AGREEMENT

between the

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

and

BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC.

for

SOLID WASTE DISPOSAL SERVICES

May 2019
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AGREEMENT
BETWEEN THE
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
AND
BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC.
FOR
SOLID WASTE DISPOSAL SERVICES

This Agreement is entered into by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY ("Authority") and BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC. ("Contractor") (together, the "Parties") on the Effective Date.

RECITALS, DETERMINATIONS, AND FINDINGS

This Agreement is entered into with reference to the following facts, circumstances, determinations, and findings made by the Authority Board of Directors:

Whereas; the Member Agencies are responsible for protection of public health and the environment. The Member Agencies are not only authorized but required to provide Solid Waste handling services to their citizens under the provisions of the California Integrated Waste Management Act of 1989 (the "Act"), which is set forth in the California Public Resources Code at Section 40000, et seq., including source reduction, recycling, composting activities, and the collection, transfer, and disposal of Solid Waste within the Member Agencies’ boundaries subject to Solid Waste handling jurisdiction, as provided in Section 40057 of the Act.

Whereas; the Member Agencies find it in their mutual economic interest to address Solid Waste and recycling issues on a regional level. The Member Agencies use certain regional facilities for Solid Waste transfer and Recyclable Materials processing located in the City of San Carlos, which are part of the San Mateo County Integrated Waste Management Plan, as approved by the California Integrated Waste Management Board. For this purpose, the Member Agencies established the Authority for the purpose of owning, financing, administering, and operating such regional facilities. The Authority was created to provide for the exercise of powers common to the Member Agencies as described in the Joint Exercise of Powers Agreement South Bayside Waste Management Authority.

Whereas; through the Authority and pursuant to the provisions of this Agreement, Authority meets its Member Agencies’ obligations in part by requiring Contractor to provide for Disposal of Solid Waste in accordance with the Act.

Whereas; municipalities like the Member Agencies have generally been held liable under federal superfund laws for costs of cleaning up of hazardous waste sites that accepted Solid Waste generated within municipalities’ jurisdictions. Therefore the Authority is prudent to provide, on behalf of its Member Agencies, for terms and conditions of its Solid Waste Disposal in accordance with this Agreement.
Whereas; pursuant to its police powers, obtaining a long-term commitment for Disposal of Solid Waste generated in the Authority Service Area in accordance with this Agreement is in the best interests of the public health, safety, and well-being of the citizens of the Member Agencies and is fiscally prudent.

Whereas; through enactment of the Act, the State of California also recognizes the important health and safety consideration to long-term planning for local governments adequate Disposal needs. The State requires local governments to make adequate provision for at least fifteen (15) years of Solid Waste Disposal capacity to preserve the health, safety, and well-being of the public. The Act also authorizes local governments to enter into exclusive franchise contracts to provide Solid Waste handling services for the health, safety, and well-being of its citizens (California Public Resources Code Section 40059).

Whereas; this Agreement also advances the objectives of the federal government to encourage environmentally sound Solid Waste management (Resource Conservation and Recovery Act of 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.).

Whereas; the Ox Mountain Landfill is intended to be the principal Landfill for Solid Waste generated in the Authority Service Area.

Whereas; this Agreement helps the Authority achieve the following goals:

1. Securing rate stability over the long term and financial protection from environmental liabilities;

2. Establishing service and performance standards to help assure that the Authority meets its obligations, and those of its Member Agencies, under law and protects and preserves the health, safety, and financial assets of its citizens; and,

3. Giving Authority tools to monitor Contractor's compliance with service terms, administer Solid Waste management programs, and enforce Authority rights.

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

ARTICLE 1.
DEFINITIONS

In this Agreement, capitalized words and certain lower case words have the meanings defined in Exhibit A, which control in the event of any conflict with the definitions used in the recitals above.
ARTICLE 2.
TERMS OF AGREEMENT

2.01 EFFECTIVE DATE

This Agreement becomes effective on the Effective Date. Between the Effective Date and Service Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing services required by this Agreement on the Service Commencement Date.

2.02 TERM AND EXTENSIONS

The Term of this Agreement commences on January 1, 2020 ("Service Commencement Date") and expires on December 31, 2029, unless the Agreement is extended in accordance with this Section or terminated pursuant to Article 7.

At the Authority's sole discretion, the Term of this Agreement may be extended for up to a total of two (2) years after December 31, 2029 (i.e., until December 31, 2031), and such extension may be granted in one or more periods specified by the Authority. If the Authority elects to exercise this option to extend the Term, it shall give Notice of its decision to extend the Agreement to the Contractor one hundred eighty (180) Days prior to the expiration date then-existing under this Agreement, and such Notice shall specify the duration of the Authority's extension.

If the Authority wants to extend the Term of this Agreement beyond the two (2) year period described in the above paragraph for up to four (4) additional years after December 31, 2031 (i.e., until December 31, 2035, where the maximum total extension of the Term shall not exceed six (6) years), the Parties agree that such extension shall be upon mutual agreement. If the Authority wants to exercise this option, the Authority shall give Notice of its request to extend the Agreement to the Contractor one hundred eighty (180) Days prior to the expiration date then-existing under this Agreement, and such Notice shall specify the duration of the Authority's requested extension of the Term. Contractor shall provide Notice to the Authority of Contractor's decision to accept or decline the Authority's request for an extension of the Term within sixty (60) Days of receipt of the Authority's Notice requesting an extension.

2.03 SURVIVAL OF CERTAIN PROVISIONS

The following provisions will survive the expiration or termination of this Agreement:

1. all representations and warranties;
2. all Indemnities;
3. obligations to pay any due and payable monetary amounts, or claims for those amounts, including damages, any Authority's Reimbursement Costs, any Disposal Rates, and payment of any amounts accrued and payable upon termination of the Agreement in accordance with Section 7.02;
(4) obligations to submit Records and any reports for periods (or portions thereof) concluded prior to the expiration or termination of this Agreement; and,

(5) any other rights and obligations of the Parties stated to survive the expiration or termination of this Agreement.

ARTICLE 3.
OBLIGATIONS OF AUTHORITY

3.01 LANDFILL DESIGNATION

A. Solid Waste. The Operating Agreement will require that Transfer Company deliver to the Landfill all Solid Waste it transfers at the Authority’s Facility that requires Disposal in accordance with the terms of the Transfer Company Operating Agreement.

B. Authority. In accordance with Section 6.1 of the Joint Exercise of Powers Agreement South Bayside Waste Management Authority, each Member Agency will at all times direct the flow of Solid Waste generated in the Member’s jurisdiction to those facilities specified by the Authority. Neither Authority nor its Member Agencies are obligated to physically deliver any Solid Waste to the Landfill or pay Contractor any Disposal Rates, except as provided for herein.

3.02 HAZARDOUS MATERIAL PROGRAMS

The Operating Agreement will require that Transfer Company develop and implement a Hazardous Waste screening, identification, and prevention protocol. It will further require that Transfer Company not knowingly deliver Hazardous Waste to the Landfill.

3.03 NO TONNAGE OBLIGATION OR LIMIT ON WASTE PREVENTION

Neither Authority nor the Transfer Company is obligated to deliver any specified quantity of Solid Waste to the Landfill. In order to reduce the amount of Solid Waste delivered to the Landfill, the Authority currently: 1) implements and/or sponsors waste reduction programs; 2) receives at the Facility Recyclable Materials and materials which can be Diverted from Disposal (including but not limited to Construction and Demolitions Materials, Organics, Plant Materials, mattresses, and carpet/padding) and directs these to third parties for processing; and, 3) separates Recyclable Materials and materials which can be Diverted from landfill Disposal from the Solid Waste Delivered to the Facility and directs these materials to third parties for processing. Nothing in this Agreement shall prevent, penalize, or impede in any manner the Authority from continuing and expanding these programs or developing new programs or new processing operations at the Facility or with third parties with the goal of reducing the amount of Solid Waste Disposed. If continued or expanded programs, new programs and/or new processing operations are implemented after the Effective Date of the Agreement to reduce the amount of Solid Waste Disposed, the Authority shall arrange for any materials remaining after processing that require Disposal to be delivered to the Landfill.
ARTICLE 4.
OBLIGATIONS OF CONTRACTOR

4.01 SCOPE OF DISPOSAL SERVICES

Contractor will receive, accept, and safely and lawfully Dispose of Authority’s Solid Waste at the Landfill in lined cells meeting requirements of Subtitle D of RCRA, if such cells are required in accordance with Applicable Law.

4.02 PERMITS

A. Securing Permits. Contractor will obtain and maintain at Contractor’s sole cost all Permits required under Applicable Law to perform Services and will provide Services in compliance with Permits. Contractor will show Authority proof of Permits and will demonstrate compliance with the terms and conditions of Permits promptly upon request of Authority. In its Annual Report or more frequently, as necessary, Contractor will inform Authority of any Permit-related or regulatory concerns and Contractor’s plans to and status of securing the issuance, revision, modification, extension, or renewal of Permits. Promptly upon Authority direction, Contractor will provide the Authority with copies of Permits and any applications or other correspondence that the Contractor submits in connection with securing Permits.

B. Complying with Permits. Contractor will comply with all Permits, including any mitigation measures related to the operation and maintenance of the Landfill. Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

4.03 LANDFILL DISPOSAL SPECIFICATIONS

Contractor will provide Disposal Services at the Landfill in accordance with the Service standards described in Section 4.19 and the following Service specifications:

1. Operating, managing, and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement, and compaction (if necessary) of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration;

2. Providing, operating, and maintaining of a landfill tipper for the unloading of Solid Waste or other materials delivered to the Landfill by the Transfer Company.

3. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, closure, post-closure, and environmental monitoring;

4. Operating, maintaining, and managing leachate and landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements;
Accepting delivery of Authority's Solid Waste, subject to the limitations of Section 4.05;

Operating and maintaining the scale house and scale system and weighing Authority's Solid Waste in accordance with Section 4.09;

Directing on-site traffic to appropriate unloading areas in accordance with Section 4.08 and providing a safe working environment for Landfill users, visitors and employees, including in accordance with Sections 4.10 and 4.11; and,

Safely managing the Solid Waste accepted at the Landfill, including in accordance with Section 4.11.

**4.04 OWNERSHIP OF AUTHORITY’S SOLID WASTE**

**A. General.** Once Authority's Solid Waste is delivered to the Landfill and received and accepted by Contractor, ownership and the right to possession of Authority's Solid Waste will transfer directly from the Person delivering Authority's Solid Waste to Contractor. Contractor may retain, recycle, process, dispose of, and otherwise use Authority's Solid Waste in any lawful fashion or for any lawful purpose. Both benefits and liabilities resulting from ownership and possession will accrue to Contractor with the exception of carbon offset credits pursuant to Section 4.04.B.

Throughout the Term, the Member Agencies shall direct their Solid Waste to the Transfer Station and the Authority will name Ox Mountain Landfill to be the defined “Landfill” where Transfer Company must deliver that Solid Waste it transfers and Transports in accordance with the terms of the Authority's agreement with Transfer Company, thereby designating the Landfill as the facility to be utilized for Disposal of that Solid Waste. Authority may obtain ownership or possession of Authority’s Solid Waste only in the event of a default of this Agreement as described in Section 7.01 upon Notice of its intent to do so; however, nothing in this Agreement will be construed as giving rise to any inference that Authority ownership modifies Authority's obligations in Section 3.01.A or that Authority has ownership or possession of that Solid Waste unless Authority has given that Notice to Contractor.

**B. Carbon Offset Credit.** For purposes of this Section, "Environmental Benefits" are carbon offset credits, Renewable Energy Certificates (RECs), Renewable Identification Numbers (RINs), greenhouse gas emission reduction credits, and other government-issued environmental, energy, or transportation-related credits. Environmental Benefits do not include byproducts of waste material, such as landfill gas, processed landfill gas, fuel, electricity, compost, or Recyclable Material if Contractor is benefiting from such processes prior to the Effective Date or has, at any time, contractually committed or conveyed such benefits to third parties.

"Applicable Environmental Benefits" are defined for purposes of this Section as Environmental Benefits that:

1. Directly and exclusively result from Contractor investments planned and made after the Effective Date of this Agreement;
2. Are not related to the use of transportation fuel or vehicles using the fuel;
3. Are received by Contractor during the Term of this Agreement; and,
4. Are based on: (i) the relative convertible Tonnage of Authority’s Solid Waste Delivered to the Landfill in relation to all other convertible Tons received at the Landfill, and (ii) residency
period of Authority’s Solid Waste within the Landfill required before such material results in Environmental Benefits.

Contractor shall notify Authority within ninety (90) Days of learning that it has or will receive Applicable Environmental Benefits. The Parties shall meet and confer, and only if a mutual agreement is reached, determine a fair Authority share of profits generated solely from the Applicable Environmental Benefits after Contractor is paid its margins and return on capital investment. In the event a mutual agreement is not reached, Contractor shall be under no obligation to provide any share of profits or other benefits to the Authority.

4.05 REJECTION OF UNPERMITTED WASTE

A. Inspection. Contractor will use Standard Industry Practices to detect and reject Unpermitted Waste in a uniform and non-discriminatory manner and will not knowingly accept Unpermitted Waste at the Landfill. Contractor will comply with the inspection procedure contained in its Permit requirements. Contractor will promptly modify that procedure to reflect any changes in Permits or Applicable Law.

B. Unpermitted Wastes Handling and Costs. Contractor will arrange for or provide handling, transportation, and delivery to a recycling, incineration, or a disposal facility permitted in accordance with Applicable Law of all Unpermitted Wastes detected at the Landfill that are not delivered by the Transfer Company. Contractor is solely responsible for making those arrangements or provisions and all costs thereof.

C. Remedies for Rejected Materials. If Unpermitted Waste is delivered to the Landfill, Contractor may reject the Unpermitted Waste and require the Person(s) bringing such Unpermitted Waste to the Landfill to remove it. Contractor shall also be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that Unpermitted Waste to the Landfill. If Contractor identifies Unpermitted Waste delivered by Transfer Company, the Contractor may reject it and require the Transfer Company to remove it. Further, the Authority’s agreement with the Transfer Company will require the Transfer Company to collect, transport, and dispose of that Unpermitted Waste and/or remediate any contamination resulting therefrom at Transfer Company’s expense, but Contractor may not require the Authority to take those actions or pay those costs. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Unpermitted Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that Unpermitted Waste in accordance with Applicable Law.

D. Notification. If the Contractor rejects Unpermitted Waste delivered by the Transfer Company, Contractor will immediately notify the Authority verbally and then follow verbal notifications with Notice identifying the date and time of occurrence; material type; material weight or volume; characterization of material; the Contractor’s reason for rejection of the delivered material; and, the vehicle that delivered the material.

4.06 DAYS AND HOURS OF OPERATION

A. General. Contractor will operate the Landfill for the receipt of Authority’s Solid Waste in accordance with the days and hours of operation set forth in Permits. As of the Effective Date,
permitted hours of the Landfill allow for the Transfer Company to deliver Solid Waste Monday through Saturday. At a minimum, Contractor will accept at the Landfill all Authority’s Solid Waste Monday through Friday from 4:00 a.m. to 4:00 p.m. and Saturday from 4:00 a.m. to 1:30 p.m., except for Holidays when the Landfill does not need to accept Authority’s Solid Waste. If a Holiday occurs on a weekday (e.g., Monday through Friday), Contractor shall operate the Landfill to receive Authority’s Solid Waste from 4:00 a.m. to 4:00 p.m. on the Saturday immediately following the Holiday. While Contractor may increase these hours, Contractor may not reduce the hours or total number of hours for acceptance of Authority’s Solid Waste without the concurrence of the Authority and Transfer Company unless reductions are required by a change in a Permit subsequent to the Effective Date.

B. **Option to Extend Regular Operating Hours.** During the Term of the Agreement, the Authority may want to have the Transfer Company routinely deliver the Authority’s Solid Waste to the Landfill during hours that extend beyond those prescribed on the Effective Date in subsection A above. In such case, the Authority shall provide Contractor Notice one hundred eighty (180) Days prior to the date the Authority desires to have the Transfer Company commence delivery of the Authority’s Solid Waste to the Landfill during operating hours beyond those prescribed on the Effective Date in subsection A above. The Parties shall treat the change in regular Landfill operating hours as a modification in the scope of service pursuant to Section 4.20.

Parties acknowledge that as of the Effective Date of the Agreement, Contractor’s permits for the Landfill do not permit Landfill operations beyond the hours prescribed in subsection A. Upon Authority’s request to extend operating hours, Contractor agrees to pursue Permit modifications or approvals required from regulatory agencies, at no cost to the Authority, to modify the operating hours for start time of 2:00 a.m. Monday through Saturday, thereby adding two additional hours (from 4:00 a.m. to 2:00 a.m.) each day except Sunday to receive the Authority’s Solid Waste. The Parties acknowledge that in February 2019 Contractor provided a not-to-exceed estimate of an additional operating cost of two hundred and ninety thousand dollars ($290,000) annually for Rate Year One (2020) for the two (2) extended operating hours covering an equivalent of two additional full-time employees during the two extended operating hours; and, Contractor indicated that it may be able to lower this estimate through additional analysis. The final cost impact associated with a change in the operating hours shall be determined through the modification in the scope of service process pursuant to Section 4.20.

**4.07 EQUIPMENT AND SUPPLIES**

Contractor will provide landfill tipper, rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, and other consumables as appropriate and necessary to operate the Landfill and provide Services. Contractor will properly protect the equipment and place it in the charge of competent operators. Contractor will repair and maintain all equipment at its own cost and expense.

The Transfer Company will deliver Solid Waste in transfer trailers that require a mechanical landfill tipper to empty the contents at the Landfill receiving area. Contractor will provide, operate, and maintain one or more landfill tippers that are capable of receiving and unloading all of the Authority’s Solid Waste on a daily basis. Prior to the commencement of the Term of this Agreement on January 1, 2020, the Authority owned and provided a landfill tipper at the Landfill that Contractor utilized to unload Authority’s Solid Waste from the Transfer Company’s transfer trailers. As of January 1, 2020, the ownership of the Authority’s tipper shall transfer from the Authority to the Contractor. At its option, Contractor may
continue to use the tipper; sell, scrap, or donate the tipper to another party; or otherwise use or dispense with the tipper; and, the Authority shall be relieved of any and all obligations or liabilities related to the tipper.

4.08 TRAFFIC CONTROL AND DIRECTION

A. General. Contractor will construct and maintain all roads required to transport Authority's Solid Waste from the Landfill site entrance to scale house and to the actual point of unloading at the Landfill. Contractor will direct on-site traffic to appropriate unloading areas and provide a safe working environment for Landfill users, visitors, and employees. Contractor will provide necessary roadways, signs, and personnel to assist drivers to proper unloading areas. Contractor will maintain all roadways and signs at the Landfill in a clean and usable condition. The Contractor will provide and maintain roadways and signs for the convenience of vehicles using the Landfill and to facilitate safe and efficient traffic flow at the Landfill.

B. Guaranteed Vehicle Turnaround Times. Contractor will operate the Landfill so that all Transfer Company vehicles are processed, unloaded, and exited from the facility: (i) within the Maximum Vehicle Turnaround Time; and, (ii) in such a manner that the actual average monthly Turnaround Time is less than or equal to the Maximum Average Monthly Vehicle Turnaround Time. If a Transfer Company delivery vehicle spends more than ten (10) minutes unloading at the Landfill, the Contractor may deduct from the actual Turnaround Time for that vehicle one minute for every minute in excess of the ten (10) minutes. Contractor may use the adjusted vehicle Turnaround Time to determine compliance with the Maximum Vehicle Turnaround Time for that individual event, and may use the adjusted vehicle Turnaround Time when calculating the actual average monthly vehicle Turnaround Time, provided that such adjustments are supported with evidence to the satisfaction of Authority. The actual average monthly vehicle Turnaround Time shall be calculated by summing the actual vehicle Turnaround Time for each load of Authority's Solid Waste delivered by the Transfer Company in a given month divided by the number of loads of Authority's Solid Waste delivered by the Transfer Company in the given month.

C. Failure to Meet Maximum Vehicle Turnaround Time. If Contractor fails to meet the Maximum Vehicle Turnaround Time for one or more loads of Authority's Solid Waste, it will pay liquidated damages. The liquidated damages payment shall be paid in accordance with Section 8.20 and shall be equal to a base amount of $100.00 in Rate Period One (2020) for each Transfer Company vehicle with a Turnaround Time greater than the Maximum Vehicle Turnaround Time plus $1.00 in Rate Period One (2020) for every minute in excess of the Maximum Vehicle Turnaround Time. The base amount of the liquidated damage shall increase by $3.00 per year (e.g., the amount will be $103.00 for Rate Period Two (2021), $106.00 for Rate Period Three (2022), etc.); and, the additional per-minute amount shall increase by $0.10 per year (e.g., the amount will be $1.10 for Rate Period Two (2021), $1.20 for Rate Period Three (2022), etc.).

