND [Contractor Company]

2235

2236 By:\_\_\_\_\_.

2237 [Name, Title] [Name, Title]

2238

2239 Approved as to Form:

2240 \_\_\_\_\_

2241 [Name, Title]

2242                                    Exhibit 4        City of Oakland Required Forms  
2243  
2244  
2245  
2246  
2247  
2248

2249  
2250  
2251

EXHIBIT 5 EMPLOYEE AND LABOR RELATIONS PLAN

2252  
2253

EXHIBIT 6 REVENUE SHARING PLAN



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# Attachment 1

## **Tonnage Data From City**

Attachment 1A: 2010 Franchise Report

Attachment 1B: 2011 Franchise Report

Attachment 1C: Residential and Commercial Tons Allocated

Attachment 1D: Roll Off Tons Adjusted



	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	<b>WMAC Franchised Report 2010</b>															
2																
3																
4	<b>LANDFILL DISPOSAL TONS</b>															
5	<b>FRANCHISE DISPOSAL</b>															
6	RESIDENTIAL	RECYCLE RESIDUE	COMM'L	R/O	CITY-HAULED DAVIS ST	BULKY	TOTAL	<b>C&amp;D DISPOSAL FROM DSTS MRF</b>							<b>OAKLAND ORIGIN</b>	
7					DAVIS ST			WMAC R/O	WMAC NON R/O	NON WMAC	C&D FRONT	PUBLIC	SELF-HAUL DAVIS ST	CLASS II ALTAMONT	MISC	
8	Jan-2010	5,224	360	5,583	2,273	756	175	14,373	162	0	20	749	673	1,299	2	2,236
9	HOLIDAY TREES															
10	Feb-2010	4,830	336	5,588	2,206	854	359	14,172	192	0	23	723	573	1,326	14	2,455
11	Mar-2010	5,532	355	6,557	2,731	936	342	16,452	250	0	20	884	680	1,560	13	12,003
12	Apr-2010	5,325	234	5,527	2,442	404	300	14,233	220	0	21	777	1,000	1,795	17	327
13	May-2010	5,184	231	5,592	2,373	501	266	14,146	217	0	15	764	2,176	1,393	116	1,990
14	Jun-2010	5,445	283	5,746	2,625	531	309	14,940	229	0	30	792	1,674	1,953	43	1,362
15	Jul-2010	5,397	260	5,474	2,406	448	305	14,290	280	2	22	716	867	1,823	9	1,009
16	Aug-2010	5,341	243	5,663	2,587	454	318	14,606	211	0	37	770	474	1,759	11	1,278
17	Sep-2010	5,266	212	5,581	2,438	379	267	14,143	250	0	40	741	483	1,782	58	288
18	Oct-2010	4,915	180	5,191	2,381	477	228	13,372	258	0	35	769	542	1,678	5	275
19	Nov-2010	5,737	209	5,318	2,302	0	176	13,742	214	0	46	621	367	1,604	14	94
20	Dec-2010	5,924	204	5,532	2,305	276	282	14,523	264	1	48	741	775	1,401	59	262
21	<b>TOTAL</b>	<b>64,120</b>	<b>3,106</b>	<b>67,352</b>	<b>29,071</b>	<b>6,015</b>	<b>3,327</b>	<b>172,992</b>	<b>2,747</b>	<b>3</b>	<b>357</b>	<b>9,047</b>	<b>10,283</b>	<b>19,373</b>	<b>362</b>	<b>23,578</b>



	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF
1																
2																
3	<b>WMAC Franchised Report 2010</b>															
	<b>RECYCLED TONS</b>															
4	<b>RESIDENTIAL</b>	<b>WHITE GOODS</b>	<b>TIRES</b>	<b>RESIDENTIAL</b>	<b>MRF RECOVERY</b>			<b>OTHER-CITY</b>	<b>COMM</b>	<b>DSTS SELF-</b>						
5	ORGANICS	RECYCLING (avg 145 lbs/unit) (Units) (Tons)	(avg 20 lbs/unit) (Units) (Tons)	<b>TOTAL</b>	BULKY	WMAC R/O	WMAC NON R/O	C&D FRONT	PUBLIC	YARD WASTE	Recycle (Gross Tons)	HAUL YARD WASTE				
6																
7																
8	2,199	1,530	22	2	19	0.19	4,004	86	95	0	9	613	790	37	309	146
9	186															
10	2,720	1,459	50	4	201	2.01	4,361	177	113	0	10	591	672	39	168	180
11	3,790	1,747	39	3	124	1.24	5,710	168	147	0	9	724	799	49	314	210
12	3,688	1,650	40	3	101	1.01	5,490	148	129	0	9	636	1,174	52	148	178
13	3,680	1,572	38	3	107	1.07	5,387	131	127	0	7	625	2,554	50	119	126
14	3,875	1,682	27	2	87	0.87	5,712	152	135	0	13	648	1,965	55	336	288
15	3,193	1,643	43	3	141	1.41	4,991	150	165	1	10	585	1,018	45	276	296
16	2,978	1,636	40	3	35	0.35	4,774	157	124	16	0	630	557	39	338	206
17	2,870	1,361	28	2	25	0.25	4,365	131	147	0	18	606	567	31	251	135
18	2,447	1,239	67	5	46	0.46	3,803	112	151	0	16	629	636	516	353	186
19	2,698	1,436	65	5	58	0.58	4,226	87	126	0	21	508	430	389	376	157
20	2,738	1,591	85	6	260	2.60	4,476	139	155	1	21	607	910	393	379	128
21	<b>37,063</b>	<b>18,545</b>	<b>544</b>	<b>39</b>	<b>1,204</b>	<b>12</b>	<b>57,299</b>	<b>1,639</b>	<b>1,613</b>	<b>18</b>	<b>144</b>	<b>7,402</b>	<b>12,072</b>	<b>1,694</b>	<b>3,367</b>	<b>2,236</b>