D. Failure to Meet Maximum Average Monthly Vehicle Turnaround Time. If Contractor fails to meet the Maximum Average Monthly Vehicle Turnaround Time, it will pay liquidated damages for the month(s) in which the Maximum Average Monthly Vehicle Turnaround Time is (are) not achieved. The liquidated damages payment shall be paid in accordance with Section 8.20 and shall be equal to $100.00 in Rate Period One (2020) for every minute in excess of the Maximum Average Monthly Vehicle Turnaround Time for delivery of Authority's Solid Waste by the Transfer Company multiplied by the number of loads of the Authority's Solid Waste delivered by the

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SBWMA/BFI Disposal Services Agreement
Transfer Company to the Landfill in the given month (e.g., $100 x (Actual Average Monthly Vehicle Turnaround Time - Maximum Average Monthly Vehicle Turnaround Time) x number of loads of Authority’s Solid Waste delivered in a given month). The per-minute liquidated damage amount shall increase by $3.00 per year (e.g., the amount will be $103.00 for Rate Period Two (2021), $106.00 for Rate Period Three (2022), etc.). For the purposes of these calculations, the actual monthly average vehicle Turnaround Time shall be rounded to the nearest tenth of a minute (e.g., 46.74 minutes shall be rounded to 46.7 minutes).

E. Assessment of Liquidated Damages. The Authority shall provide Notice of its intent to assess liquidated damages to the Contractor within ten (10) Days of the Authority becoming aware of the Contractor’s failure to meet the Maximum Vehicle Turnaround Time and/or Maximum Average Monthly Vehicle Turnaround Time. The Authority may become aware of Contractor’s non-performance through review of Contractor-provided reports or Records, through review of Records pursuant to Section 8.14, or through review of documentation provided by the Transfer Company. The assessment of liquidated damages shall be made in accordance with Section 8.20.

F. Turnaround Time Documentation Requirements. On or before the Service Commencement Date, Contractor shall, at its own cost, implement and maintain a technology-based vehicle tracking system of recording inbound and outbound vehicle times (such as a system that uses RFID vehicle tags and RFID readers at the Landfill). Such system shall not inconvenience the Transfer Company or delay its vehicles from arriving and departing the Landfill. For each load of the Authority’s Solid Waste delivered by the Transfer Company to the Landfill, the Contractor’s inbound scale and/or vehicle tracking system shall record the arrival date and time, and the Contractor’s vehicle tracking system shall record the outbound departure date and time. Contractor shall use this data to calculate the actual vehicle Turnaround Time for each load. Contractor shall use the data to calculate the actual average monthly Turnaround Time. If needed, the Authority will facilitate the Transfer Company’s cooperation in equipping its vehicles with a simple tracking device.

If the Contractor fails to have such a vehicle tracking system fully operational by the Service Commencement Date, the Maximum Average Monthly Vehicle Turnaround Time will not be used as a performance standard for vehicle Turnaround Times until such time the Contractor’s system is fully operational. During any period in which the Contractor is unable to document the actual Turnaround Time of each load of Authority’s Solid Waste delivered by the Transfer Company using a Contractor-provided vehicle tracking system, the Maximum Vehicle Turnaround Time shall be thirty-five (35) minutes rather than forty-five (45) minutes stated in Exhibit A. During any period in which the Contractor does not have a system in place for determining actual vehicle Turnaround Times, the actual vehicle Turnaround Times will be determined for transfer vehicles based on the recorded inbound and outbound scale house times, which will necessitate the transfer vehicle drivers stopping at the scale house at both facility arrival and departure times. Alternatively, the Authority may request that the Transfer Company provide GPS data that demonstrates the actual vehicle Turnaround Times.

4.09 SCALE OPERATION

A. Maintenance and Operation. Contractor will maintain at least two (2) State-certified motor vehicle scales at the Landfill in accordance with Applicable Law. Contractor will link all scales to a centralized computer recording and billing system that will be compatible with Contractor’s systems and account for tracking all incoming and outgoing materials. Contractor will operate
those scales during Landfill receiving hours established in Section 4.06. Contractor will provide Authority with access to weighing information at all times and copies thereof on the next Working Day following Authority’s request therefore.

B. **Vehicle Tare Weights.** When Transfer Company places new vehicles into service, Contractor will promptly weigh the new vehicle and determine its unloaded (“tare”) weight(s). Contractor will record tare weight, hauler name, and vehicle identification number. Within ten (10) Working Days of weighing, Contractor will provide the Authority and Transfer Company with a report listing vehicle tare weight information. Contractor will have the right to request re-determination of tare weights of vehicles twice each Calendar Year. If there is reasonable suspicion or evidence that tare weights are not accurate, Transfer Company may request re-determination of tare weights, in which case Contractor will promptly re-determine tare weights for requested vehicles up to four (4) times per Calendar Year. Contractor may update tare weights (at its own initiative) more frequently.

C. **Substitute Scales.** If any scales are inoperable, being tested, or otherwise unavailable, Contractor will use Reasonable Business Efforts to weigh vehicles on the remaining operating scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Contractor will substitute portable scales until the permanent scales are replaced or repaired. Contractor will arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, Contractor will immediately obtain a temporary substitute scale(s).

D. **Estimates.** Pending substitution of portable scales or during power outages, Contractor will estimate the Tonnage of Authority’s Solid Waste delivered to the Landfill by utilizing the arithmetic average of each vehicle’s recorded Tons of Solid Waste delivered on its preceding three (3) deliveries, on the same Day of the week, to the Landfill. All information required by Section 4.09.G will continue to be recorded for each delivery of Solid Waste to the Landfill and each Transported load of Solid Waste during any period the scales are out of service.

E. **Testing.** Contractor will test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months. Upon Authority request, Contractor will promptly provide the Authority with copies of test results. Contractor will further test and calibrate any or all scales within three (3) Working Days of Authority direction. If test results indicate that the scale or scales complied with Applicable Law, the Authority will reimburse Contractor the Direct Costs of the tests. If the test results indicate that the scale or scales did not comply with Applicable Law, Contractor will bear the costs thereof and Contractor will at its own cost adjust and correct, consistent with the results of that test, all weight measurements recorded and Disposal Rates calculated, charged, and paid, as the case may be, from the date of Authority’s direction.

F. **Weighing Standards and Procedures.** Contractor will use the Landfill’s entry scale(s) located at the scale house to weigh vehicles and charge Disposal Rates. Contractor scale house personnel will be responsible for inspecting the Solid Waste delivered to the Landfill. Contractor will charge the Authority the Disposal Rates based on the Tonnage of Authority’s Solid Waste delivered by the Transfer Company to the Landfill. Contractor will weigh and record inbound weights of all
G. Records. Contractor will maintain scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials received, type of material, hauler identification and/or classification, type, weight, and destination of material (such as, with respect to a transfer station, to a landfill or material recovery facility operations).

4.10 PERSONNEL

Contractor will engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for operation of the Landfill and to perform Services.

4.11 SAFETY

The Contractor will perform all Services in a safe manner, in accordance with Applicable Law and insurance requirements provided in Article 6.

4.12 ALTERNATIVE LANDFILL(S)

A. Alternative Landfill for Reasons other than Uncontrollable Circumstances. If Contractor does not Dispose of Authority’s Solid Waste at the Landfill for reasons other than Uncontrollable Circumstances, then following Authority approval given in Authority’s sole discretion, Contractor will: (i) accept and Dispose of Authority’s Solid Waste at another landfill owned by it or an Affiliate at a price not to exceed the Disposal Rate in effect under this Agreement and pay Authority for any additional Transportation costs incurred by the Authority or Transfer Company in delivering Authority’s Solid Waste to the other landfill, or (ii) arrange for Authority’s Solid Waste to be Disposed of at another landfill not Owned by it or an Affiliate, in which case Contractor will pay any difference in the fees charged at that Disposal location compared to the Disposal Rate plus any additional Transportation costs incurred by the Authority or Transfer Company in delivering Solid Waste to the other Transfer station or Landfill, and the disposal fee thereat.

B. Alternative Landfill for Uncontrollable Circumstances. If Contractor does not Dispose of Authority’s Solid Waste at the Landfill due to Uncontrollable Circumstances, then promptly upon Authority direction Contractor will, to the extent it is legally able to do so in accordance with Applicable Law, accept and Dispose of Solid Waste at another landfill owned by it or an Affiliate at a price not to exceed the Disposal Rate in effect under this Agreement. Contractor is not obligated to pay for any additional Transportation costs incurred by Authority or Transfer Company in delivering Authority’s Solid Waste to the other landfill. If Authority does not so direct Contractor, Authority may in its sole discretion terminate this Agreement as provided in accordance with Section 7.02.
C. **Alternative Landfill Sites.** If use of an alternative landfill(s) is necessary, Contractor has identified two alternative landfills that it will make available to accept and Dispose of the Authority's Solid Waste — Newby Island Landfill in San Jose, CA and Keller Canyon Landfill in Pittsburg, CA. Contractor may allocate the Authority's Solid Waste Tonnage between these landfills if needed given landfill capacity limitations, and will meet and confer with the Authority to agree on which landfill(s) will be used, and if, and how much, Tonnage will be allocated between the two alternative landfills.

4.13 **INVOICING AND MONTHLY REPORT**

On or before the fifteenth (15th) of each month, Contractor shall invoice or otherwise charge the Authority in amounts equal to the then-current Disposal Rate pursuant to Article 5 multiplied by Tonnages of Authority's Solid Waste delivered by the Transfer Company to the Landfill during the previous month. Contractor will simultaneously provide the Transfer Company with a copy of that invoice. Invoices will be in a form satisfactory to Authority. All undisputed amounts shall be payable by the Authority within thirty (30) Days of receipt of the invoice. For example, for Disposal Services provided in July, Contractor will invoice the Authority on or before August 15 and payment will be due and payable by the Authority on or before September 15. The Authority shall, within fifteen (15) Days of receipt of invoice, identify any disputed charges and communicate these to Contractor and Transfer Company. Contractor may deliver to Authority, with a copy to Transfer Company, a Notice of late payment for a given monthly invoice thirty-five (35) Days after the date of generation of the invoice. Contractor’s invoices shall be deemed delinquent if the Authority has not paid within sixty (60) Days of the date of the Notice of late payment. Thereafter, Contractor may suspend acceptance of Authority’s Solid Waste deliveries from the Transfer Company until the delinquent invoice(s) are paid in full excluding disputed amounts. The delinquent invoice shall bear interest on the unpaid balance at a rate not to exceed one and one-third percent (1 1/3%) per month.

Along with its invoice, Contractor shall provide a monthly report to the Authority presenting daily Tonnage received from Transfer Company by material type, the actual average monthly vehicle Turnaround Time (determined in accordance with Section 4.08), and the number of loads of Authority Solid Waste in which the actual Turnaround Time was in excess of the Maximum Vehicle Turnaround Time.

Contractor shall separately invoice Member Agencies for payment of any Solid Waste delivered to the Landfill by employees of the Member Agencies.

4.14 **ANNUAL REPORT OF LANDFILL ACTIVITY**

A. **General.** Contractor will submit an Annual Report of Landfill Activity described in this Section no later than forty-five (45) Days after the end of each Rate Period. Authority shall have the right to inspect all documents upon which the representations contained in said report are based. If Contractor does not submit the Annual Report on the due date, it will pay to the Authority liquidated damages equal to five hundred dollars ($500.00) in Rate Period One (2020) for each Day it is late for up to thirty (30) Days plus additional Days as further described. If the Authority provides Notice to Contractor of a late Annual Report thirty (30) Days after the report due date, Contractor shall submit the report to the Authority fourteen (14) Days of the Notice date. If the report is received on or before the fourteenth (14th) Day, liquidated damages shall be limited to the amount due for the initial thirty (30) Days. If the report is not received within the fourteen-
(14-) Day period, the Authority may assess liquidated damages for each Day the report is late after the fourteen- (14-) Day period following the Notice. In such case, the number of days for which liquidated damages may be assessed will equal the sum of the initial thirty (30) Days the report is late and the additional Days the report is late following the fourteen- (14-) Day period after the Authority's Notice. The amount of the liquidated damage shall increase by twenty-five dollars ($25.00) per year (e.g., the amount will be five hundred twenty-five dollars ($525.00) in Rate Period Two (2021), five hundred fifty dollars ($550.00) for Rate Period Three (2022), etc.). Liquidated damages will be assessed in accordance with Section 8.20.

If the Authority identifies an error in an Annual Report or omission of required information, the Authority may assess liquidated damages in accordance with Section 8.20, and Contractor shall pay the liquidated damages. The amount of the liquidated damage for an inaccurate or incomplete report shall be five hundred dollars ($500) for the initial occurrence. Contractor shall be given five (5) Working Days to correct the report from the date of the Authority’s initial Notice. If Contractor fails to correct the report on or before the fifth (5th) Working Day, Authority may assess a liquidated damage amount of five hundred dollars ($500) per Day for each Day beyond the cure period until such time the Contractor submits a corrected report, as determined by the Authority. For example, if a report is inaccurate and Contractor takes seven (7) Days to submit a corrected report after Authority’s Notice, the total liquidated damages due shall be a total of one thousand five hundred dollars ($1,500), which is five hundred dollars ($500) for the initial occurrence plus one thousand dollars ($1,000) for the extra two (2) Days to correct. Assessment and payment of the liquidated damages described in this paragraph shall be performed in accordance with Section 8.20.

If the Contractor identifies an error in an Annual Report it submitted to the Authority, Contractor shall Notify the Authority of the error and submit a corrected Annual Report within fifteen (15) Days of the Notice. Authority agrees to waive liquidated damages in the event Contractor self-identifies an error and submits the corrected Annual Report within fifteen (15) Days of Contractor’s Notice to the Authority. If Contractor is late submitting the corrected Annual Report, the Authority may assess liquidated damages for the late report as outlined herein.

B. **Report Format.** Contractor shall propose report formats for review and approval by the Authority. Authority’s approval shall not be unreasonably withheld. The Authority's Contract Manager may, from time to time during the Term, review and request changes to Contractor's report formats and content, and Contractor shall not unreasonably deny such requests.

Contractor shall submit (via mail and/or e-mail at the Authority’s option) all reports to the Authority's Contract Manager.

The Authority reserves the right to require Contractor to provide additional reports or documents as Authority Contract Manager reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

C. **Report Content.** Annual reports shall, at a minimum, include the following:

1. Total number of vehicle loads Delivered by Transfer Company and Member Agency vehicles to the Landfill listed separated for Transfer Company and Member Agency for each month in the Rate Period and in total for the most-recently-completed Rate Period.
2. Totals Tons for all vehicle loads Delivered by Transfer Company and Member Agency vehicles to the Landfill listed separated for Transfer Company and Member Agency for each month in the Rate Period and in total for the most-recently-completed Rate Period.

3. Average Tons per vehicle load Delivered by Transfer Company to the Landfill for the most-recently-completed Rate Period.

4. Date, time, route number, Transfer Company and Member Agency truck number, and reason for Contractor rejection of any Delivered vehicle loads for each month in the Rate Period and in total for the Rate Period.

5. Annual tonnage of Solid Waste Disposed that is not generated in the Authority’s Service Area.

6. Proof Contractor paid all Government Fees and taxes in accordance with Sections 5.05 and 5.06.

7. List of any Violations received during the Rate Period.

8. Landfill capacity status report that identifies the remaining permitted capacity, the aggregate capacity committed to other entities through Contractor’s contracts, and the available, uncommitted capacity, and the estimated remaining years of Landfill capacity.

9. Other relevant information including, but not limited to, a description of any advances in environmental mitigation measures; any advanced technologies utilized in the course of business; any pilot programs which test advanced technologies; and report on any recent, pending, or planned changes in Landfill Permits.

D. Right to Verify Landfill Capacity Commitments. Pursuant to Section 4.14.C.8, Contractor is required to report the aggregate Landfill capacity committed to other entities through Contractor’s contracts. Authority, or its agent, will have the right to seek verification of Contractor’s reported aggregate capacity through inspection of pertinent sections of Contractor’s contracts with such entities to determine the duration of Contractor’s commitment to accept materials from such entities and the type and volume of materials Contractor is obligated to accept through the contracts. In addition, Authority, or its agent, will have the right to review Tonnage reports documenting the past three (3) years of Tonnage Disposed at the Landfill by such entities. To the extent allowed by law, Authority, or its agent(s), agree to maintain the confidentiality of the information reviewed related to the individual contracts with other contracting entities and agree to review all related material at the Contractor’s office and will not retain any copies of reviewed material. Contractor will fully cooperate with the Authority’s request and provide Authority and its agent(s) or access to Contractor’s records.

4.15 DUE DILIGENCE

Contractor acknowledges that waste management is a public health and safety concern. It agrees that it will exercise due diligence in performing Service.

4.16 CLOSURE AND POST-CLOSURE OF LANDFILL

Contractor will safely operate, maintain, and manage the Landfill in compliance with Applicable Law not only during the Term, but also thereafter until and during the Landfill Closure and Post-Closure period(s) (including fulfillment of State funding requirements). Contractor’s compliance obligations include compliance with the Closure/Post-Closure requirements of California’s Department of Resources Recycling and Recovery (CalRecycle) throughout the Term of this Agreement and through the required
federal, State, or local Post-Closure period. Contractor is solely responsible, operationally and financially, for: (i) the appropriate Closure and Post-Closure activities of the Landfill; and, (ii) the establishment and funding of any reserve funds required by Applicable Law for the purposes of providing funds for the payment of costs of Closure of the Landfill (or any cell within the Landfill) or Post-Closure activities relating to the Landfill. Contractor will not hold the Authority, the Member Agencies, or the Transfer Company responsible for paying any deficiencies in required reserves. In addition, Contractor will not hold the Authority, Member Agencies, or the Transfer Company responsible for making any payments if actual Closure and Post-Closure costs relating to the Landfill exceed the amounts reserved by the Contractor for that purposes. This obligation survives expiration or termination of the Agreement.

4.17 RIGHT TO ENTER FACILITY AND OBSERVE OPERATIONS

The Authority and its designated representative(s) may enter, observe, and inspect the Landfill at any time during Landfill operations; conduct studies or surveys of the Landfill; and, meet with the Landfill manager(s) or his or her representatives at any time, provided that the Authority and its representatives comply with Contractor’s reasonable safety and security rules and do not interfere with the work of the Contractor or its subcontractors. However, if the Contractor Representative named in Exhibit F or Landfill manager is not at the Landfill when the Authority or its designated representative(s) visit without prior announcement, Contractor may limit the visit of the Authority or its designated representative to portions of the Landfill that are open for the public and others delivering materials to the Landfill. In that event, Contractor will arrange for Authority or its designated representative(s) to return for a visit of the complete Landfill within twenty-four (24) hours of the Authority’s visit. Upon Authority direction, Contractor will make personnel available to accompany Authority or its designated representative(s) employees on inspections. Contractor will ensure that its employees cooperate with the Authority and respond to the Authority’s reasonable inquiries.

4.18 PROVISION OF EMERGENCY SERVICES

Subject to Permit restrictions and Landfill airspace capacity constraints described below, Contractor will provide emergency services, as set forth in this Section, at the Authority’s request in the event of major accidents, disruptions, or natural calamities. Contractor will provide emergency services within twenty-four (24) hours of Authority oral notice followed by Notice or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services that exceed the Contractor’s obligations under this Agreement include extending facility receiving hours and increasing the types and quantities of permitted materials accepted at the Landfill. Authority shall pay Contractor for emergency services at the Disposal Rates unless the type(s) of emergency services are different than the services covered by the Disposal Rates. In such case, the Contractor will be paid its Direct Costs, which excludes indirect costs (which include, but are not limited to, general and administrative costs, regional and corporate charges, allocated costs) of providing emergency services following submission of an invoice therefore in form and content sufficient to determine and corroborate those Direct Costs. Authority shall review and approve the Direct Costs in accordance with Section 4.20.C. As noted in said Section, the Authority may request the assistance of an independent third party to review the Direct Costs. Contractor will promptly provide operating and business records requested by the Authority that are reasonably required to verify the reasonableness and accuracy of the impacts associated with provision of the emergency services. Contractor will fully cooperate with the Authority’s request and provide Authority and its agent(s) copies of or access to Contractor’s records.
Contractor shall be relieved of its obligations to provide emergency services when Contractor can demonstrate to the satisfaction of the Authority that one or both of the following Landfill airspace capacity constraints exist: (1) Contractor's acceptance of materials related to the emergency condition would exceed either the currently-constructed airspace and/or the total lifetime permitted capacity of the Landfill; and/or, (2) Contractor's acceptance of materials related to the emergency condition would exceed the Landfill capacity guarantees Contractor has committed to other entities in agreements Contractor has with other entities.

4.19 SERVICE STANDARDS

Contractor will perform Services in accordance with Applicable Law, Standard Industry Practice, and specification and other requirements of this Agreement.

4.20 MODIFICATIONS TO SCOPE OF SERVICE

A. General. Authority may direct Contractor to perform additional services (including, but not limited to, the performance of additional material Recovery activities) or the Contractor may propose additional services. Disposal Rates will be increased or decreased, in accordance with this Section, to give effect to these adjustments.

B. Proposal for Modification of Services. Within sixty (60) Days of Authority request for a proposal or at any time Contractor chooses to propose additional services, Contractor will present its proposal to modify existing services. At a minimum, the proposal will contain a completed description of the following:

1. Methodology to be employed (changes to equipment, manpower, staffing, etc.).
2. Equipment to be utilized (equipment number, types, capacity, age, etc.).
3. Labor requirements (changes in number of employees by classification).
4. Provision for program publicity/education/marketing (if appropriate).
5. Estimate of the impact of the service modification (increased Diversion tonnage, reduced costs, increased public service, etc.).
6. Five- (5-) year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumption underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

C. Authority's Review. If the Authority does not review and comment on, and approve or disapprove of the modification to the scope of services within ninety (90) Days of receiving the Contractor's proposal, the proposal will be deemed disapproved. The Authority and Contractor may mutually agree to extend the time period for review due to the complexity of the scope of service modification under consideration, the time needed for the review or approval, or for other reasonable reasons.

The Authority may request the assistance of an independent third party to review the proposal. Contractor will pay the reasonable costs of that review if the modification to the scope of services is initiated by the Contractor. Authority will pay those costs if the modification to the scope of services is initiated by the Authority. The cost of that review will be estimated in advance of the
work and provided to the Contractor for comment and agreement to pay. Contractor's refusal to pay the reasonable cost of review of a Contractor-initiated proposal will be grounds for Authority rejection of that proposal.

Contractor will promptly provide operating and business records requested by the Authority that are reasonably required to verify the reasonableness and accuracy of the impacts associated with a modification to the scope of services. Contractor will fully cooperate with the Authority's request and provide Authority and its agent(s) copies of or access to Contractor's records.

If Contractor and Authority cannot agree on terms and conditions of services within thirty (30) Days of the end of the Authority's review period described in this subsection, the Authority may permit Persons other than Contractor to provide those services at a location other than the Landfill.

**D. Approval of Modification to Scope of Services.** Upon Authority approval or determination, Authority will issue a notice approving the modification to the scope of service and documenting any change to the Disposal Rates, and approved change to Contractor's obligations hereunder. The Parties will prepare a written amendment to the Agreement documenting any and all changes resulting from the modification to the scope of services. No adjustment in Disposal Rates, change in Contractor's obligations, or change in scope of Services will become effective absent that Authority approval or determination.

**4.21 LAND LEASING**

**A. General.** During the Term of the Agreement, the Authority may lease up to three (3) acres of land from the Contractor at the Landfill for any duration of time provided the lease does not extend beyond the Term of the Agreement. Contractor agrees to make such land available for lease during the Term of the Agreement and will not charge the Authority to lease or rent the land. In the event the Authority chooses to lease such land, Contractor agrees that the Authority, or its designee(s), may use the leased land for one or more of the following purposes: parking of a maximum of thirty-five (35) transfer vehicles; parking of related employee vehicles; limited maintenance of transfer vehicles (i.e., replacement of lights) provided that such maintenance shall not include (i) the changing, adding, or replacing fuel, oil solvents, or fluids, (ii) the maintenance, servicing or repair of engines, brakes or other mechanical systems, or (iii) any other use or activity that would involve the use or potential release of Hazardous Materials; and/or, storage of carts, bins, and/or roll-off containers or other equipment this is related to the Authority's, or its designee's provision of collection, processing, and transfer services for the Authority Service Area. The Authority, or its designee(s), will not conduct any regular maintenance of transfer vehicles; however, the occasional need may arise to perform maintenance of the transfer vehicles that may involve changing, adding, or replacing fuel, oil solvents, or fluids; and, in such case, the Authority, or its designee(s), will perform such vehicle maintenance in an area designated by the Contractor.

**B. Exercise of Land Lease Option.** If the Authority wants to exercise its option to lease land from the Contractor, the Authority shall provide Contractor Notice one hundred eighty (180) Days prior to the date Authority desires to lease the land, and the Parties shall meet and confer to finalize a lease agreement that is in substantially the same form as the lease provided in Exhibit C. The
Parties shall negotiate and enter into a lease agreement that reflects the parameters presented in this Section 4.21 and Exhibit C, subject to change as mutually agreed upon by the Parties.

C. **Description of Land and Site Improvements.** At Authority’s option, the Contractor shall lease land at the Landfill to the Authority in the location shown on page 3 of Contractor’s November 21, 2018 Phase 2 Proposal for Solid Waste Disposal and Other Material Handling Services, which is included in Exhibit D. As of the Effective Date of this Agreement, the land designated for leasing is a graded and compacted dirt area accessed after passing by the Landfill scale house and is accessed by use of a minimum of two (2) roads (one paved road and one dirt road). Upon the Parties reaching agreement on the lease, the Authority shall be responsible for all permitting, design, and construction of site improvements and for maintenance of the leased site to manage surface water runoff and other environmental controls required by regulatory agencies to manage any fluid leaks and spills from the transfer vehicles and occasional maintenance of the vehicles, unless Parties mutually agree to other arrangements.

D. **Best Management Practices.** The Parties agree to follow the follow best management practices listed below, which may be modified during the process of negotiating the final lease.

1. Contractor shall be responsible for maintaining the entrance and access roads at the Landfill, which shall include maintenance of roads that provide transfer vehicles year-round access to the leased land.

2. Contractor acknowledges and agrees that Authority or its designee shall be solely responsible for providing security for the leased land and the equipment and personal property of Authority and any of its contractors, agents, consultants, or representatives located on the leased land.

3. Contractor may request that the Authority or its designee install fencing equipped with visibility screening and, if so requested, the Authority or its designee shall install such fencing within one hundred twenty (120) Days of such request.

4. Authority, or its designee, shall maintain surfaces of the leased land, including grading the area for transfer vehicle and employee parking accessibility and container storage.

5. Authority, or its designee, shall maintain and manage the transfer vehicles to avoid dripping or leaking of mechanical fluids.

6. Authority, or its designee, shall perform only limited maintenance of the transfer vehicles on the leased land (such as minor servicing of the transfer vehicles from time to time as needed and as described in Section 4.21(A).

7. Authority, or its designee, shall empty containers prior to storing the containers on the leased land.

8. Authority, or its designee, shall park vehicles in an orderly manner and store containers in a manner that is organized and does not create a visual or vector related nuisance on the leased land.

**4.22 OTHER MATERIAL HANDLING SERVICES**

A. **General.** During the Term of the Agreement, the Authority, or its designee, may deliver the following other materials to the Landfill: clean dirt; large aggregate (concrete, asphalt); mixed dirt with rocks and aggregates; concrete, asphalt, and rock; and, biosolids subject to the conditions stated in Contractor’s November 21, 2018 Phase 2 Proposal for Solid Waste Disposal and Other Material Handling Services, which is included in Exhibit D. The Contractor shall accept these materials and shall process and/or use the materials in the manner described in Exhibit D.
Authority shall compensate the Contractor at the per-Ton rates specified in Exhibit D subject to adjustment of the Contractor Components and Governmental Fee Components in accordance with Article 5.

**B. Exercise of Option to Deliver Other Materials.** If the Authority wants to exercise its option to deliver other materials to the Landfill, the Authority shall provide Contractor Notice one hundred eighty (180) Days prior to the date Authority desires to deliver materials and will specify in its Notice the type of materials, estimated quantities of materials, and anticipated frequency of delivery. The Parties will treat the delivery of other materials as a modification in the scope of service pursuant to Section 4.20, with the exception that the rates for the materials are defined in Exhibit D (subject to the adjustment described in subsection A above).

**C. Reporting.** If Authority delivers other materials to the Landfill, Contractor's reporting obligations in Section 4.14.C shall be expanded to require separate reporting for Solid Waste data and data for the other material types (presented separately by material type).

**4.23 COMPACTION OF SOLID WASTE**

The Authority, or its designee, reserve the right to compact some or all of Authority's Solid Waste prior to delivery to the Landfill. In such case, the Transfer Company shall deliver compacted Solid Waste in transfer vehicles, and such Solid Waste shall not be baled. The Authority shall provide Contractor Notice of its intent to deliver compacted Solid Waste to the Landfill no later than ninety (90) Days prior to the start date of the deliveries of compacted Solid Waste. Contractor shall receive the compacted Solid Waste and Dispose of the Solid Waste in the Landfill. Contractor shall be compensated for receipt and Disposal of compacted Solid Waste at the Disposal Rate defined by this Agreement. Parties agree that this change to delivery of compacted Solid Waste shall not be treated as a modification in the scope of service pursuant to Section 4.20 and shall not require an amendment to the Agreement.

**ARTICLE 5. CONTRACTOR COMPENSATION**

**5.01 GENERAL**

The Contractor will perform all of its Services, obligations, responsibilities, and duties under this Agreement, including paying costs associated with obtaining and complying with all Permits; operating the Landfill in full compliance with Applicable Law; constructing the Landfill and its cells, closing the Landfill, and performing Post-Closure maintenance of the Landfill after its closure; monitoring for environmental impacts; and, remediating environmental damage. In consideration of its performance of these duties, the Contractor may charge and collect the Disposal Rates from the Authority for each Ton of Authority's Solid Waste that Transfer Company delivers to the Landfill, and may charge and collect from the Member Agencies for each Ton of Member Agency Solid Waste delivered to the Landfill by employees of Member Agency. Contractor will not look to the Member Agencies or the Transfer Company for payment of any and all sums due under this Agreement or otherwise with the exception that the
Contractor shall invoice and look to Member Agencies for payment of any Solid Waste delivered to the Landfill by employees of the Member Agencies performing Member Agency duties and for the provision of emergency services pursuant to Section 4.18.

Contractor's Compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, operations, profit, Government Fees, and all expenses Contractor deems necessary to perform all the Services required by this Agreement in the manner and at the times prescribed. Nothing herein shall obligate Authority, Member Agencies, or Transfer Company to provide any compensation to Contractor beyond Disposal Rates.

If Contractor's actual costs, including any fees or payments due to others, are more than the Disposal Rate and/or more than gross receipts received under this Agreement, Contractor shall not be compensated for the difference in actual costs and actual Disposal Rates or gross receipts except to the extent the Authority grants an extraordinary Rate adjustment request pursuant to Section 5.04. If Contractor's actual costs are less than the actual Disposal Rates or actual gross receipts, Contractor shall retain the difference.

The Disposal Rate approved by the Authority for Rate Year One is presented in Section 5.02. The Parties acknowledge that the Disposal Rate provided for in this Agreement has been determined on the basis of the exclusive and long-term nature of the Authority's obligations hereunder.

5.02 DISPOSAL RATE

A. **General.** The Authority shall be responsible for approving the Disposal Rate as described in this Article 5. The Disposal Rate shall have two components: (i) the Contractor Component; and, (ii) the Governmental Fee Component; the sum of which shall equal the total Disposal Rate. The "Contractor Component" of the Rate reflects the Contractor's compensation for the Services provided under this Agreement. The Governmental Fee Component reflects Government' Fees and taxes assessed on a per-Ton basis in connection with providing the Services required under this Agreement, which are specifically itemized in subsection B below.

B. **Disposal Rate for Rate Period One.** The Disposal Rate for Rate Period One was determined by Contractor and Authority based on Contractor's September 24, 2018 Proposal for Solid Waste Disposal and Other Materials Handling Services (and subsequent, related correspondence) and was approved by Authority Board of Directors on or before the execution of the Agreement. The Disposal Rate for Rate Period One will be effective from the Service Commencement Date of this Agreement (January 1, 2020) through December 31, 2020. The Disposal Rate for Rate Period One is presented in the following table.
Disposal Rate for Rate Period One
(Effective January 1, 2020)

<table>
<thead>
<tr>
<th>Contractor Component</th>
<th>Disposal Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Contractor Component</td>
<td>$41.34</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Governmental Fee Component</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Local Enforcement Agency Fee</td>
<td></td>
</tr>
<tr>
<td>2. CIWMB AB 1220 Fee</td>
<td>$1.40</td>
</tr>
<tr>
<td>3. San Mateo County AB 939 Solid Waste Management Diversion fee</td>
<td>$4.81</td>
</tr>
<tr>
<td>4. San Mateo County AB 939 HHW fee/LEA fee</td>
<td>$5.02</td>
</tr>
</tbody>
</table>

| Total Governmental Fee Component | $11.23 |
| Total Disposal Rate | $52.57 |

* All government taxes and fees are assessed on a per-Ton basis for all Tons Delivered unless otherwise noted, and the amounts shown above are the fees as of the Effective Date.

C. Rate for Member-Agency-Hauled Solid Waste. The Disposal Rate for any Solid Waste delivered to the Landfill by an employee of a Member Agency performing Member Agency duties will equal the per-Ton Disposal Rate.

5.03 DISPOSAL RATE ADJUSTMENTS

The Disposal Rate for all Rate Periods following Rate Period One shall be adjusted annually commencing with the first adjustment that will be effective on January 1, 2021. The Disposal Rate adjustment will be performed in accordance with this Section.

A. Definitions. For the purposes of this Section, the following terms shall be defined as follows:

"Annual Percentage Change" means the Average Index Value of an index for the twelve- (12-) month period ending August of the then-current Rate Period minus the Average Index Value for the twelve- (12-) month period ending August of the most-recently completed Rate Period, divided by the Average Index Value for the twelve- (12-) month period ending August of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

"Average Index Value" means the sum of the monthly index values during the twelve- (12-) month period ending in August divided by twelve (12) (in the case of indices published monthly) or the sum of the bi-monthly index values divided by six (6) (in the case of indices published bi-monthly).

For example, if the Contractor is preparing its Rate application for Rate Period Two, the Annual Percentage Change in CPI shall be calculated as follows: 

\[
\frac{[(\text{Average CPI for October 2019 through August 2020}) - (\text{Average CPI for October 2018 through August 2019})]}{12} 
\]
"CPI" means the All Urban Consumers Index (CPI-U) compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the following parameters:

Area – San Francisco-Oakland-Hayward Metropolitan Area
Item – All Items
Base Period – Current 1982-84=100
Not seasonally adjusted
Periodicity – Bi-monthly
Series ID – CUUSS49BSA0

If said CPI is discontinued, it shall be replaced by the CPI which most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics. Should the Parties fail to agree on a successor index or indices), the Parties shall utilize the Dispute Resolution process in Section 8.17.

B. Contractor Component. The Contractor Component of the Disposal Rate will be adjusted annually in the manner describe here. If the Annual Percentage Change in the CPI is less than two and sixth tenths percent (2.6%), the Contractor Component of the Disposal Rate will be increased by two and sixth tenths percent (2.6%). If the Annual Percentage Change in the CPI is greater than two and sixth tenths percent (2.6%), the Contractor Component of the Disposal Rate will be increased by the Annual Percentage Change in the CPI, or five percent (5%), whichever is less.

C. Governmental Fee Component. The Governmental Fee Component of the Disposal Rate will be adjusted upward or downward to reflect the actual changes in Government Fees and/or other elements of the Governmental Fee Component, which are outside the control of Contractor and are not a factor in adjusting the Contractor component in subsection B. Government Fees for Rate Period One are presented in the table in Section 5.02.

In making adjustments to the Governmental Fee Component, Contractor shall increase or reduce the Governmental Fee Component for any Government Fee that is imposed, increased, or reduced and is undisputed by the Authority. Upon thirty- (30-) Day Notice by Contractor of changes in Government Fees, Authority shall have the options of: (1) disputing the imposition of such fee, or increase in an existing fee, in a court of competent jurisdiction, or (2) agreeing to pay such fee through an adjustment to the Governmental Fee Component. In the event of disputes with the Contractor, Parties shall utilize the Dispute Resolution process in Section 8.17. In the event the Authority has a dispute with a government body imposing a Government Fee, the Authority shall notify the Contractor of this determination and the governmental body in question and shall resolve the dispute with the government body by exhausting administrative remedies as necessary and proceeding to litigate the matter as necessary. In such case, the Authority shall pay its costs related to such litigation and the Contractor shall pay its costs.

Upon resolution of a dispute, and assuming both Parties agree on the adjustment of the Governmental Fee Component and the resulting adjustment of the Disposal Rate, the Contractor shall be entitled to the adjusted Disposal Rate payments retroactively to the latter of the end of the thirty- (30-) Day Notice period or the effective date of the imposed Government Fee. In the
event the delay is due, in whole or part, to Contractor’s failure to provide responses and Notices
within the timelines described in this Agreement, no retroactive adjustment shall be made.

In the event of changes to or new Government Fees that are effective at a time that does not
coincide with the annual Disposal Rate adjustment, Contractor may notify the Authority of the
expected increase to any of the Government Fees relating to the Landfill. Contractor may request
such an adjustment if such Government Fees were not in effect on the Effective Date, or, if in
effect on the Effective Date, are increased. Contractor shall notify Authority in writing thirty (30)
Days in advance of any increase in the Governmental Fee Component to any such changes in, or
imposition of Government Fees. The Authority may review the Contractor’s calculation of the
adjusted Governmental Fee Component and resulting adjustment of the Total Disposal Rate for a
period of up to thirty (30) Days. During this period, Authority may request and the Contractor
shall provide supporting documentation which justifies the increase. Should the Parties be in
dispute over the adjusted Fees at the end of the thirty- (30-) Day period, no adjustment shall be
made and the dispute shall be subject to Section 8.17 of this Agreement. Upon resolution of the
dispute, and assuming both Parties agree on the adjustment of the Government Fee and the
resulting adjustment of the Disposal Rate, the Contractor shall be entitled to the adjusted Disposal
Rate payments retroactively to latter of the end of the thirty- (30-) Day notice period or the
effective date of the imposed Government Fee.

D. Total Adjusted Disposal Rate. The Total Adjusted Disposal Rate will be calculated as the sum of
the adjusted Contractor Component, as calculated in subsection B above, and the adjusted
Governmental Fee Component, as calculated in subsection C above.

E. Adjusted Disposal Rate for Member-Agency-Hauled Solid Waste. The Adjusted Disposal Rate for
any Solid Waste delivered to the Landfill by an employee of a Member Agency, performing
Member Agency duties, will equal the per-Ton Adjusted Disposal Rate (determined in accordance
with subsection D).

F. Disposal Rate Adjustment Application. Annually on October 15, Contractor will submit to the
Authority Representative an application requesting the adjustment of Disposal Rate for the
coming Rate Period via email that includes a letter request that summarizes the requested
Disposal Rate adjustment and editable Microsoft Excel file that presents all supporting schedules,
formulas, and calculations. For example, on October 15, 2020, Contractor will submit its Rate
adjustment application for the adjustment of Disposal Rate to be effective January 1, 2021 (i.e.,
Rate Period Two).

Such application will include the Disposal Rate adjustment calculations in accordance with Section
5.03.A through 5.03.E and an updated Disposal Rate table.

Authority will evaluate Contractor’s application for mathematical accuracy and consistency with
the requirements of the Agreement, and it shall have the ability to require changes to the
application prior to approval on the basis of the application’s mathematical inaccuracy or failure
to comply with the procedures defined in the Agreement. Upon Authority Representative’s
agreement that the calculations are consistent with the requirements of this Agreement and are
mathematically accurate, the Disposal Rate adjustment (if any) will be approved by Authority
Representative.
G. **No Other Adjustments.** As of the Service Commencement Date, the Disposal Rate set forth in Section 5.02 and adjusted in accordance with Sections 5.03 and 5.04 will not be increased thereafter to include any of the following costs of providing Services, even if Contractor’s projections and estimates thereof prove inaccurate:

(i) Costs incurred due to Contractor’s negligence or misconduct;
(ii) Costs incurred due to Permit changes of which Contractor did not provide timely Notice;
(iii) Any fines or penalties imposed on Contractor or the Landfill;
(iv) Cost of remediation and cost recoveries pursuant to Applicable Law, including CERCLA and RCRA;
(v) Costs attributable to changing the classification of the Landfill under Applicable Law, unless directed by the Authority in accordance with Section 4.20;
(vi) Costs and expenses related to the handling of Unpermitted Waste; and,
(vii) Increases in Contractor costs to provide Services including, but not limited to, costs for labor, fuel, equipment, maintenance, and monitoring (except as Contractor’s costs are adjusted in Sections 5.03 and 5.04).