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1	<b>WMAC Franchised Report 2011</b>															
2	<b>LANDFILL DISPOSAL TONS</b>															
3	<b>FRANCHISE DISPOSAL</b>															
4	<b>C&amp;D DISPOSAL FROM DSTS MRF</b>															
5	<b>OAKLAND ORIGIN</b>															
6	RESIDENTIAL	RECYCLE	COMM'L	R/O	CITY-HAULED	BULKY	TOTAL	WMAC R/O	WMAC NON R/O	NON WMAC	C&D FRONT	PUBLIC SELF HAUL	CLASS II	MISC		
7		RESIDUE			DAVIS ST							DAVIS ST	ALTAMONT			
8	Jan-2011	5,565	181	5,231	2,214	1,017	233	14,442	338	0	247	761	357	1,688	48	237
9	HOLIDAY TREES															
10	Feb-2011	4,913	218	4,919	2,081	582	321	13,035	298	0	350	792	373	1,790	9	789
11	Mar-2011	5,517	243	5,834	2,422	1,079	251	15,346	346	0	384	931	388	1,487	10	364
12	Apr-2011	5,317	214	5,555	2,397	888	274	14,644	367	0	437	646	333	1,467	11	433
13	May-2011	5,324	256	5,705	2,380	806	249	14,720	308	0	433	733	452	1,496	19	379
14	Jun-2011	5,457	215	5,586	2,282	392	273	14,205	372	0	533	877	446	1,606	22	548
15	Jul-2011	5,254	220	5,274	1,995	480	288	13,512	388	0	508	779	513	1,593	45	445
16	Aug-2011	5,607	206	5,643	2,262	430	308	14,456	367	0	579	859	553	1,636	19	520
17	Sep-2011	5,303	277	5,771	2,163	474	234	14,224	322	0	458	669	612	1,472	50	832
18	Oct-2011	4,867	294	5,179	2,300	310	228	13,178	372	0	412	742	619	1,462	11	431
19	Nov-2011	5,121	263	5,238	2,100	383	210	13,316	256	0	394	781	541	1,289	8	442
20	Dec-2011	4,979	280	5,209	2,056	502	245	13,269	288	0	299	728	535	1,223	8	398
21	<b>TOTAL</b>	<b>63,225</b>	<b>2,866</b>	<b>65,144</b>	<b>26,653</b>	<b>7,344</b>	<b>3,114</b>	<b>168,346</b>	<b>4,022</b>	<b>0</b>	<b>5,033</b>	<b>9,298</b>	<b>5,724</b>	<b>18,210</b>	<b>262</b>	<b>5,818</b>



	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	
<b>WMAC Franchised Report 2011</b>																	
<b>RECYCLED TONS</b>																	
4	RESIDENTIAL		WHITE GOODS (avg 145 lbs/unit) (Units) (Tons)		TIRES (avg 20 lbs/unit) (Units) (Tons)		RESIDENTIAL <b>TOTAL</b>		MRF RECOVERY				OTHER-CITY YARD WASTE		COMM Recycle (Gross Tons)	DSTS SELF- HAUL YARD WASTE	
	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
ORGANICS	RECYCLING								BULKY	WMAC R/O	WMAC NON R/O	C&D FRONT	PUBLIC				
1	2,676	1,440	82	6	26	0.26	4,379	115	198	0	111	623	419	100	389	128	
2	142																
3	2,317	1,325	92	7	275	3	3,809	158	175	0	157	648	438	109	361	148	
4	2,694	1,533	103	7	215	2	4,360	124	203	0	172	1,692	456	133	437	164	
5	3,538	1,383	67	5	171	2	5,063	135	215	0	196	529	391	125	330	153	
6	3,485	1,436	108	8	263	3	5,053	122	181	0	195	600	531	68	367	219	
7	3,394	1,556	64	5	302	3	5,092	134	218	0	240	717	524	75	475	277	
8	3,066	1,413	23	2	47	0	4,623	142	228	0	228	638	602	64	323	176	
9	3,147	1,508	64	5	262	3	4,814	152	216	0	260	703	649	62	400	182	
10	2,712	1,533	51	4	258	3	4,367	115	189	0	206	547	719	75	289	167	
11	3,003	1,535	18	1	8	0	4,651	112	218	0	185	607	727	93	353	161	
12	3,056	1,521	25	2	9	0	4,682	103	151	0	177	639	635	127	339	208	
13	2,593	1,657	45	3	62	1	4,375	121	169	0	134	595	628	58	351	158	
14	<b>35,824</b>	<b>17,838</b>	<b>742</b>	<b>54</b>	<b>1,898</b>	<b>19</b>	<b>55,268</b>	<b>1,534</b>	<b>2,362</b>	<b>0</b>	<b>2,261</b>	<b>8,538</b>	<b>6,719</b>	<b>1,090</b>	<b>4,414</b>	<b>2,142</b>	