H. **Dispute Resolution.** All disputes arising under this Section will be resolved in accordance with Section 8.17. If a dispute exists, the Disposal Rate will not be adjusted until the dispute has been resolved.

### 5.04 EXTRAORDINARY RATE ADJUSTMENTS

It is understood that the Contractor accepts the risk for changes in cost of providing Services and/or quantities and composition of materials delivered to the Landfill, and therefore the extraordinary adjustments to Disposal Rate shall be limited to a Change in Law, or an Authority-directed change in scope of Services. If a Change in Law or Authority-directed change in scope of Services (pursuant to Section 4.20) occurs, the Contractor may petition Authority for an adjustment to the Disposal Rate in excess of the annual adjustment described in Section 5.03.

Contractor shall prepare an application for the extraordinary Disposal Rate adjustment calculating the net financial effect on its operations (both increases and decreases of costs) resulting from the Change in Law or Authority-directed change in scope of Services, clearly identifying all assumptions related to such calculations and providing the underlying documentation supporting the assumptions. The application shall provide all information requested by Authority Representative specific to the nature of the request being made. Authority Representative shall evaluate the application for reasonableness. As part of that review, the Authority Representative may request access to the financial statements and accounting records required to be maintained by the Contractor (pursuant to Section 8.13.D) in order to determine the reasonableness of the Contractor’s application. Should the Contractor not grant such access, then the Authority may rely on the Contractor’s September 24, 2018 Proposal for Solid Waste Disposal and Other Materials Handling Services (and subsequent, related correspondence) and other information available to it as the basis for making reasonable assumptions regarding what those accounting and financial records would have shown and therefore the reasonableness of the Contractor’s application. Contractor shall pay all reasonable costs incurred by the Authority, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested Rate adjustment.
In the event of such an application for extraordinary Disposal Rate adjustment, it is understood that the Authority or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of the requested adjustment.

The Contractor may appeal the decision of the Authority Representative to the Authority Board of Directors, which shall then make the final determination as to whether an adjustment to the Disposal Rate will be made, and if a Disposal Rate adjustment is permitted, the amount of the adjustment. With respect to an extraordinary Disposal Rate adjustment requested by the Authority Representative, the Authority Board of Directors shall then make the final determination as to whether an adjustment to the Disposal Rate will be made and, if an adjustment is permitted, the amount of the adjustment.

If the extraordinary Disposal Rate adjustment review warrants an increase in the applicable Disposal Rate(s) outlined above to compensate Contractor, the adjustment shall cover only Allowable Costs (defined below) and such Allowable Costs shall be in the proportion of the total volume that Contractor reasonably projects that the Authority will deliver to the Landfill for the Term of this Agreement compared with all other customers of the Landfill.

"Allowable Costs" shall include: incremental operating, maintenance, monitoring, reporting, and capital costs, including, but not limited to, the costs of making improvements (including, but not limited to future Landfill cells) or modifications, at the Landfill necessary to perform under this Agreement, but only to the extent brought about by Change in Law that are not otherwise reflected in the calculations used to adjust the Disposal Rate (e.g., Contractor Component and Governmental Fee Components pursuant to Section 5.03). Contractor shall Notify Authority in writing sixty (60) Days in advance of any request for increase in the Disposal Rate pursuant to this Section.

The Authority shall have a ninety- (90-) Day review period following receipt of Contractor’s application for the requested Disposal Rate adjustment. During this period, the Authority may request and Contractor shall provide supporting documentation that justifies the increase. Should the Parties be in dispute over the adjusted Disposal Rate at the end of the ninety- (90-) Day period, no adjustment shall be made and the dispute shall be subject to Section 8.17 of this Agreement. Upon resolution of the dispute and assuming both Parties agree on the adjustment of the Disposal Rate, Contractor shall be entitled to the adjusted Disposal Rate retroactively to latter of the end of the sixty (60) Day advance Notice period or the effective date of the increased Allowable Costs.

5.06 PAYMENT OF GOVERNMENT FEES

Contractor will timely pay any and all Government Fees to the appropriate federal, State, regional, or local governmental entities that levied the Government Fees and will provide the Authority with proof of payments promptly upon direction.

5.07 PAYMENT OF TAXES

Contractor will timely pay all Government Fees, assessments, or taxes incurred as a result of the Contractor’s provision of Services, including estimated taxes. Contractor will provide the Authority with proof of payments promptly upon Authority direction.
ARTICLE 6.
INDEMNITY AND INSURANCE

6.01 DEFENSE AND INDEMNIFICATION

A. Agreement Defense. Contractor will defend at its sole cost and expense with counsel reasonably acceptable to the Authority, the Authority (including the Persons described in the definition of "Authority" in Exhibit A) and the Transfer Company in any Actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the Authority (including the Persons described in the definition of "Authority" in Exhibit A) and the Transfer Company that result or are claimed to have resulted directly or indirectly by Contractor's performance or non-performance of this Agreement, including the following:

1. Contractor negligence or misconduct: the wrongful, willful, or negligent act, error or omission, or the misconduct of the Contractor (including the Persons described in the definition of "Contractor" in Exhibit A);

2. Failure to comply with Applicable Law: Contractor's failure or alleged failure to comply with Applicable Law and any Violation thereof, including any Actions in connection with its Permits;

3. Breach of representation: Contractor's breach of any representation, warranty, or covenant made in this Agreement;

4. Challenges to Agreement: legal challenge regarding whether or not the Authority is entitled to enter into this Agreement or to contract out Services, regardless of the legal theory advanced or relied upon by any interested third party, including any appeals necessary to validate that authority or the Agreement.

Notwithstanding the foregoing, this defense obligation shall not extend to the Transfer Company to the extent the Transfer Company delivered or is alleged to have delivered Hazardous Waste to the Landfill.

Authority reserves the right to retain at its own cost and expense co-counsel and Contractor will direct Contractor's counsel to assist and cooperate with such co-counsel with respect to Authority's defense.

B. Agreement Indemnification. Contractor shall, at its sole cost and expense, indemnify, defend, and hold Authority harmless (including the Persons described in the definition of "Authority" in Exhibit A) and Transfer Company from and against all Liabilities paid, incurred or suffered by, imposed upon or asserted against, the Authority (including the Persons described in the definition of "Authority" in Exhibit A) that result or are claimed to have resulted directly or indirectly from Contractor's performance or non-performance of this Agreement, including the items listed in preceding subsection A, whether or not those Liabilities are litigated, settled, or reduced to judgment and whether or not those Liabilities are caused in part by any wrongful or negligent act, error, or omission of the Authority (including the Persons described in the definition of "Authority" in Exhibit A) indemified under this Agreement. If a final resolution of any Action...
allocates Liability by determining that any portion of Liability is attributable to a wrongful or negligent act, error, or omission of the Authority, the Authority will pay that portion of Liabilities and of defense costs.

Notwithstanding the foregoing, this indemnity obligation shall not extend to the Transfer Company to the extent the Transfer Company is proven to have delivered Hazardous Waste to the Landfill.

C. Unpermitted Waste Defense and Indemnification. Contractor will defend, indemnify, and hold harmless at its sole cost and expense with counsel reasonably acceptable to the Authority, the Authority (including the Persons described in the definition of "Authority" in Exhibit A) and the Transfer Company in any Actions that assert or allege Liabilities paid, incurred, or suffered by, imposed upon or asserted against, the Authority that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release, or emission of Unpermitted Waste or petroleum to, in, on, at, or under the Landfill, whether:

(1) in one or more instance,
(2) threatened or transpired,
(3) Contractor is negligent or otherwise culpable, or
(4) those Liabilities are litigated, settled, or reduced to judgment.

For purposes of this indemnity, "Liabilities" includes Liabilities arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure, or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

Notwithstanding the foregoing, this defense obligation shall not extend to the Transfer Company to the extent the Transfer Company delivered or is alleged to have delivered Hazardous Waste to the Landfill. Moreover, this indemnity obligation shall not extend to the Transfer Company to the extent the Transfer Company is proven to have delivered Hazardous Waste to the Landfill.

Authority reserves the right to retain at its own cost and expense co-counsel and Contractor will direct Contractor’s counsel to assist and cooperate with such co-counsel with respect to Authority’s defense.

The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify the Authority from liability in accordance with this Section.

D. Groundwater Clean-Up and Environmental Releases Defense and Indemnification. The Parties recognize that Contractor has had an on-going corrective action program for groundwater cleanup at the Landfill for over ten (10) years that will continue into the future. In addition, the Parties recognize that Contractor has been subject to past enforcement actions and penalty related to contaminated stormwater discharges. Contractor agrees that defense and Indemnity provisions of Section 6.01.C shall apply to ongoing and future Liabilities related to the groundwater cleanup, stormwater, and other environmental releases. Notwithstanding the
foregoing, this defense obligation shall not extend to the Transfer Company to the extent the Transfer Company delivered or is alleged to have delivered Hazardous Waste to the Landfill.

6.02 INSURANCE

A. Policies

(1) Types and Amounts; Deductibles and Self-Insured Retentions. As of the Effective Date, Contractor will secure and maintain, and enter into agreements to cause its Subcontractors, if any, to secure and maintain or provide that Subcontractors are insureds under Contractor's policies, in full force and effect the types and amounts of insurance coverage, together with related specified deductibles and endorsements, listed in Exhibit E or required by Applicable Law, whichever is greater, in form acceptable to Authority.

If any third Person makes a claim against Contractor or any Subcontractors exceeding the amount of any deductibles, self-insured reserves, letters of credit, or bonds guaranteeing payment thereof, Contractor will promptly Notify the insurer, bond surety, or letter of credit provider and Authority thereof.

(2) Required Provisions.

(i) Primary. Policies will always be primary with respect to the Contractor's Services and the Authority, the Authority's affiliated employees, Board of Directors members, officers, officials, agents, assigns, and volunteers ("Authority Insureds").

(ii) Additional insureds. Authority Insureds must be included as additional insureds by blanket form endorsement under the Comprehensive General, Automobile Liability, Environmental Impairment Liability Policies, and any other pollution polices secured by Contractor. A copy of the endorsement or evidence of blanket or contractual additional insured status must be submitted with the certificate(s) of insurance.

(iii) Excess, not contributory. Insurance coverage written specifically for the Authority must be considered excess and not contributory and any insurance or self-insurance maintained by Authority Insureds is in excess of Contractor's insurance and will not contribute with it.

(iv) Separate application. All insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(v) No special limitations. Coverage will contain no special limitations on the scope of protection afforded to Authority Insureds, except in cases of fraud perpetrated by Authority.

(vi) Reporting provisions. Any failure to comply with reporting provisions of policies will not affect coverage provided to Authority Insureds.

(vii) Waiver of subrogation. Insurer, including workers compensation and general liability
policy insurers, by blanket-form endorsement must waive all rights of subrogation against Authority Insureds for losses arising from performance of Services by Contractor, except for the sole negligence of Authority.

B. Insurers. Contractor will procure insurance from insurers approved by Authority Risk Manager, an approved company in California and authorized to do business in the state, having not less than size category VII and a rating of A or better ("A-VII") by A.M. Best Company, Inc.

C. Notices to Authority of Cancellation, etc. General and Auto Liability policies must bear endorsements in substantially the form provided in Exhibit E providing that coverage will not be, canceled or not renewed, or otherwise materially changed except after prior written notice, to Authority thirty (30) Days in advance, or if the reason for cancellation is non-payment of premiums, ten (10) Days in advance. Endorsements will contain mere "best effort" modifiers or relieve the insurer from its responsibility to give the Authority notice.

D. Evidence of Coverage. As of the Effective Date, Contractor will provide certificates of insurance and original endorsements required under this Agreement, signed by an authorized representative of the insurance company. Upon Authority request, Contractor will provide or cause to be provided to Authority documentation acceptable to Authority verifying that the individual signing those documents is authorized by the insurer to evidence coverage on the insurer's behalf. At that time and thereafter simultaneously with renewal of the policies, Contractor will file with the Authority a certificate of insurance and blanket-form endorsements, in form and substance satisfactory to Authority (including type and amount of coverage, effective dates and expiration dates) signed or counter-signed by an authorized representative of the insurer(s), evidencing that the coverage has not lapsed and will remain in effect at all times during the term of the policy. If Contractor fails to procure and maintain any insurance required under this Agreement, Authority may take out and maintain that insurance at Contractor's expense and Contractor will pay the Authority the Authority's Reimbursement Costs therefore. This remedy is in addition to Authority's right to declare a Contractor Default and terminate the Agreement. Upon request of the Authority, the Contractor will cause its Subcontractors (if any) to provide proper evidence of insurance coverage required under this Agreement, satisfactory to the Authority. Contractor will maintain procedures to assure the Authority it is monitoring all insurance requirements under this Agreement, including those of its Subcontractors.

E. Contractor Compliance. Contractor will comply with all requirements of policies and the insurers. Carrying insurance will not relieve Contractor from any obligations under this Agreement. Nothing in this Agreement may be construed as limiting in any way the extent to which the Contractor may be held responsible for payments of damages to Persons or property resulting from Contractor's or any Subcontractors' performance of Services.
ARTICLE 7.
DEFAULT BY CONTRACTOR AND TERMINATION

7.01 CONTRACTOR DEFAULT

Each of the following will constitute an event of default by Contractor ("Contractor Default"), under this Agreement:

A. Service Defaults.

(1) Failure to Dispose of Solid Waste. Contractor fails to Dispose of all Solid Waste delivered to the Landfill by the Transfer Company for more than three (3) consecutive Days or more than six (6) cumulative Days in any Calendar Year excluding Holidays and Days the Landfill is closed (i.e., Sundays).

(2) Uncured Breach. Contractor fails or refuses to perform any of its obligations under this Agreement; the Authority Notifies the Contractor in writing that a specific failure or refusal has occurred which will, unless corrected, in its opinion, give the Authority a right to terminate this Agreement; and, the Contractor does not correct the breach within twenty (20) Days of receiving the Authority's Notice thereof. However, if the breach is not capable of cure within twenty (20) Days, Contractor will promptly initiate the process to cure the default and provide Authority a Notice explaining why Contractor believes it needs additional time to effectuate a cure, together with a schedule therefore, and will diligently proceed to cure the breach within that schedule, whereupon Authority, in its sole discretion, may: (i) accept Contractor's schedule of cure; (ii) make a written demand that Contractor cure the default within an alternative time period set by Authority; or (iii) terminate this Agreement at the end of the twenty- (20-) Day period;

(3) Repeated Breach. Contractor fails or refuses to perform any of its obligations under this Agreement repeatedly or habitually, whether or not specific instance of failure or refusal has been previously cured.

(4) Failure to Comply With Law. Contractor fails to materially comply with Applicable Law within twenty- (20-) Days' Notice of Violation thereof.

(5) Criminal Activity. Contractor fails to timely terminate and/or replace any supervisor, manager, officer, or director of Contractor upon the occurrence of any Criminal Activity.

B. Performance Assurance Defaults.

(1) Failure to Provide Insurance, etc. Contractor fails to provide insurance in accordance with Section 6.02 or Guaranty in accordance with Section 8.21;

(2) Failure to Provide Assurances of Performance. Contractor fails to timely provide assurances of performance in accordance with Section 8.16;
(3) **Failure to Pay Authority:** Contractor fails to timely pay Authority any amounts due and
owing to Authority, including reimbursement of costs for alternative services in accordance
with Section 7.03 and liquidated damages in accordance with Section 8.20;

(4) **Transfer, Assignment:** Contractor Assigns this Agreement without Authority approval
required by Section 8.05;

(5) **Seizure, Attachment:** Any asset used to provide Services is seized, attached, or levied upon
(other than a pre-judgment attachment) so as to substantially impair Contractor’s ability to
timely and fully perform Services, and which cannot be released, bonded, or otherwise lifted
within forty-eight (48) hours, excepting weekends and Holidays;

(6) **Insolvency, Bankruptcy, Liquidation:** Contractor files a voluntary claim for debt relief under
any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in
effect, or will consent to the appointment of or taking of possession by a receiver, liquidator,
assignee (other than as a part of a transfer of assets no longer used to provide Services or
backup Services), trustee (other than as security of an obligation under a deed of trust),
custodian, sequestration, administrator (or similar official) of Contractor for any part of
Contractor’s operating assets or any substantial part of Contractor’s property, or will make
any general assignment for the benefit of Contractor’s creditors, or will fail generally to pay
Contractor’s debts as they become due or will take any action in furtherance of any of the
foregoing.

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

C. **Miscellaneous.**

(1) **False Representations; Breach of Representations or Warranties:** Contractor makes a
representation, certification, or warranty in this Agreement or pursuant to this Agreement
which Contractor knows, or in the course of diligently conducting business and providing
Services should have known, is untrue as of the date thereof. Contractor makes a
representation or fails to make a disclosure, whether within this Agreement or otherwise, to
the Authority in connection with or as a material inducement to entering into this Agreement
or any future amendment to this Agreement, which representation or failed disclosure is
false or misleading in any material respect when made.

(2) **Default under Guaranty Agreement:** Any default occurs under Section 24 of the Guaranty,
which default for failure to pay the Guaranty listed in subsection 24.a thereof is not timely
cured as provided therein, and which default for breach listed in subsection 24.c thereof
continues for the period provided therein.
7.02 RIGHT TO SUSPEND OR TERMINATE AGREEMENT

A. Termination Events. Authority may terminate this Agreement in the following events:

(1) **Contractor Default**: the occurrence of a Contractor Default per Section 7.01;

(2) **Uncontrollable Circumstances**: the occurrence and continuance of an Uncontrollable Circumstance in accordance with Section 8.12;

(3) **Upon Authority’s Rejection of Alternative Disposal Facility**: the Authority’s rejection of an alternative facility in accordance with Section 4.12.

(4) **Assignment of Guaranty Without Consent**: the Guarantor’s assignment of the Guaranty without consent required by Section 3 of the Guaranty despite Authority Board of Directors action denying Authority consent, and on or before fifteen (15) Days thereafter, the Guarantor does not provide Authority with a substitute Guarantor or alternative financial credit support satisfactory to Authority.

(5) **Upon Need for Solid Waste as Conversion Facility Feedstock**: the Authority’s development of a conversion facility that requires Solid Waste or portions of the Solid Waste stream as a feedstock, where “conversion” means the processing, through non-combustion thermal means, chemical means, or biological means, other than composting, of Solid Waste from which Recyclable Materials have been substantially diverted and/or removed to produce electricity, alternative fuels, chemicals, or other products that meet quality standards for use in the marketplace.

(6) **Operating Agreement or Collection Agreements Unenforceable**: If any provision of the Operating Agreement or any provisions of the Member Agencies’ franchise agreements with respect to Authority direction of Solid Waste to the Landfill is (are) ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, or the Operating Agreement or franchise agreement(s) is (are) terminated as a result thereof.

B. Notice. Notice of termination will be effective:

(1) immediately or upon other period stated by Authority with respect to Contractor Defaults described in Section 7.01.B.1 (Failure to Provide Insurance, etc.) and, to the extent permitted by Applicable Law, in Section 7.01.B.6 (Insolvency, Bankruptcy, Liquidation);

(2) two (2) Days after giving Contractor a Notice with respect to a Contractor Default described in Section 7.01.A.1 (Failure to Dispose of Solid Waste);

(3) one (1) year after giving Contractor a Notice with respect to an event described in subsection A.5 (Upon Need for Solid Waste as a Power Plant or Conversion Facility Feedstock); and,

(4) fifteen (15) Days after giving Contractor a Notice with respect to all other Contractor Defaults or termination events.
C. Contractor's Obligations Upon Expiration or Termination

(1) Pay Outstanding Amounts. Contractor will pay Authority any amounts, including liquidated or compensatory damages, then accrued and payable, net of any amounts due from Authority in accordance with Section 4.13.

(2) Indemnities. Meet its obligations under any Indemnities in Article 6 (Indemnity and Insurance).

7.03 RIGHT TO PERFORM

In the events described in Section 7.02.A.1 (Contractor Default) and Section 7.02.A.4 (Assignment of Guaranty Without Consent), the Authority in its sole discretion may perform and complete, by contract or otherwise, Services or a portion thereof (other than operating the Landfill) and incur all expenses necessary for full and timely provision of Services, including Disposal of Solid Waste at alternate Transfer facility and landfill. If expenses (including the costs of Transportation to an alternative facility and the actual fees charged for disposal) exceed the Disposal Rates that would have been paid to Contractor under this Agreement if Contractor had fully and timely performed Services, then Contractor will pay the amount of the excess expenses to the Authority within thirty (30) Days of Contractor's receipt of a claim for Authority's Reimbursement Costs and evidence of those Costs incurred, from the Authority.

7.04 ALL OTHER AVAILABLE REMEDIES

If Authority suspends or terminates this Agreement, it may seek damages and any other available remedies at law and in equity (including specific performance).

Contractor acknowledges damages for a breach of this Agreement by Contractor in accordance with this Section may be inadequate for reasons including:

(i) the urgency of timely, continuous, and high-quality Solid Waste management service under this Agreement, including disposal of putrescible wastes which constitute a threat to public health;

(ii) the long time and significant investment of money and personnel (both Authority staff, elected Authority officials, and private consultants, including procurement consultants, technical consultants, procurement counsel) required to structure a competitive procurement; draft a request for proposal and this Agreement; advertise the procurement and solicit proposals; distribute the request for proposal; respond to proposers questions about the procurement; revise documents based on solicited proposer comment; evaluate proposals; and, finalize and award this Agreement; and,

(iii) the Authority's reliance on Contractor's technical Solid Waste management expertise.

Consequently, Authority is entitled to liquidated damages pursuant to Section 8.20 and all available equitable remedies, including injunctive relief.

Compensatory damages include amounts equal to any Authority's Reimbursement Costs or other money Contractor has previously paid to the Authority but that are subsequently recovered from the Authority.
by a trustee in bankruptcy as preferential payments or otherwise and Authority’s Reimbursement Costs
of re-purchasing an agreement for services to replace Services if this Agreement is terminated due to
Contractor Default.

7.05 AUTHORITY’S REMEDIES CUMULATIVE

The Authority’s rights to seek dispute resolution in accordance with Section 8.17, suspend or terminate
this Agreement in accordance with Section 7.02, to perform under Section 7.03, or to seek other available
remedies under Section 7.04 are not mutually exclusive. Exercise of one remedy is not an election of
remedies but is cumulative with any other remedies under this Agreement.

7.06 WAIVER

A. Authority Waiver of Breach. Authority’s waiver of any breach or Contractor Default will not be
deemed to be a waiver of any other breach or Contractor Default including ones with respect to
the same obligations under this Agreement. The Authority’s decision not to demand damages will
not be deemed a waiver of any Contractor breach under this Agreement. Authority’s subsequent
acceptance of any damages or other money paid by Contractor will not be deemed to be a waiver
by Authority of any pre-existing or concurrent breach or Contractor Default.

B. Contractor Waiver of Certain Defenses. Contractor acknowledges that it is solely responsible for
providing Services and by this Agreement irrevocably and unconditionally waives defenses to the
payment and performance of its obligations under this Agreement based upon failure of
consideration; contract of adhesion; impossibility or impracticability of performance; commercial
frustration of purpose; or the existence, non-existence, occurrence, or non-occurrence of any
foreseen or unforeseen fact, event, or contingency that may be a basic assumption of Contractor
with regard to any provision of this Agreement. However, Contractor does not waive any
defenses of Uncontrollable Circumstances.

ARTICLE 8.
OTHER AGREEMENTS OF THE PARTIES

8.01 RELATIONSHIP OF PARTIES

The Parties intend that Contractor will perform the Services required by this Agreement as an
independent contractor engaged by the Authority and not as an officer or employee of the Authority nor
as a partner of or joint venturer with the Authority. No employee or agent of Contractor will be or will be
deemed to be an employee or agent of the Authority. Contractor will have the exclusive control over the
manner and means of conducting Services, and all Persons performing those Services, except for
Authority’s right to change the scope of Services in accordance with Section 4.20. Contractor is solely
responsible for the acts and omissions of its officers, employees, subcontractors, and agents, none of
whom is deemed an officer, employee, subcontractor, or agent of the Authority. Neither Contractor nor
its officers, employees, subcontractors, and agents will obtain any rights to retirement benefits, workers’
compensation benefits, or any other benefits that accrue to the Authority employees, and Contractor
expressly waives any claim it may have or acquire to those benefits.
8.02 COMPLIANCE WITH LAW

A. Compliance. Contractor will perform, and will cause any contractors or Subcontractors to perform, all Services in accordance and compliance with Applicable Law, whether or not referenced specifically in the text of this Agreement and regardless of whether specified Service obligations may be stated less stringently than Applicable Law. If any provision of this Agreement is more stringent than Applicable Law, Contractor must comply with that provision.

The Contractor acknowledges that the Authority, by this Agreement, has stated necessary and reasonable rules and regulations regarding aspects of Solid Waste handling services covered by this Agreement. Contractor agrees to comply with any and all of those rules and regulations, subject to clause (vi) of the definition of "Uncontrollable Circumstances" in Section 8.12 and subject to possible adjustments in the Disposal Rates for Uncontrollable Circumstances, including Changes in Law.

B. Referenced Provisions. Reference in this Agreement to particular provisions or requirements of Applicable Law will not be construed to limit Contractor's obligation to comply with all provisions of Applicable Law. They are deemed to include reference to implementing rules and regulations. They are intended to facilitate Contractor's satisfaction of its performance obligations and Authority’s administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is modified, amended, or repealed, that reference or citation will be deemed to refer to that amendment or modification, or to any re-codified or substituted Applicable Law.

C. Permits. Contractor will obtain and maintain all Permits in accordance with Section 4.02.

D. Fines and Penalties. Contractor is responsible for payment of any and all fines and penalties imposed on Contractor. Contractor will not seek reimbursement from Authority, Member Agencies, Transfer Company, or Member Agencies’ franchise haulers, residents, or businesses for any fines and penalties.

8.03 GOVERNING LAW

This Agreement will be governed by, and construed and enforced in accordance with, the Applicable laws of the State, without giving effect to the State's principles of conflicts of laws.

8.04 FURTHER ASSURANCES

Each Party will execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

8.05 ASSIGNMENT

A. Authority Assignment. The Authority may Assign this Agreement to a joint power authority, a sanitation district, or other public entity succeeding to the major portion of the Authority's Solid Waste management rights and obligations. The Authority may also Assign this Agreement to any
other Person upon Authority's determination that the assignee is financially capable of meeting the Authority's obligations under this Agreement.

B. Assignment by Contractor.

(1) Permitted Assignments. Contractor shall have the right to Assign this Agreement to any other company which is owned and controlled by Browning-Ferris Industries of California, Inc., provided that, (i) such company is qualified to do business in California, and assumes in writing all of Contractor's obligations under this Agreement prior to or concurrently with such assignment, and (ii) the Guaranty Agreement remains in full force and effect. Contractor shall not otherwise Assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person.

(2) Assignment Defined. For the purpose of this Section when used in reference to Contractor, "assign" and "assignment" shall be as defined in Exhibit A.

Contractor acknowledges that this Agreement involves rendering a vital service to the Authority's residents and businesses, and that the Authority has selected Contractor to perform the services specified herein based on (i) effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations, and best management practices, and (ii) Contractor's obligations to the Authority under this Agreement. The Authority has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

(3) Contractor Request for Assignment. If Contractor requests the Authority's consideration of and consent to an Assignment, the Authority may reasonably deny or approve such requests. No request by Contractor for consent to any Assignment need be considered by Authority unless and until Contractor has met the following requirements:

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

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

C. Contractor shall furnish Authority with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state, or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal, or local Environmental Laws and that the assignee has provided Authority with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid
Waste management practices in full compliance with all federal, State, and local laws regulating the collection and Disposal of Solid Waste including Unpermitted Waste; and, (v) of any other information required by Authority to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

Under no circumstances shall Authority be obligated to consider any proposed Assignment by Authority if Contractor is in default at any time during the period of consideration.

8.06 BINDING ON SUCCESSORS

The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

8.07 PARTIES IN INTEREST

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors, and permitted assigns.

8.08 SERVICES PERFORMED AT CONTRACTOR’S SOLE EXPENSE

Contractor will perform Services solely for the compensation expressly provided for herein.

8.09 NOTICES AND COMMUNICATION

A. Written. Parties must present and express all reports, demands, requests, directions, selections, option exercises, orders, requests, proposals, reviews, comments, acknowledgments, approvals, consents, waivers, certifications, and other communications made to each other under this Agreement in writing.

B. Manner. Parties must provide Notices at the address provided in subsection C, in any of the following manners:

1. personal delivery to a representative of the Parties, with signed receipt,

2. deposit in the United States mail, first class postage prepaid (certified mail, return receipt requested), or

3. deposit with a commercial delivery service providing delivery verification.
C. Addresses.

If to Authority:

SBWMA Executive Director
610 Elm Street, Suite 202
San Carlos, CA 94070

If to Contractor:

District Manager
Browning-Ferris Industries of California, Inc.
1680 Edgeworth Avenue
Daly City, CA 94015

Parties may change their address upon Notice to the other Party.

8.10 REPRESENTATIVES OF THE PARTIES

A. Authority Representative. The Authority Representative is the Executive Director or his or her designee, unless otherwise named in Exhibit F from time to time upon Notice of Authority Representative to Contractor. The Authority Representative is authorized to act on behalf of Authority in the administration of this Agreement, unless another Person is specifically authorized herein. Authority actions referenced in this Agreement, including reviews and approvals, may be taken by the Authority Representative, unless provided otherwise.

B. Contractor Representative. The Contractor Representative named in Exhibit F, as may be changed from time to time upon Notice of Contractor Representative to Authority. The Contractor Representative is authorized to act on behalf of Contractor in the performance of this Agreement.

8.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

In the performance of all work and Services under this Agreement, Contractor will not discriminate against any person on the basis of that person’s race, color, religion (including religious dress and grooming practices), sex/gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), sex stereotype, gender identity/gender expression/transgender (including whether or not the person is transitioning or has transitioned), sexual orientation, national origin, ancestry, age (40 and above), physical or mental disability, medical condition, genetic information/characteristics, marital status/registered domestic partner status, military or veteran status, or any other basis protected by federal, State, or local law or ordinance or regulation. Contractor will not discriminate based on the perception that anyone has any of these characteristics or is associated with a person who has or is perceived as having any of these characteristics. Contractor will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.
8.12 FORCE MAJEURE

A. Performance Excused. Neither Party is deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities, or commitments under this Agreement to the extent that the breach or default is due to an Uncontrollable Circumstance, provided the Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

Uncontrollable Circumstance(s) means any act, event, or condition, whether affecting (i) Services or (ii) either Party, that is beyond the reasonable control of the Party relying thereon and not the result of willful or negligent action or inaction of that Party (other than the contesting in good faith or the failure in good faith to contest that action or inaction), which materially and adversely affects the ability of either Party to perform any obligation under this Agreement, comprised of:

1. an act of nature, including landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area of the Authority), explosion, sabotage, terrorism, acts of a public enemy, war, blockade or insurrection, riot, or civil disturbance;

2. the failure of any appropriate federal, State, or local public agency or private utility having operational jurisdiction in the area in which the Landfill is located to provide and maintain utilities, services, water, sewer, or power transmission lines thereto;

3. a Change in Law other than a Change in Law excluded in item (ii) below; and,

4. strikes, work stoppages, or other labor disputes or disturbances of Persons other than Contractor or any Affiliates performing Services;

"Uncontrollable Circumstances" excludes, without limitation:

i. either Party's own breach of its obligations under this Agreement;

ii. adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise, or employment taxes;

iii. strikes, work stoppages, or other labor disputes or disturbances of Contractor or any Affiliates performing Services, or Contractor's or Affiliates' inability to hire adequate numbers of personnel who are competent and skilled in the work to which they are assigned, or the organization of any Contractor's or any Affiliates' employees under a collective bargaining agreement;

iv. the failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for Services;

v. as to the Contractor, the failure of any Service assets to perform in accordance with any warranties, unless caused by Uncontrollable Circumstances; and,

vi. Changes in Law mandated by State or Federal Applicable Law.

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SBWMA/BFI Disposal Services Agreement
B. **Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon will give immediate Notice thereof to the other Party, including describing performance under this Agreement for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent Services may be curtailed; any requests or suggestions to mitigate the adverse effects of the Uncontrollable Circumstance; or, any consequent adjustment of the Disposal Rates in accordance with Sections 5.03 or 5.04.

C. **Authority’s Rights.** Notwithstanding that Contractor’s failure to timely and fully provide Services due to Uncontrollable Circumstances does not constitute a Contractor Default, following the continuance of the failure for twenty (24) hours, Authority may, in its sole discretion, secure alternative services. Following the continuance of that failure for thirty (30) Days, Authority may terminate the Agreement in accordance with Section 7.02.A.2.

D. **Use of Alternative Landfill.** Contractor shall use an alternative landfill in accordance with Section 4.12 if Uncontrollable Circumstances prevent it from using the Landfill (Ox Mountain Landfill) for all or a portion of the Authority’s Solid Waste. If, as a result of Uncontrollable Circumstances, the Contractor is unable to Dispose of all the Authority’s Solid Waste at the Ox Mountain Landfill for three (3) months or more or if the Authority has incurred two hundred fifty thousand dollars ($250,000) or more in additional transportation costs to arrange for delivery of the Authority’s Solid Waste to an alternative landfill(s), the Authority may, in its sole discretion, suspend or terminate the Agreement in accordance with Section 7.02, but is not obligated to do so.

8.13 **MAINTENANCE OF RECORDS**

A. **Location of Records.** Contractor will maintain Records at the Landfill or elsewhere at offices located within San Mateo County.

B. **Contractor’s Accounting Records.** In order to effectuate the adjustments to the Disposal Rates contemplated by Sections 5.03 and 5.04, Contractor must maintain accurate, detailed financial and operational information in a consistent format and to make that information available to the Authority in a timely fashion. This Section is intended to effectuate these requirements. Contractor will maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing Services. The accounting records will be prepared in accordance with Generally Accepted Accounting Principles (GAAP), which will be consistently applied. The Parties acknowledge that the Contractor’s accounting procedures may not produce accounting records that separate the financial and operational data related to specific services provided to the Authority, but rather the accounting records are consolidated financial and operational data for all services provided by Contractor or at Contractor’s Landfill.

C. **Retention of Records.** Contractor will retain all Records required to be maintained by this Agreement at least throughout the Term.

Contractor will retrieve Records specifically directed to be retained in accordance with this Agreement and make them available to the Authority within ten (10) Days of Authority’s direction.
Contractor will retrieve Records that are material, in the sole opinion of the Authority, to determining the cost of compliance with changes in Government Fees or regulations; verifying payment of Government Fees or taxes; determining cost impact related to modifications to scope of Services or new waste management programs or economic incentives; or determining an adjustment to the Disposal Rate as provided for in this Agreement, and make them available to the Authority within ten (10) Days of the Authority's direction. If Contractor is not required to maintain those Records under this Agreement, then the Authority and Contractor will meet and confer in good faith to reach agreement on reasonable assumptions that are necessary to make determinations at issue.

D. Delivery of Financial Information. The Parties agree that Contractor shall submit sufficient financial information that provides sufficient information, in the Authority's opinion, for performance of the review necessary for determination as to whether an extraordinary adjustment to the Disposal Rate(s) is warranted.

8.14 RIGHT TO INSPECT RECORDS

Upon reasonable notice and without interference with Contractor's operations, the Authority, its auditors, and other agents selected by the Authority, will have the right, at its sole cost, during regular business hours as described in Section 4.06, to conduct on-site inspections of Records and to make and retain copies of any Records that are reasonably necessary to: (1) determine the cost of compliance with changes in Government Fees or regulations (in accordance with Section 5.03); (2) verify payment of Government Fees or taxes (in accordance with Sections 5.05 and 5.06); (3) determine cost of modifications to scope of Services (in accordance with Section 4.20); (4) determine cost of new programs or economic incentives (in accordance with Section 4.20); or, (5) verify Contractor's reported aggregate Landfill capacity commitments (in accordance with Section 4.14.D). Contractor will cooperate with the Authority, its auditors, and other agents selected by the Authority; will make those Records available to the Authority; and, will provide the Authority copies of those Records (which the Authority may retain) at the Authority's request (with the exception that Contractor is not obligated to provide copies of agreements with entities related to the review of the aggregate Landfill capacity under Item 5 of this Section). If the Authority so requests, Contractor will make specified personnel available to assist the Authority representatives in accessing Records.

8.15 COMPILATION OF INFORMATION FOR STATE LAW PURPOSES

Contractor will compile information on amounts of Solid Waste delivered to the Landfill and Disposed and other information, which the Authority may reasonably request in order to meet its obligations under the Act and other State regulations.

8.16 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

If Contractor:

(i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or other concerted job action that affects Contractor's performance under this Agreement;

(ii) appears in the judgment of the Authority to be unable to regularly pay its bills as they become due; or,
is the subject of a civil or criminal proceeding brought by a federal, State, regional, or local agency for Violation of an Applicable Law with respect to Services;

such that the Authority reasonably believes Contractor's ability to perform under this Agreement is in substantial jeopardy, or

if Authority disagrees with Contractor's estimate of Landfill capacity required to meet Contractor's warranty in accordance with subsection I of Exhibit H or of remaining capacity, considering Contractor's Disposal obligations to both Authority and other Persons, as contained in the Annual Report or otherwise, then following dispute resolution in accordance with Section 8.17 that concludes either of Contractor's estimates is erroneous, at its option and in addition to all other remedies it may have, the Authority may demand from Contractor written assurances of timely and proper performance of this Agreement. Assurances include reduction or elimination of deductibles or self-insured retention with respect to insurance or procuring a bond or letter of credit guarantying or in size sufficient to cover payment of losses and related investigations, claim administration, and defense expenses. If Contractor fails or refuses to provide reasonable assurances by the date required by the Authority no less than fifteen (15) Days after Notice, that failure or refusal will constitute a Contractor Default in accordance with Section 7.01.

8.17 DISPUTE RESOLUTION

Should any dispute between the Parties arise out of this Agreement and should the Parties be unable to resolve the issue, the Parties shall, at the written request of either Party, meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither Party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution, provided that this limitation shall not apply to a Party if the other Party fails to comply with this Section. The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated settlement is reached, neither Party shall be deemed the prevailing Party for purposes of the settlement and each Party shall bear its own legal costs. The mediation shall be completed within sixty (60) Days of the written request of a Party for mediation unless both Parties agree to extend this timeframe. If litigation is filed regarding any dispute arising under this Agreement, the action shall be filed in San Mateo County Superior Court and the court shall award reasonable attorney's fees and costs to the prevailing Party. To the maximum extent permitted by law, all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, or attorneys, or by the mediator or any employees of the mediation services, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until the end of the sixty- (60-) Day period referred to above. The Parties will take such action, if any required to effectuate such tolling.
8.18 CRIMINAL ACTIVITY OF CONTRACTOR

A. Notice of Convictions or Pleas. The Contractor will immediately Notify the Authority upon the occurrence of any Convictions or Pleas with respect to Contractor or any of its Contract Managers defined in paragraphs (1), (2), and (3) of the definition of “Contract Manager” in Exhibit A, and Contractor will use Reasonable Business Efforts to immediately notify the Authority with respect to Contractor or any of its Contract Managers defined in paragraph (4) of the definition of “Contract Manager”.

B. Contractor Cure. Upon the occurrence of any Convictions or Pleas, the Contractor will do or cause to be done both of the following:

1. as soon as permitted under Applicable Law, terminate from employment or remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Contractor or an Affiliate, the individual or individuals responsible for the Criminal Activity; and,

2. immediately eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Contractor or Affiliate the individual or individuals responsible for the Criminal Activity, in any position of influence.

Should Contractor be unable to terminate the offending Contract Manager, said individual(s) shall be replaced in their capacity as Contract Manager(s) relative to this Agreement.

C. Authority Remedies. The Authority, in its sole discretion, may terminate the Agreement upon thirty (30) Days’ Notice to the Contractor, or may impose those other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, if the following events are continuing at the end of those thirty (30) Days:

(i) the Contractor or any Affiliate fails to comply with their obligation under subsection B, or

(ii) the Criminal Activity concerns and is related to this Agreement.

Contractor must be given the opportunity to present to Authority Representative evidence in mitigation during the preceding Notice period and Authority will consider that evidence.

The Contractor will not hire or transfer from any Affiliate of any employee, officer, or director of an Affiliate who is the subject of any Criminal Activity to a position as a Contract Manager and will not allow its Affiliates to do so.

8.19 COOPERATION AND DISPUTES BETWEEN CONTRACTOR AND TRANSFER COMPANY

Contractor will fully comply with its obligations to provide Service to the Transfer Company and cooperate to its fullest extent with the Transfer Company and Authority. In the event of disputes between Contractor and Transfer Company, Contractor will attempt to resolve the dispute directly with the Transfer Company. As a last resort, Contractor may request assistance from the Authority in resolving the dispute. In the
event of a dispute, Contractor will continue performance of Contractor’s obligations under this Agreement and will attempt to continue to resolve that dispute in a cooperative manner, including, but not limited to, negotiating in good faith.