## Residential and Commercial Tons Allocated

The following tables demonstrate how SFD, MFD and Commercial tonnages are estimated from the "Residential" and "Commercial" tonnage data provided in the Franchise Reports (Attachment 1A and 1B). Table 1, below, totals all Commercial tonnage from the Franchise Reports. Table 2 shows all "Residential" and "Commercial" tonnage from the Franchise Reports. Table 3 shows SFD, MFD and Commercial service volumes as reported by WMAC. Table 4 shows estimated SFD, MFD and Commercial tons collected (sum of residential and commercial tons collected (Table 2), multiplied by the service volumes as a percentage (Table 3)).

Table 1

<i>Commercial tonnage is represented in three (3) columns in the Franchise Reports (Attachment 1A and 1B):</i>				Totals/ Checks
1) Column D - This material is transferred for landfill disposal without processing. 2) Column L - This material is landfilled after mixed material processing at MRF. 3) Column AB - This material is recovered after mixed material processing at MRF.				
	Column D	Column L	Column AB	
2010	67,352	9,047	7,402	83,802
2011	65,144	9,298	8,538	82,981

Table 2

<i>Total Residential and Commercial tons collected in 2010 &amp; 2011 per Franchise Reports:</i>				Totals/ Checks
	Residential	Commercial		
2010	64,120	83,802		147,921
2011	63,225	82,981		146,205

Table 3

<i>SFD, MFD and Commercial service volumes as a percentage of the sum of all SFD, MFD and Commercial service volume:</i>				Totals/ Checks
	SFD	MFD	Commercial	
2010	44%	23%	33%	100%
2011	42%	22%	36%	100%

Table 4 - Results for RFP Table 2-1

<i>Estimated SFD, MFD and Commercial tons collected:</i>				Totals/ Checks
	SFD	MFD	Commercial	
2010	65,085	34,022	48,814	147,921
2011	61,406	32,165	52,634	146,205



## Roll Off Tons Adjusted

Tables 1 and 2 below describe two (2) methods used to estimate the portion of franchise Roll Off (R/O) tons that would be included in the Mixed Materials and Organics Collection Services (MMO), i.e., total R/O tons under the current franchise minus R/O tons collected from construction and demolitions (C&D) sites (material from C&D sites will not be exclusive to the MMO franchise). The average of the two methods is then applied to 2010 and 2011 total R/O tons in Table 3.

Table 1

<b>Estimated by Tonnage</b>		
<i>According to 2/29/12 correspondence w/WMAC the R/O tonnage in column E of the franchise report (Attachment 1A and 1B) excludes tonnage collected at C&amp;D sites, and tonnage in columns I and Y is material that was collected from C&amp;D sites, as shown below:</i>	Tons	%
R/O tonnage per Franchise Reports column E (2010/2011 averaged). This tonnage excludes material collected at C&D sites.	27,862	84%
R/O tonnage per Franchise Reports column I (2010/2011 averaged). This tonnage is collected from C&D sites and landfilled from mixed material processing at MRF.	3,385	10%
R/O tonnage per Franchise Reports column Y (2010/2011 averaged). This tonnage is collected from C&D sites and recovered from mixed material processing at MRF.	1,988	6%
Total R/O tonnage (2010/2011 averaged)	33,234	100%
<b>Estimated portion of franchise R/O tons that would be included in MMO</b>		<b>84%</b>

Table 2

<b>Estimated by Service Volume</b>		
<i>WMAC commercial subscription data shows two (2) types of R/O accounts: PERM excludes C&amp;D accounts) and TEMP (includes C&amp;D accounts). Total service volume of each type is shown below:</i>	Tons	%
Total cubic yards of subscribed R/O service codes as "PERM"	10,544	82%
Total cubic yards of subscribed R/O service codes as "TEMP"	2,344	18%
Total cubic yards of subscribed R/O service	12,888	100%
<b>Estimated portion of franchise R/O tons that would be included in MMO</b>		<b>82%</b>

Table 3 - Results for RFP Table 2-1

<i>Estimated R/O tons that would be included in MMO franchise using the average of methods 1. and 2. above. The following estimates the portion of 2010 and 2011 R/O tonnage would be included in the MMO franchise:</i>	2010	2011
Total franchise R/O tonnage per Franchise Reports	33,432	33,037
Estimated portion of franchised R/O tons that would be included in MMO	83%	83%
<b>Estimated portion of franchise R/O tons that would be included in MMO</b>	<b>27,689</b>	<b>27,362</b>