8.20 LIQUIDATED DAMAGES

A. General. The Parties acknowledge that Authority incurred considerable time and expense procuring this Agreement in order to secure an improved level of service quality and increased Authority satisfaction. Therefore consistent and reliable Services are of utmost importance to the Authority, Member Agencies, Transfer Company, and Member Agencies’ residents and businesses. Authority has considered and relied on Contractor’s representations as to its quality of service commitment in entering into this Agreement, and Contractor’s breach of its Service obligations referenced in this Section above represents a loss of bargain to the Authority. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure quality, consistent, and reliable Disposal service, and if Contractor fails to meet Service obligations, Authority will suffer damages (including its own, Transfer Company, and Member Agencies’ franchise haulers’ inconvenience; anxiety, frustration, potential political pressure, criticism, and complaint by Member Agencies’ franchise haulers, Transfer Company, and residents and businesses; lost Authority Board of Directors and staff time; deprivation of the benefits of the Agreement; and, loss of bargain) in subjective ways and in varying degrees of intensity that are incapable of measurement in precise monetary terms, and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. In addition, in event of breach or Contractor Default, urgency of protecting public health and safety may necessitate that Authority enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than hereunder, and the monetary loss resulting therefrom is impossible to precisely quantify. Lastly, termination of this Agreement for Contractor Default and other remedies provided hereunder are, at best, a means of future correction and not remedies that make the Authority whole for past breaches and Contractor Defaults. Therefore, the Parties agree that the liquidated damages listed in Sections 4.08 and 4.14 represent a reasonable estimate of the amount of damages, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to Authority that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: \[\text{Initial} \]  
Agency Initial Here: \[\text{Initial} \]

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. Upon failure to meet standards in Sections 4.08 and 4.14, Contractor will pay (as liquidated damages and not as a penalty) the amounts set forth in Sections 4.08 and 4.14. Authority may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of complaints by Transfer Company. Prior to assessing liquidated damages, Authority will give Contractor Notice of its intention to do so. The Notice will include a brief description of the incident(s) and non-performance. The Authority may
review (and make copies at its own expense) all information in the possession of Contractor
relating to incident(s) and non-performance. Authority or Contractor may, within ten (10) Days
after issuance of the Notice, request a meeting with the other Party. During the meeting,
Authority may present evidence of non-performance in writing and through testimony of its
employees and others relevant to the incident(s) and non-performance. During such meeting,
Contractor shall have the right to: (i) present evidence that it met the Maximum Vehicle
Turnaround Time and/or Maximum Average Monthly Vehicle Turnaround Time, and/or, (ii)
present evidence that its failure to meet the Maximum Vehicle Turnaround Time and/or
Maximum Average Monthly Vehicle Turnaround Time was due to Transfer Company driver(s)
slowing down (e.g., taking breaks, taking longer to unload, etc.). The Authority shall review all
evidence provided and make a final determination relating to the incident(s) and Contractor’s
non-performance, if any. On or before thirty (30) Days following of the meeting, Authority will
provide Contractor with a final Notice that includes written explanation of its determination on
each incident(s) and non-performance and amount of liquidated damages, if any. The decision of
Authority to assess liquidated damages will be final, and Contractor will not be subject to, or
required to exhaust, any further administrative remedies.

C. **Amount.** Authority may assess liquidated damages for each Day or event, as appropriate, that
Contractor is determined to be liable in accordance with this Agreement in the amounts specified
in Sections 4.08 and 4.14.

D. **Payment of Liquidated Damages.** Contractor will pay any liquidated damages assessed by
Authority within fifteen (15) Days after they are assessed. If they are not paid within that period,
Authority may proceed against the Guaranty Agreement. The fifteen- (15-) Day period shall
commence from the time the Initial Notice was issued by the Authority if one of the Parties do
not request a meeting, or from the time the Authority issues a final Notice following a meeting of
the Parties.

### 8.21 GUARANTY OF CONTRACTOR’S PERFORMANCE

The Guarantor has agreed to guaranty Contractor’s performance of this Agreement including Contractor’s
indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially the form
attached as Exhibit G. The Guaranty Agreement is being provided concurrently with Contractor’s
execution of this Agreement.

### 8.22 JURISDICTION, VENUE

Jurisdiction and venue shall be governed by Section 8.17, Dispute Resolution.
ARTICLE 9.
REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

9.01 MADE BY CONTRACTOR

Contractor's representatives and warranties, as stated in Exhibit H are in full force and effect from the Effective Date of this Agreement.

ARTICLE 10.
MISCELLANEOUS PROVISIONS

10.01 EXHIBITS

If any provisions contained in the text of Articles 1 through 10 are inconsistent or conflict with any Exhibits to this Agreement, then the provisions of the text will govern.

10.02 INTEGRATION

This Agreement contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this Agreement, including the enforcement and administration of this Agreement. This Agreement completely and fully supersedes all prior understandings and agreements between the Parties with respect to those rights and responsibilities.

10.03 SECTION HEADINGS

Any captions or headings following the Exhibit, Section, subsection, paragraph, and Article numbers and preceding the operative text of this Agreement is for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of this Agreement.

10.04 INTERPRETATION AND CONSTRUCTION

A. Drafting. This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Contractor acknowledges that it determined to participate in the procurement of this Agreement upon its own choice and initiative and, during the course of that procurement, Authority solicited Contractor's comments, exceptions, and proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at arm's length and with advice of their respective attorneys, and no provision herein is construed against the Authority solely because it prepared this Agreement in its executed form.

B. Gender and Plurality. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number mean and include the plural number, and vice versa, unless the context demands otherwise.
C. **Font.** Any underlined, italicized, bold-faced, upper captioned, or other font style are for ease of reading and contract administration only and do not imply relative importance or unimportance of any provision of this Agreement.

D. **References to Parts.** References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to “subsections” refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.

E. **Examples.** Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent or conflicts with the text that it illustrates, the text governs.

F. **Specifics No Limitation on Generalities.** The mention of any specific duty or liability imposed upon the Contractor may not be construed as a limitation or restriction of any general liability or duty imposed upon the Contractor by this Agreement or Applicable Law.

### 10.05 AMENDMENT

The Parties may change, modify, supplement, or amend this Agreement only upon written agreement duly authorized and executed by both Parties. However, wherever reports, forms, or other documents are attached to this Agreement in substantially the form provided in the Exhibits, the Authority Representative and Contractor Representative may edit and revise them upon their agreement or otherwise provided in the related Sections of this Agreement, evidenced in writing unless this Agreement or Applicable Law specifically requires approval by Authority Board of Directors pursuant to resolution or otherwise.

### 10.06 SEVERABILITY

If any clause, sentence, provision, subsection, Section, or Article of this Agreement or Exhibit to this Agreement (an “Agreement Provision”) is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then the Parties will:

1. promptly meet and negotiate a substitute for those Agreement Provision and any related amendments, deletions or additions to other provisions of this Agreement which together effect the Parties’ original intent to the greatest extent allowable under Applicable Law; and,

2. if necessary or desirable to accomplish preceding item (1), apply to the court that made that ruling for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or additions to this Agreement. Contractor will pay Authority half of the Direct Costs of that application within twenty (20) Days of Authority’s request if Contractor or a third Person other than the Authority instituted proceedings resulting in the ruling.

The unconstitutionality, illegality, invalidity, non-binding nature, or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this Agreement. This Agreement will be construed and enforced as if that Agreement Provision did not exist.
10.07 COSTS OF ENFORCING AGREEMENT

Contractor will pay to the Authority the Authority's Costs, including attorneys' fees, reasonably incurred by or on behalf of the Authority enforcing payment or performance of Contractor's obligations under this Agreement if non-payment or non-performance results in a Contractor Default.

10.08 AUTHORITY

Authority warrants that the officers listed below have been duly authorized by the Authority to execute this Agreement on behalf of the Authority. Contractor warrants that the individuals listed below have been duly authorized by the Contractor to execute this Agreement on behalf of the Contractor.

10.09 COUNTERPARTS

This Agreement, including dated signatures on amended Exhibits and attachments to those Exhibits, may be executed in counterparts, each of which will be deemed to be an original.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the latter of the date written below.

BROWN-FERRIS INDUSTRIES OF CALIFORNIA, INC.

By: Michael Capito
(print name)

Date: May 22, 2019

SOUTH BAY SIDE WASTE MANAGEMENT AUTHORITY

By: Joe La Mariana, Executive Director

Date: 5/29/19

ATTEST:

By: Cynthia Herman
Corporate Officer (print name)

ATTEST:

By: Jean Savaree
Authority Attorney
EXHIBIT A: Definitions


Actions means all actions including claims, demands, causes of action, suits, mediation, arbitration, hearings, investigations, inquiries, and proceedings, whether legal, judicial, quasi-judicial, governmental, or administrative in nature and whether threatened, brought, instituted, or settled.

Affiliate means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor, and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and, (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

Agreement means this Agreement between the Authority and Contractor, including all exhibits, schedules, and attachments, which are incorporated in this Agreement by reference, as this Agreement may be amended and supplemented.

Annual Report is described in Section 4.14.

Applicable Law means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, approvals, or requirements of the United States, State, regional, or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Services or the performance of the Parties’ respective obligations under this Agreement, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation conditions and monitoring plans in accordance with environmental impact statements, conditional use permits, building codes, zoning, non-discrimination, and the Transfer or disposition of Solid Waste, Recyclable Materials and Plant Materials, and,

(1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. Section 9601 et seq.);

(2) the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq.);

(3) the Clean Air Act, (42 U.S.C. Section 1351 et seq., 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 et seq. and Health and Safety Code Sections 39000 et seq.);

(4) the Emergency Planning and Community Right to Know Act, (42 U.S.C. Section 11001 et seq.)
Assign (Assignment) means:

(i) selling, exchanging, or otherwise transferring effective control of management of the Contractor (through sale, exchange, or other transfer of outstanding stock or otherwise);

(ii) issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Contractor;

(iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which results in a change of Ownership or change of control of Contractor;

(iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Contractor, appointment of a receiver taking possession of any of Contractor’s tangible or intangible property, or transfer occurring in the event of a probate proceeding;

(v) any combination of the forgoing (whether or not in related or contemporaneous transactions) which has the effect of any that transfer or change of Ownership or change of control of Contractor.
Authority means the South Bayside Waste Management Authority or any governmental entity which may assume waste management obligations of the Authority, including any joint exercise of powers authority or other similar public entity with which the Authority participates or contracts with, established to provide Solid Waste management services or meet Solid Waste Diversion requirements under Applicable Law. For the purposes of Indemnities, “Authority” will include its officers, employees, agents, contractors, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns, and any successor or successors to the Authority’s interest.

Authority’s Solid Waste means Solid Waste delivered by the Transfer Company in accordance with the Operating Agreement;

Authority’s Reimbursement Costs means Authority’s Direct Costs.

Authority Service Area means the consolidated boundaries of the Member Agencies, except for portions of the County of San Mateo.

Calendar Year means a successive period of twelve (12) months commencing on January 1 and ending on December 31.

CCR means California Code of Regulations.


Change in Law means the occurrence of any event or change in Applicable Law as follows:

(1) the adoption, promulgation, repeal, modification, amendment, or other change in Applicable Law or change in judicial or administrative interpretation thereof occurring after the Effective Date, other than laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by the Authority or Member Agencies) or employment taxes; or

(2) any order or judgment of any federal, state, or local court, administrative agency, or governmental body issued after the Effective Date:

(i) the order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and,

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, will make or have made, or will cause or have caused to be made, Reasonable Business Efforts to contest the order or judgment (it being understood that contesting in good faith an order or judgment will not constitute or be construed as a willful misconduct or negligent action of the Party); or
(3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date of this Agreement; or

(4) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption, or termination of, any Permit after the date of this Agreement; provided the failure to issue or the suspension or termination of any Permit is not the result of negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

**Closure** means closure of the Landfill or portions of the Landfill in accordance with Applicable Law, including all planning, design, regulatory approvals, plan implementation, construction, and monitoring.

**Contract Manager** means items (2) through (4) of this definition, and “Contractor or any of its Contract Managers” and means:

1. the Contractor and its officers and directors;
2. the officers and directors of Browning-Ferris Industries of California, Inc. (or its successors);
3. the Contractor Representative; and,
4. any other Persons, including Affiliates that, and Contractors’ or Affiliates’ employees, officers or directors who, have the authority or responsibility to directly or indirectly administer, manage, direct, supervise, or oversee Services or this Agreement, including the following:

   - supplying Goods or Services; serving as director of the board of directors of Contractor and an Affiliate; serving as an officer or employee of Contractor and an Affiliate; reviewing or negotiating Contractor’s contracts (including this Agreement); providing in-house legal services; providing insurance or other performance security; and, providing processing or disposal, but excluding the following:

   - monitoring Contractor’s performance, supervising Contractor’s finance and capital budget decisions, and articulating general policies and procedures.

**Contractor** means Browning-Ferris Industries of California, Inc., a corporation organized and operating under the laws of the State of California. For purposes of Indemnities, Contractor will include Contractor’s employees, officers, agents, Subcontractors, and consultants performing or responsible for performing Services; provided that only signatory Contractor, a corporation, is obligated to provide Indemnities and its employees, officers, agents, subcontractors, and consultants will not be liable therefore as individuals.

**Contractor Default** has the meaning provided in Section 7.01.

**Construction and Demolition Materials** includes, but is not limited to, concrete, cinder blocks, brick, mortar, wood, glass, and other material removed and discarded during the alteration, renovation, remodeling, repair, construction, or demolition of pavements, houses, commercial buildings, or structures which can be separated from Solid Waste for the purpose of reuse, processing, or re-manufacture.
Conviction means a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court or regulatory agency of competent jurisdiction with respect to Criminal Activity.

Criminal Activity means:

(1) any criminal offense in connection with obtaining, procuring, or performing a public or private agreement related to Recyclable Materials, Plant Materials, or Solid Waste services of any kind (including collection, hauling, Transfer, processing, composting, or disposal), including this Agreement; or

(2) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency; or

(3) fraud, embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification, or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony; or

(4) unlawful disposal of Hazardous Materials, Designated Waste, or Unpermitted Waste; or

(5) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling, or disposal rates or fees.

Day means calendar day.

Designated Waste means non-Hazardous Material which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites, or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services or pursuant to applicable permits. Designated Waste consists of those substances classified as Designated Waste by the State, in CCR Title 23, Section 2522.

Direct Costs means the sum of:

(1) payroll costs directly related to the Contractor’s performance, or supervision of any obligation pursuant to the provisions of this Agreement, or Authority’s administration and enforcement of this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, federal and State unemployment taxes, and all medical and health insurance benefits, plus

(2) the costs of materials, services, direct rental costs and supplies, plus

(3) the reasonable costs of any payments to Subcontractors necessary to and in connection with the performance under or administration and enforcement of this Agreement; plus

(4) any other cost or expense which is directly or normally associated with the task performed.
Such Direct Costs are to be substantiated by (i) a certificate signed by the principal financial officer of the Contractor or the authorized representative of the Authority or his or her designee, as the case may be, setting forth the amount of the cost and the reason why the cost is properly chargeable to the Authority or the Contractor, as the case may be, and representing that the cost is an arm's length and competitive price, if there are competitive prices, for the service or materials supplied; and, (ii) if the Authority or the Contractor requests, as the case may be, additional back-up documentation as may be available to reasonably substantiate any Direct Cost, including invoices from suppliers and Subcontractors. Direct Costs exclude Non-Allowable Costs.

**Disposal (or Dispose or other variation thereof) means the final disposition of Solid Waste in accordance with this Agreement at the Landfill.**

**Disposal Rate** means the amount established under Article 5 of this Agreement to be charged the Transfer Company by Contractor for Disposal of Solid Waste at the Landfill.

**Diversion (Divert)** means to divert from landfill disposal or transformation through source reduction, reuse, recycling, composting, or other means within the meaning of the Public Resources Code Section 41780.

**Effective Date** means the later date of execution by the Authority or Contractor on the execution page of this Agreement.

**Facility (Facilities)** means the Shoreway Environmental Center, which includes a Transfer Station located at 225 Shoreway Road, Recyclables Materials processing facility at 333 Shoreway Road, and any other building and improvement located at these addresses in San Carlos, California (including the administration and vehicle repair and maintenance building).

**Generator** means any Person whose act or process produces Solid Waste or Unpermitted Waste or other material that becomes part of the overall waste stream.

**Goods or Services** means all goods or services used in providing Services, including labor, leases, subleases, equipment, supplies, and capital related to furnishing Services; insurance, bonds, or other credit support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and, legal, risk management, general, and administrative services.

**Government Fees** are fees or taxes imposed upon the Landfill without regard to the specific site characteristics or operational history of those facilities, and may include franchise fees, regulatory fees, mitigation fees, surcharges, governmental impositions, and/or taxes. “Government Fees” are not amounts imposed upon the Landfill in connection with the repair, remediation, improvement, addition, or expansion of the Landfill.

**Governmental Fee Component** has the meaning provided in Section 5.02.

**Guarantor** means Republic Services, Inc., is a corporation duly organized and existing in good standing under the laws of the State of California.

**Guaranty Agreement** is the agreement in substantially the form attached as Exhibit G executed by the Guarantor.
Hazardous Materials or Hazardous Waste are materials that by reason of their quality, concentration, composition, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise mismanaged; or any waste which is defined regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, and:

(1) “Hazardous Waste” pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., including 23 CCR Sections 2521 and 2522; and

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and

(3) materials regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; and

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., and

(5) materials regulated under any future additional or substitute federal, State, or local laws and regulations pertaining to the identification, transportation, treatment, storage, or disposal of toxic substances or hazardous waste, and

(6) Any substance the presence of which at the Landfill is prohibited by Applicable Law.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing, and/or disposal, the broader, more restrictive definition is employed for purposes of this Agreement.

"herein," "hereunder," and the like mean "in this Agreement," "of this Agreement," "under this Agreement," respectively; "hereinafter" mean before and after the date of this Agreement, respectively.

Holidays are defined as New Year’s Day and Christmas Day.

Household Hazardous Waste means any Hazardous Waste generated incidental to owning or maintaining a place of residence, excluding any Hazardous Waste generated in the course of operation of a business concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.

“immediate” or “immediately” means within twelve (12) hours.
“including”, “include”, and variations thereof mean “including, without limitation,” “including, but not limited to”, and “including, at a minimum”.

Indemnities or Indemnification means all defense and indemnities under this Agreement.

Landfill means Ox Mountain Landfill that is owned and operated by Contractor and located at 12310 San Mateo Road, Half Moon Bay, CA 94019.

Liabilities means all liabilities, including:

(1) Actions;

(2) Awards, judgments, and damages, both: (i) actual damages, whether special and consequential, in contract or in tort, such as natural resource damages, damage for injury to or death of any Person, and damage to property; and, (ii) punitive damages;

(3) Contribution or indemnity claimed by Persons other than the Parties;

(4) Injuries, losses, debts, liens, liabilities,

(5) Costs, such as response remediation and removal costs,

(6) Interest,

(7) Fines, charges, penalties, torteitures, and

(8) Expenses such as attorney’s and expert witness fees, expenditures for investigation and remediation, and costs incurred in connection with defending against any of the foregoing or in enforcing Indemnities.

Maximum Average Monthly Vehicle Turnaround Time means a thirty-five- (35-) minute average monthly vehicle Turnaround Time, where the average monthly vehicle Turnaround Time shall be calculated by summing the actual vehicle Turnaround Time for each load of Authority’s Solid Waste delivered by the Transfer Company in a given month divided by the number of loads of Authority’s Solid Waste delivered by the Transfer Company in the given month.

Maximum Vehicle Turnaround Time means a forty-five- (45-) minute Turnaround Time.

Member (Member Agency) means any one of the public entities listed in Exhibit A (Equity Members) or Exhibit B (non-Equity Members) of the Joint Exercise of Powers Agreement South Bayside Waste Management Authority, as those exhibits may be changed from time to time. As of the Effective Date, Member Agencies include the public entities listed in Exhibit B hereto.

Non-Allowable Costs include the following:

(1) fines, penalties, assessments, and other amounts paid for violations or noncompliance with Applicable Law or in settlement of claims or allegations of noncompliance with Applicable Law;
(2) any costs of indemnifications, including indemnification, Liabilities, or any mediation, arbitration, or judicial proceeding, whether formal or informal;

(3) any contributions or donations to any Person (including charitable, non-profit, service or other community groups, and elected officials), including cash, property, and services in kind;

(4) lobbying costs, whether cash, property, or services in kind, such as:

- costs incurred in any direct or indirect attempt to influence the outcome of any federal, State, or local election, referendum, initiative, or similar process by citizen electorate or vote upon resolutions, ordinances, or other action items by elected officials (including members of a city council or a county board of supervisors), through cash contributions, endorsements, publicity, or other action;

- establishing, administering, contributing to, or paying the expense of a candidate, political party, campaign, political action committee, or other Person or organization established for the purpose of influencing the outcomes of elections or vote, including votes on resolutions, ordinances, or other actions by elected bodies such as a city council or a county board of supervisors;

- attempts to influence (i) the introduction of federal, State, or local legislation, or (ii) the enactment or modification of any pending federal, State, or local legislation through communication with any member of employee of Congress, a state legislature, or local governing body, or by preparing, distributing, or using publicity;

- legislative liaison activities when those activities are carried on in support of, or in knowing preparation for, an effort to engage in unallowable activities;

(5) costs of preparing documentation, including cost, financial, and accounting books and records, upon request of Authority or any accountant, auditor, financial analyst, or rate consultant retained by Authority, incurred to substantiate Direct Costs, or allocation thereof.

Notice (or Notify) means a notice given in accordance with Section 8.09.

Operating Agreement means the Agreement for the Operation of the Authority's Transfer Station and Recyclery (Facilities) between the Authority and South Bayside Recycling, dated January 1, 2010, as may be amended or replaced consistent with Authority's obligations in Article 3 of this Agreement.

Organics means food waste including fruits, vegetables, grain products, dairy products, meat, seafood, napkins, waxed cardboard, and wood crates.

Ownership has the meaning provided under the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986 except that (1) ten percent (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; (2) Section 318(a)(5)(C) is disregarded; (3) ownership interest of less than ten percent (10%) is disregarded; and, (4) percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
**Party** or **Parties** refers to the Authority and Contractor, individually or together.

**Permits** means all federal, State, Authority, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Services, as renewed or amended from time to time.

**Person(s)** includes an individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, local governments, municipalities, special purpose districts, and other entities.

**Plant Materials** means a subset of organic Recyclable Materials consisting of grass cuttings, weeds, leaves, pruning, branches, dead plants, brush tree trimmings, dead trees (not more than six (6) inches in diameter and four (4) feet in length), and similar materials generated at Premises within Agency, separated and set out for collection, processing, and Recycling. **Plant Materials** do not include materials not normally produced from farms, gardens, or landscapes, such as, but not limited to, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood or wood products. Diseased plants and trees are also excluded from **Plant Materials**.

**Plea(s)** means the Contractor or any of its Contract Managers have plead "guilty" or entered a plea of "nolo contendere" or "no contest" to Criminal Activity occurring within the Authority or relating to this Agreement.

**Position of Influence** means the authority and responsibility described in item (4) of the definition of "Contract Managers".

**Post-Closure** means post-closure of the Landfill or portions of the Landfill in accordance with Applicable Law, including all maintenance and monitoring.

**PRC** means the California Public Resources Code.

**Rate Period** means a twelve- (12-) month period, commencing January 1 and concluding December 31.

**RCRA** means the Resource Conservation and Recovery Act (42 U.S.C. Section 6900 et. seq.).

**Reasonable Business Efforts** means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation that that Person has undertaken to satisfy.

**Records** means all ledgers, book of account, invoices, vouchers, canceled checks, logs, correspondence, and other records or documents evidencing or relating to Disposal Rates, Tonnage of Solid Waste and other materials handled, satisfaction of Contractor’s obligations under this Agreement and performance of the terms of this Agreement, damages payable under this Agreement, and Contractor Defaults, including, but not limited to, those Records described in Sections 4.02, 4.03, 4.04, 4.09, 4.13, 4.14, 4.17, 4.18, 8.13, 8.14, 8.15, and 10.01.

**Recovered Material** means Recyclable Materials that are Recovered.
Recovery (or Recover, Recovered or other variations thereof) means the picking, pulling, sorting, separating, classifying, and recovery of Recyclable Materials from Solid Waste whether by manual or mechanical means, after acceptance of that materials and before marketing of Recovered Materials, including recycling, material reuse and recovery, mulching, composting, land application, or transformation.

Recyclable Materials means materials that are reused, remanufactured, or processed.

Self Haul means the collection and transportation of Solid Waste and Recyclable Materials by Persons other than the Transfer Company, Member Agencies' franchise haulers, or commercial haulers as allowed by Applicable Law of the Member Agencies, including the Generator thereof and the owner or occupant of residential or commercial premises located in the Authority where the Solid Waste was generated.

Services mean all obligations of Contractor under and in accordance with this Agreement to Authority and Transfer Company.

Service Commencement Date means January 1, 2020, the date that Solid Waste Disposal Services provided by the Contractor will commence.

Solid Waste means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, dewatered, treated, or chemically-fixed sewage sludge which is not hazardous waste, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, biosolids, and other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste, medical waste, Recyclable Materials, Construction and Demolition Materials, or Plant Materials. Solid Waste shall include material or residue remaining after the processing of Recyclable Materials, Plant Materials, Organic Materials, and/or other Authority materials at the Authority’s Facility (when such material or residue is designated for Disposal).

South Bayside Waste Management Authority means the joint powers authority created under Government Code Section 6500 et seq. by an agreement dated October 13, 1999 among the Town of Atherton, the cities of Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo, and the West Bay Sanitary District.

Standard Industry Practice means (1) the then-current development and operations practices and standards of the California Solid Waste management industry with respect to Recovery, Diversion, transfer, Transport, and Disposal services, and (2) the then-current development, operations, closure, and post-closure practices and Solid Waste Association of North America (or any successor organization) Manager of Landfill Operations standards in meeting Contractor’s obligations under this Agreement for Recovery, Diversion, and Disposal services.

State means the State of California.

Subcontractors includes any Person that provides Goods or Services to Contractor, whether pursuant to formal, written agreement, or merely in fact; “subcontract” means any arrangement, formal or informal, written, or otherwise, between Contractor and a subcontractor for providing Goods or Services.
Term is defined in Section 2.02.

Ton (or Tonnage) means a unit of weight equal to 2,000 pounds.

Transfer (or Transferring or other variations thereof) means transferring Solid Waste at the Transfer Station, if any, from residential collection vehicles, commercial collection vehicles, and self-haulers into Transport vehicles.

Transfer Company means the Person that Authority directs pursuant to the Operating Agreement to Transfer Solid Waste at the Transfer Station into Transport containers or vehicles and to deliver such Solid Waste to the Landfill.

Transfer Station means the Transfer station that is owned by the South Bayside Waste Management Authority, at the Shoreway Environmental Center located 225 Shoreway Boulevard, San Carlos, CA 94070.

Transfer Vehicle means a tractor and trailer designed to haul Solid Waste from any Transfer Station to the Landfill.

Transport (or Transportation) means the transportation of Solid Waste from any Transfer station to the Landfill.

Turnaround Time means the duration of time for each vehicle (i.e., load) of Authority's Solid Waste delivered by the Transfer Company that elapses from the time recorded at the inbound scale documenting when the vehicle enters the Landfill property until the time recorded at the outbound scale documenting the time the vehicle exits the Landfill property. Parties agree that time spent by Transfer Company drivers taking meal or rest breaks at the Landfill or driver’s non-productive time after unloading their transfer trailer shall not be counted in the measurement provided that adjustments to Turnaround Times pursuant to Section 4.08 are supported with evidence to the satisfaction of Authority.

Uncontrollable Circumstances has the meaning provided in Section 8.12.

Unpermitted Waste means wastes or other materials that the Landfill may not receive under their Permits, including:

(1) all materials that the Landfill is not permitted to accept, excluding white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, recycles, or Disposes;

(2) Friable asbestos, unless otherwise approved by applicable regulatory agencies, consisting of materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Materials if it contains more than one percent (1%) asbestos;

(3) Hazardous Materials;

(4) Untreated Infectious Waste or untreated Medical Wastes (as defined by Chapter 6.1, Division 20 of the State Health and Safety Code) that have disease transmission potential and are classified
as Hazardous Wastes by the State Department of Health Services, including untreated pathological and surgical wastes, untreated medical clinic wastes, untreated wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases, where “Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in the California Health and Safety Code Section 25117.5;

(5) Liquid wastes that are not spadeable including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, and those liquid wastes that may be Hazardous Wastes; and,

(6) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation.

This definition will be promptly amended to reflect any applicable changes in permits or Applicable Law.

Violation means any notice, assessment, or determination of non-compliance with Applicable law from any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assess, levied, or attached, where “Regulatory Agency” means any federal, State, or local governmental agency that regulates transfer, transportation, and Disposal of Solid Waste, including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, California Air Resources Board, regional water quality management districts, California Department of Toxic Substances, CIWMB, the Local Enforcement Agency, federal and State Environmental Protection Agencies, and other federal or State health and safety department, applicable to Services.

Working Days (or Work Day or other variations thereof) means Days during which Authority offices are open to do business with the public.
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EXHIBIT B: Member Agencies

Town of Atherton
City of Belmont
City of Burlingame
City of East Palo Alto
City of Foster City
Town of Hillsborough
City of Menlo Park
City of Redwood City
City of San Carlos
City of San Mateo
County of San Mateo
West Bay Sanitary District
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EXHIBIT C: Land Lease
OPTION TO LEASE AGREEMENT

THIS OPTION TO LEASE AGREEMENT ("Lease") is dated as of the ___ day of _____, 2019 (the "Effective Date") by and between BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC., a California corporation ("Lessor"), and SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a California joint powers authority ("Lessee").

RECITALS:

WHEREAS, Lessor is the owner of certain real property consisting of a maximum of 3 acres located at 12310 San Mateo Rd, Half Moon Bay, California 94019 (the "Premises"), which is generally shown on Attachment "A" attached hereto and made a part hereof.

WHEREAS, the Premises are a part of and located on real property owned by Lessor which is known as the Ox Mountain Landfill (the "Landfill").

WHEREAS, Lessor and Lessee are parties to that certain Agreement for Solid Waste Disposal Services dated as of the Effective Date (the "Agreement").

WHEREAS, Lessor agrees to provide Lessee with an option to lease the Premises from Lessor, on the terms and conditions provided herein.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the parties hereto hereby act and agree as follows:

ARTICLE I
OPTION TO LEASE; RENT AND TERM

1.1 Option to Lease. At any time during the term of the Agreement (the "Option Term"), and provided that the Agreement remains in full force and effect, Lessee shall have the right and option, upon 180 days advance written notice to Lessor, to Lease the Premises (the "Option"). In the event Lessee timely exercises the Option, Lessor shall lease to Lessee and Lessee shall lease from Lessor the Premises on the terms and provisions set forth in this Lease. In the event Lessee fails to exercise the Option during the Option Term, the Option and this Lease shall terminate and be of no further force or effect.

1.2 Rent. Lessor hereby acknowledges receipt from Lessee of the sum of $100.00, as rent for the use and occupancy of the Demised Premises during the Term.

1.3 Term. The Term (herein so called) of this Lease shall begin on the date Lessor shall receive Lessee's written notice of its election to exercise the Option (the "Commencement Date") and shall end on the date of expiration or earlier termination of the Agreement. In the event the term of the Agreement shall be extended in accordance with the provisions of the Agreement, the Term of this Lease shall be automatically extended so that the Term of this Lease shall be coterminous with the term of the Agreement.

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SBWMA/BFI Disposal Services Agreement
1.4 Priority of the Landfill. Lessee acknowledges and agrees that the rights provided herein and the Lease of the Premises shall at all times be subject to and subordinate to the rights of Lessor to operate, maintain and develop the Landfill, and its obligation to comply with all permits, approvals and requirements in connection therewith. If at any time during the Option Term or the Term of this Lease Lessor determines, in its sole discretion, that Lessor requires the use of the Premises in connection with the operation, maintenance or development of the Landfill, or its compliance with all permits, approvals and requirements in connection therewith, Lessor shall have the right to relocate the Premises to an alternative area reasonably satisfactory to Lessor and Lessee at the Landfill upon reasonable prior written notice to Lessee. Lessee shall have no rights to any oil, minerals, gas (including landfill gas), clay, dirt, rocks or other materials located on or below the Premises.

1.5 Access to the Premises. Lessor shall provide Lessee, its officers, directors, employees, agents, contractors, and invitees suitable road access to the Premises during Lessor’s regular business hours at the Landfill. In the event Lessee or its officers, directors, employees, agents, contractors, and invitees require access to the Premises outside of Lessor’s regular business hours at the Landfill, Lessee shall coordinate same with Lessor in advance. Lessee shall comply with Lessor’s reasonable rules and requirements applicable to all persons that enter the Landfill as may be noticed to Lessee in writing from time to time, and shall cause its officers, directors, employees, agents, contractors, and invitees to comply with such rules and requirements when crossing Lessor’s property for ingress to or egress to and from the Premises or when on Lessor’s property for other purposes related to the transactions contemplated in this Lease, and shall cause its officers, directors, employees, agents, contractors, and invitees to comply with such rules and requirements.

ARTICLE 2
TAXES, UTILITIES, INSURANCE AND MAINTENANCE

2.1 Taxes and Assessments. Lessor shall be responsible for payment of all real estate taxes and assessments during the Term; provided, however, Lessee shall be responsible for the payment of all personal property taxes, if any, attributable to any personal property, equipment or inventory placed on the Premises by Lessee or any of Lessee’s contractors, customers, employees, representatives, consultants or invitees.

2.2 Utilities. Lessor shall not be responsible for providing any water, electricity, sewerage, gas, telephone and other utilities to the Premises. In the event any such utilities are required by Lessee in connection with its use of the Premises, Lessee shall be responsible for the cost thereof.

2.3 Insurance.

(a) Lessee shall procure and maintain throughout the Term of this Lease Commercial General Liability Insurance (plus whatever generally available endorsements or special coverages Lessor, in its reasonable discretion, may consider appropriate) providing coverage for bodily injury (including death), premises damage and products liability insurance (where such exposure exists).
Such liability insurance shall have a combined single limit of not less than $1,000,000 per occurrence and $2,000,000 aggregate.

(b) Lessee shall also procure and maintain throughout the term of this Lease, at its sole cost and expense, the following insurance: (1) Fire and “all risks” extended coverage insurance covering Lessee’s personal property and equipment, against loss or damage containing the waiver of subrogation required in this Lease and in an amount equal to the full replacement value; and (2) State Worker’s Compensation Insurance in the statutorily mandated limits and Employers Liability Insurance with limits of not less than $500,000, or such greater amount as Lessor may from time to time require.

(c) It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease. All of the foregoing insurance policies (with the exception of Workers Compensation Insurance to the extent not available under statutory law) shall name Lessor, and such other parties as Lessor shall from time to time designate as an additional insured as their respective interests may appear, and shall provide that any loss shall be payable to Lessor, Lessee and any other additional insured parties as their respective interests may appear. All insurance required hereunder shall be placed with companies which are rated A:VII or better by Best’s Insurance Guide and licensed to do business in the State of California. All such policies shall be written as primary policies. Upon any loss, Lessee shall promptly pay to the additional insured parties as their respective interests may appear the full amount of the deductible under the policy(ies) involved. Lessee shall deliver to Lessor certificates of coverages in form and content reasonably satisfactory to Lessor as to all such policies, prior to the Commencement Date, or, in the case of renewals therefor, 15 days prior to the expiration of the prior insurance policy, together with evidence that such policies are fully paid for, and that no cancellation, material change or non-renewal thereof shall be effective except upon 30 days’ prior written notice from the insurer to Lessor.

(d) Lessor and Lessor’s agents and employees shall not be liable to Lessee, nor to Lessee’s employees, agents or visitors, nor to any other person whomever, for any injury to or death of any person, or damage to Premises caused by the Premises becoming out of repair, nor shall Lessor be liable to Lessee, nor to Lessee’s employees, agents or visitors, nor to any other person whomever, for any loss or damage that may be occasioned by or through the acts or omissions of any persons whomever. Lessor shall not be liable to Lessee or to Lessee’s employees, agents, contractors, invitees or to any other person whomever, for any injury to any person or loss or damage to property in or about the Premises caused by any reason whatsoever.

(e) Lessor and Lessee each hereby release the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to Premises caused by a casualty which is insurable under the standard fire and extended coverage insurance. Lessor and Lessee agree that all policies of insurance obtained by them pursuant to the terms of this Lease shall contain provisions or endorsements thereto waiving the insurer’s rights of subrogation with respect to claims against the other, and, unless the policies permit waiver of subrogation without notice to the insurer, each shall notify its insurance companies of the existence of the waiver and indemnity provisions set forth in this Lease.
(f) Lessee shall require that all agents, representatives, consultants and contractors using the Premises satisfy the insurance requirements set forth in this Section.

2.4 Maintenance. Lessee agrees that, at its sole cost and expense, it will keep and maintain the Premises in good repair and appearance during the continuance of this Lease, except for ordinary wear and tear. Lessor shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature or description to, the Premises or any part thereof, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to maintain the Premises or any part thereof in any way, and Lessee hereby expressly waives any right to make repairs at the expense of Lessor which may be provided for in any statute or law in effect at the time of the execution of this Lease or any statute of law which may thereafter be enacted. Lessor shall be responsible for maintaining the entrance and access roads that provide transfer trucks and trailers access to the Premises.

ARTICLE 3
USE AND ASSIGNMENT

3.1 Use. Lessee shall use the Premises solely for: parking of a maximum of 35 transfer trucks and trailers; parking of related employee vehicles during the period such employees are driving a transfer truck and trailer only (no overnight parking); limited maintenance of transfer trucks and trailers (i.e., replacement of lights) provided that such maintenance shall not include (i) the changing, adding, or replacing fuel, oil solvents, or fluids, (ii) the maintenance, servicing or repair of engines, brakes or other mechanical systems, or (iii) any other use or activity that would involve the use or potential release of Hazardous Materials; and/or, storage of carts, bins, and/or roll-off containers or other equipment that is related to the Lessee’s, or its designee(s)’ provision of collection, processing, and transfer services for the Authority Service Area. All transfer trucks and trailers, carts, bins, roll-off containers and equipment shall be empty prior to entering the Premises. The Lessee or its designee(s), will not conduct any regular maintenance of transfer trucks and trailers; however, the occasional need may arise to perform maintenance of the transfer trucks and trailers that may involve changing, adding, or replacing fuel, oil solvents, or fluids; and, in such case, the Lessee or its designee(s), will perform such maintenance in an area designated by the Lessor.

Lessor may request that the Lessee install fencing with visibility screening and, if so requested, Lessee shall install such fencing within 120 days of such request. Lessee shall maintain surfaces of the Premises including grading the area for transfer vehicle and employee parking accessibility and container storage. Lessee shall maintain and manage the transfer vehicles to avoid dripping or leaking of mechanical fluids. Lessee shall empty containers prior to storing the containers on the Premises. Lessee shall park vehicles in an orderly manner and store containers in a manner that is organized and does not create a visual or vector related nuisance on the Premises.

Lessee shall comply with the Best Management Practices set forth in the Agreement with respect to its use of the Premises, and shall cause its employees, contractors, agents, consultants and representatives to strictly adhere to same at all times during the Term of this Lease. Lessee
acknowledges and agrees that Lessee shall be solely responsible for providing security for the
Premises and the equipment and personal property of Lessee and any of its contractors, agents,
consultants or representatives located on the Premises.

3.2 **Adjacent Operations.** Lessee acknowledges that the Premises is located on
property owned by Lessor which is used as a solid waste disposal landfill ("Adjacent Operations")
Lessee agrees that: (a) neither it nor its contractors, agents, consultants, representatives or invitees
shall object to the presence of the Adjacent Operations; (b) Lessee and its subtenants, occupants,
successors and assigns shall not object to any expansion of the Adjacent Operations; and (c) no
demands, suits or other claims whatsoever of any type shall be made by Lessee or its subtenants,
occupants, successors or assigns against Lessor or any of its predecessors in interest with respect
to or arising from any impact on Lessee’s use of the Premises caused by the Adjacent Operations.

3.3 **Compliance with Law.** Lessee agrees, at its own expense, to comply with all laws,
orders, regulations, permits and approvals of federal, state and municipal authorities which are
applicable to Lessee’s use and occupancy of the Premises, or Lessor’s use and occupancy of the
Landfill, including without limitation any conditional use permit or land use restrictions applicable
thereto, and shall cause its employees, contractors, agents, consultants and representatives to
strictly adhere to same at all times during the Term of this Lease. Lessee and its contractors,
agents, consultants and representatives shall, at their own expense, obtain and maintain all required
licenses or permits necessary for Lessee’s use or occupancy of the Premises.

3.4 **Quiet Enjoyment.** Lessor covenants and represents to Lessee that Lessee shall, at
all times during this Lease, peaceably and quietly enjoy the Premises without any disturbance from
Lessor or from any other person claiming through Lessor; provided Lessee and its contractors,
agents, consultants and representatives comply with its obligations hereunder.

3.5 **Transfer of Lessor's Interest.** Lessor shall have the right to assign its interest in
this Lease to any party in Lessor's sole discretion. If Lessor sells or transfers its interest in the
Premises (other than a transfer for security purposes) Lessor shall be released from all obligations
and liabilities accruing thereafter under this Lease, if Lessor's successor has assumed in writing
Lessor's obligations under this Lease.

3.6 **Assignment and Subletting.** Lessee shall not transfer this Lease or any interest
therein (any sale, assignment, mortgage, pledge, hypothecation or encumbrance of this Lease shall
be deemed a "transfer"), and shall not sublet the Premises or any part thereof, without the prior
written consent of Lessor (such consent to be in the sole discretion of Lessor) in each instance, and
any attempt to do so without such consent shall be voidable by Lessor and, at Lessor's election,
shall constitute a material default under this Lease.
ARTICLE 4
CONDITION OF PREMISES

4.1 Condition of Premises. LESSEE ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE LOCATED ON REAL PROPERTY WHICH CONTAINS A SOLID WASTE LANDFILL. AS A MATERIAL PART OF THE CONSIDERATION FOR THIS LEASE, LESSOR AND LESSEE AGREE THAT, LESSEE IS LEASING THE PREMISES "AS IS" WITH ALL FAULTS AND DEFECTS, LATENT AND PATENT, AND LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE PREMISES, (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH LESSEE MAY INTEND TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION INCLUDING WITHOUT LIMITATION, ALL APPLICABLE ZONING LAWS, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER RELATED TO OR CONCERNING THE PREMISES. LESSEE SHALL NOT SEEK RECOUERCE AGAINST LESSOR ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY LESSEE WITH REGARD TO ANY OF THE MATTER DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE AND HEREBY ASSUMES THE RISK OF ANY ADVERSE MATTERS RELATED TO THE MATTERS DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE FROM AND AFTER THE EFFECTIVE DATE OF THIS LEASE. LESSEE ACKNOWLEDGES THAT LESSEE, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF LESSOR OR ANY STATEMENT, REPRESENTATION OR OTHER ASSERTION MADE BY LESSOR WITH RESPECT TO THE PREMISES. LESSEE FURTHER ACKNOWLEDGES THAT NO INDEPENDENT INVESTIGATION OR VERIFICATION HAS BEEN OR WILL BE MADE BY LESSOR WITH RESPECT TO ANY INFORMATION SUPPLIED BY OR ON BEHALF OF LESSOR CONCERNING THE PREMISES, AND LESSOR MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, IT BEING INTENDED BY THE PARTIES THAT LESSEE SHALL VERIFY THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION ITSELF.

4.2 Improvements. Lessee shall not make any alterations, additions and improvements to the Premises without the prior written consent of Lessor, which may be withheld in Lessor's reasonable discretion. Lessee shall not have the authority to, and shall not, permit any
lien, charge or encumbrance of any kind whatsoever to be placed upon the Premises, and Lessee
shall bond or discharge any such lien, charge or encumbrance within 15 days' written notice from
Lessor.

4.3 Condemnation. In the event of condemnation or other similar taking or transfer
due to governmental order, of all or any portion of the Premises which renders the Premises
reasonably and economically unsuitable for Lessee's use, this Lease, at Lessor's sole discretion,
shall terminate, in which case Lessee shall be released of all further duties and obligations
hereunder. Lessor shall be entitled to the entire proceeds of any condemnation award.

ARTICLE 5
DEFAULT AND REMEDIES

5.1 Default. The following events shall be deemed to be events of default by Lessee
under this Lease:

(a) Lessee shall fail to pay any other obligation under this Lease involving the
payment of money and such failure shall continue for a period of 10 days after such payment shall
become due and payable.

(b) Lessee shall fail to comply with any provision of this Lease, other than as described in
subsection (a) above, and either shall not cure such failure within 30 days after written notice
thereof to Lessee.

(c) Lessee shall desert or vacate the Premises or any substantial portion of the
Premises.

5.2 Remedies. Upon the occurrence of any such event of default, Lessor shall have the option to pursue any one or more of the following remedies to the extent permitted by law:

(a) Without any further notice or demand whatsoever, Lessee shall be obligated to
reimburse Lessor for the damages suffered by Lessor as a result of the event of default, plus interest
on such amount at the Default Rate and Lessor may pursue a monetary recovery from Lessee.

(b) Without any further notice or demand whatsoever, Lessor may take any one or more
of the actions permissible at law to ensure performance by Lessee of Lessee's covenants and
obligations under this Lease. In this regard, and without limiting the generality of the immediately
preceding sentence, it is agreed that if Lessee deserts or vacates the Premises, Lessor may enter
upon and take possession of such premises in order to protect them from deterioration. It is further
agreed in this regard that in the event of any default described in Subsection (b) above, Lessor
shall have the right to enter upon the Premises by force if necessary without being liable for
prosecution or any claim for damages therefor, and do whatever Lessee is obligated to do under
the terms of this Lease; and Lessee agrees to reimburse Lessor on demand for any expenses which
Lessor may incur in thus effecting compliance with Lessee's obligations under this Lease, and
Lessee further agrees that Lessor shall not be liable for any damages resulting to the Lessee from such action.

(c) Lessor may re-enter the Premises with or without terminating this Lease in which event Lessee shall immediately surrender the Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which Lessor may have for possession, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. In addition, Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of any re-entry effected pursuant to this subsection (c), said loss and damage to be determined by either of the following alternative measures of damages.

If Lessor elects to exercise the remedy prescribed in Subsection (b) above, this election shall in no way prejudice Lessor's right at any time thereafter to cancel said election in favor of the remedy prescribed in Subsection (c) above, provided that at the time of such cancellation Lessor is still in default. Pursuit of any of the above remedies shall not preclude pursuit of any other remedies prescribed in other sections of this Lease and any other remedies provided by law. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

(d) It is agreed that, in addition to payments required pursuant to Subsections (b) and (c) above. Lessee shall compensate Lessor for all expenses incurred by Lessor in repossession (including, among other expenses, any increase in insurance premiums caused by the vacancy of the Premises), all losses incurred by Lessor as a direct result of Lessee's default and a reasonable allowance for Lessor's other direct costs attributable directly or indirectly to Lessee's default and Lessor's pursuing the rights and remedies provided herein and under applicable law.

(e) Lessor may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Lessee herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Lessor hereunder shall be deemed cumulative and not exclusive of each other.

(f) If on account of any breach or default by Lessee in its obligations hereunder, Lessor shall employ an attorney to present, enforce or defend any of Lessor's rights or remedies hereunder, Lessee agrees to pay any reasonable attorneys' fees incurred by Lessor in such connection.

(g) Lessee hereby waives any and all rights to receive a notice to quit and rights of redemption or restoration upon the expiration of this Lease conferred by any present or future law, statute or otherwise upon the expiration or sooner termination of the term of this Lease, the entry of final unappealable judgment for recovery of possession through any action or proceeding, or Lessor's obtaining possession of the Premises under the terms of this Lease. In an event of default occurs, Lessee hereby waives its rights to receive any notice of default, as well as any period of right to cure said default, as may be required by State or local law, and Lessees' rights in that regard shall be solely as provided in this Lease.
ARTICLE 6
ENVIRONMENTAL

6.1 Compliance by Lessee. During the Term of this Lease, Lessee shall comply with all Environmental Laws and Environmental Permits (each as defined in Section 6.5 hereof) applicable to the operation or use of the Premises, will cause all other persons occupying or using the Premises to comply with all such Environmental Laws and Environmental Permits, will immediately pay or cause to be paid all costs and expenses incurred by reason of such compliance, and will obtain and renew all Environmental Permits required for operation or use of the Premises.

6.2 Prohibition. Lessee shall not generate, use, treat, store, handle, release or dispose of, or permit the generation, use treatment, storage, handling, release or disposal of Hazardous Materials (as defined in Section 6.5 hereof) on the Premises, or transport or permit the transportation of Hazardous Materials to or from the Premises.

6.3 Notice to Lessor. Lessee will immediately advise Lessor in writing of any of the following: (a) any pending or threatened Environmental Claim (as defined in Section 6.5 hereof) against Lessee relating to the Premises; (b) any condition or occurrence on the Premises or any Premises adjoining the Premises that could reasonably be anticipated to cause the Premises to be subject to any restrictions on the ownership, occupancy, use or transferability of the Premises under any Environmental Law; and (c) the actual or anticipated taking of any removal or remedial action by Lessee in response to the actual or alleged presence of any Hazardous Material on the Premises. All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and Lessee’s response thereto. In addition, Lessee will provide Lessor with copies of all communications regarding the Premises with any government or governmental agency relating to Environmental Laws, all such communications with any person relating to Environmental Claims, and such detailed reports of any such Environmental Claim as may reasonably be requested by Lessor.

6.4 Indemnification.

(a) Lessee agrees to defend, indemnify and hold harmless the Indemnitees (as defined in Article 16) from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including attorneys’ and consultants’ fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Indemnitees directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials in, on or under the Premises which is caused or permitted by Lessee and (b) any Environmental Claim relating in any way to Lessee’s operation or use of the Premises (the “Hazardous Materials Indemnified Matters”). The provisions of this Article 21 shall survive the expiration or sooner termination of this Lease.

(b) All sums paid and costs incurred by Lessor with respect to any Hazardous Materials Indemnified Matter shall bear interest at the Default Rate of interest from the date so paid or
incurred until reimbursed by Lessee, and all such sums and costs shall be immediately due and payable on demand.

6.5 Definitions.

(a) “Hazardous Materials” means (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde, foam insulation, and radon gas; (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other substance exposure which is regulated by any governmental authority.


(c) “Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or any Environmental Permit, including without limitation (i) any and all Environmental Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

(d) “Environmental Permits” means all permits, approvals, identification numbers, licenses and other authorizations required under any applicable Environmental Law.

6.6 Survival. The provisions of this Section shall survive the expiration or sooner termination of this Lease.
7.1 Indemnification by Lessee. Lessee agrees to indemnify and hold harmless Lessor and its affiliated companies and their agents, servants, directors, officers, shareholders, and employees (as used in this Section, Lessor and its affiliated companies and their agents, servants, directors officers, shareholders, and employees are collectively called "Indemnities") from and against any and all liabilities, losses, damages, liens, claims, suits, causes of action, costs (including court costs, attorneys' fees and costs of investigation), and actions of any kind arising out of, caused by, resulting from or alleged to arise by reason of injury to or death of any person or damage to or loss of Premises occurring on, in, or about the Premises or by reason of any other claim whatsoever of any person or party occasioned or alleged to be occasioned in whole or in part by any act or omission on the part of Lessee or any invitee, licensee, employee, director, officer, servant, contractor, subcontractor or Lessee of Lessee, or by any breach, violation, or nonperformance of any covenant of Lessee under this Lease, even if such liability, losses, damages, liens, claims, suits, causes of action, costs, injuries, deaths or damages arise from or are attributed to the sole negligence of any Indemnitee. If any action or proceeding shall be brought by or against any Indemnity in connection with any such liability or claim, Lessee, on notice from Lessor, shall defend such action or proceeding, at Lessee's expense, by or through attorneys reasonably satisfactory to Lessor. The provisions of this Section shall apply to all activities of Lessee with respect to the Premises, whether occurring before or after the Commencement Date of the Term and Lessee's obligations under this Section shall not be limited to the limits or coverage of insurance maintained or required to be maintained by Lessee under this Lease.

7.2 Damage or Destruction. If the Premises, or any part thereof, is damaged by fire or other cause against which Lessee is required to carry insurance pursuant to this Lease, Lessor shall not be liable to Lessee for any loss, cost or expense arising out of or in connection with such damage.

7.3 Access to Premises. Lessor and Lessor's agents and representatives shall have the right to enter the Premises at any time in case of an emergency, and at all reasonable times for any lawful purpose including, but not limited to, examining the Premises; making such repairs or alterations therein as may be necessary or appropriate in Lessor's sole judgment for the safety and preservation thereof, or as required by any law, rule, regulation, statute, order, permit or direction of any applicable governmental authority; erecting, installing, maintaining, repairing or replacing equipment running in, to, or through the Premises; and posting notices of non-responsibility. Any entry to the Premises by Lessor shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises, or an eviction, partial eviction or constructive eviction of Lessee from the Premises or any portion thereof, and shall not relieve Lessee of its obligations hereunder.

7.4 Brokers. Each of the parties represents and warrants there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and each of the parties agrees to indemnify and hold harmless the other from any and all liabilities, costs and expenses (including attorneys' fees) arising from any such claim.
7.5 Relationship of Parties. The relationship between the parties hereto shall be solely as set forth herein and neither party shall be deemed the employee, agent, partner or joint venturer of the other.

7.6 Separability. Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. Each and all of the rights and remedies given to either party by this Lease or by law or equity are cumulative, and the exercise of any such right or remedy by either party shall not impair such party's right to exercise any other right or remedy available to such party under this Lease or by law or equity.

7.7 No Waiver. No delay in exercising or omission of the right to exercise any right or power by either party shall impair any such right or power, or shall be construed as a waiver of any breach or default or as acquiescence thereto. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach of the same covenant, provision or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

7.8 Attorneys' Fees. In the event of any controversy arising under or relating to the interpretation or implementation of this Lease or any breach thereof, the prevailing party shall be entitled to payment for all costs and attorneys' fees (both trial and appellate) incurred in connection therewith.

7.9 Entire Lease. This Lease together with any Exhibits or attachments hereto and other written agreements entered into contemporaneously herewith constitutes and represents the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein. This Lease may be amended, supplemented, modified or discharged only upon an agreement in writing executed by all of the parties hereto. This Lease shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, subject, however, to the limitations contained herein. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

7.10 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

7.11 Subordination. This Lease is and shall be subject and subordinate, at all times, to the lien of any mortgages or deeds of trust which now affect the Premises.

7.12 Notices. All notices or other communications shall be deemed given by: (1) personal delivery or overnight courier, or (2) a written notice mailed via certified mail, return receipt requested; such notices to be addressed to the parties at the addresses set forth below:
Lessor: Browning-Ferris Industries of California, Inc.
c/o Republic Services, Inc.
18500 North Allied Way
Phoenix, AZ 85054
Attn: General Counsel

With a copy
to: Spotts Fain P.C.
411 East Franklin Street, 6th Floor
Richmond, VA 23219
Attn: David A. Reed

Lessee: South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
Attn: Executive Director

7.13 Recording. Lessee shall not record this Lease or a memorandum hereof.

7.14 Estoppel. Lessee agrees that it will from time to time upon request by Lessor within
10 business days execute and deliver to Lessor a written statement addressed to Lessor which shall
certify that this Lease is unmodified and in full force and effect (or if there have been
modifications, that the same is in full force and effect as so modified), shall confirm that Lessor is
not in default as to any obligations of Lessor under this Lease (or if Lessor is in default, specifying
any default), and shall contain such other information or confirmations as Lessor may reasonably
require.

7.15 Surrender. Lessee shall deliver and surrender to Lessor possession of the Premises
immediately upon the expiration of the Term or the earlier termination of this Lease in as good
condition and repair as the same were on the Commencement Date (ordinary wear and tear only
excepted), and with all equipment, personal property and other items placed on the Premises by or
for Lessee or any of its contractors, agents, consultants, representatives or invitees removed. Any
such items not removed by Lessee upon the expiration of the Term or earlier termination of this
Lease shall be deemed abandoned, and Lessor shall have the right to dispose of such items as
Lessor deems appropriate at the sole cost and expense of Lessee. In the event Lessee remains in
possession of the Premises after the expiration or earlier termination of this Lease (i) Lessor
expressly reserves the right to reenter the Premises, and the right to assert any remedy at law or in
equity to evict Lessee and collect damages in connection with any such holding over, and (ii)
Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims,
demands, actions, losses, damages (including consequential damages), obligations, costs and
expenses, including, without limitation, attorneys’ fees incurred or suffered by Lessor by reason
of Lessee’s failure to surrender the Premises on the expiration or earlier termination of this Lease
in accordance with the provisions of this Lease. In the event Lessee holds over, either with or
without the consent of Lessor, Lessee hereby waives its rights to receive any prior written notice
to quit and vacate the Premises as may be required by State or local law.
IN WITNESS WHEREOF, the parties hereto have each executed this Lease on the dates
set forth in their respective acknowledgments below to be effective for all purposes as of the date
first written above.

LESSOR:

BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC., a California corporation

By: ______________________________
Name: ___________________________
Title: ____________________________

LESSEE:

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a California joint powers authority

By: ______________________________
Name: ___________________________
Title: ____________________________
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF

On _______________, 2019, before me, ____________________________, a Notary Public, personally appeared ____________________________, who proved to me 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 signature(s) 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)

STATE OF CALIFORNIA

COUNTY OF

On _______________, 2019, before me, ____________________________, a Notary Public, personally appeared ____________________________, who proved to me 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 signature(s) 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)
ATTACHMENT “A” - DESCRIPTION OF PREMISES

The Premises is a maximum of 3 acres located at 12310 San Mateo Rd, Half Moon Bay, California is generally shown in the pictures below.
Page intentionally left blank
EXHIBIT D: Contractor's Phase 2 Proposal
Phase 2 Proposal for Solid Waste Disposal and Other Material Handling Services
Prepared for the South Bayside Waste Management Authority

Nov. 21, 2018

REPUBLIC SERVICES
We'll handle it from here.

Rethink waste.
A Public Agency

May 2019

SBWMAY84H Disposal Services Agreement
This page intentionally left blank
November 21, 2018

Hilary Gans
SBWMA
610 Elm Street, Suite 202
San Carlos, CA 94070

Subject: Response to Phase 2 RFP for Solid Waste Disposal and Other Material Handling Services

Dear Mr. Gans:

Browning-Ferris Industries of California, Inc., dba Ox Mountain Landfill, a wholly-owned subsidiary of Republic Services, Inc. (Republic Services), is pleased to respond to the South Bayside Waste Management Authority (SBWMA) Phase 2 Request for Proposal (RFP) for Solid Waste Disposal and Other Material Handling Services dated November 1, 2018. Republic Services proposes to provide said services in accordance with requirements of the second phase of this procurement process, as well as those included in our original Proposal to the SBWMA.

Republic remains committed to providing the best solution to meet the SBWMA’s disposal and other material handling needs in the most reliable, transparent and cost-efficient manner. We have placed a great deal of thought into the preparation and contents of both this and our original proposal, and believe that they serve as an indication of our desire and willingness to continue our partnership with the SBWMA.

We are proud to be able to offer the following benefits to the SBWMA with our Phase 2 Proposal, which are described in greater detail in our Proposal:

- Land Leasing Services at no cost to the SBWMA
- Reduced Solid Waste Disposal Rate for the 10-year initial term: than presented in our original Proposal
- Additional handling of materials, including dirt, mixed C&D, concrete, asphalt and rock, for beneficial reuse onsite
- Purchase of dedicated tipper for the SBWMA’s transfer station operator

We applaud the SBWMA’s focus on its environmental goals, as sustainability remains a core focus for Republic Services. While the diversion of materials is a key component of sustainability, however, so is minimizing our carbon footprint. The Ox Mountain Landfill not only provides the most economical option for disposal services, but also the most environmentally sustainable one due to its proximity to the
SBWMA. The SBWMA's carbon footprint will remain minimal in comparison to having to transport the materials to facilities outside of San Mateo County.

We look forward to building upon our partnership with the SBWMA and its Member Agencies and the next steps in the process.

Sincerely,

Michael Caprio  
Area President

Michael Mahoney  
General Manager
Table of Contents
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   B. Land Leasing Services (Optional) ................................................................................ 3
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1.0 Technical Proposal

As stated in our original proposal submitted September 24, 2018, Republic Services’ Ox Mountain Landfill is a fully permitted, state-of-the-art Class III disposal facility that will require no additional permits for the continued acceptance of all of the South Bayside Waste Management Authority’s (SBWMA) solid waste throughout the term of the Future Agreement.

We are prepared and willing to offer other material handling services for the materials specified in the Phase 2 Request for Proposals as an option to our core disposal services proposal as requested by the SBWMA. Republic Services is able to begin receiving these materials primarily for their beneficial reuse at the start of the new Agreement on January 1, 2020.

Republic Services currently accepts and has been accepting the materials proposed in this section for beneficial reuse since the facility opened.

It is our understanding that the SBWMA’s transfer station operator will be responsible for conducting load checks of the materials and removing any visible contaminants prior to delivering the materials to Ox Mountain. This is critical to ensure maximum diversion and reuse of the delivered materials. The solid waste rate will be applied on any loads not meeting the specifications detailed below or subsequently agreed to with the SBWMA. The transfer station operator will be notified of any issues as they occur.

A. Other Material Handling Services

1. Clean Dirt

Ox Mountain Landfill will accept clean dirt as a subset of the SBWMA’s estimated 35,000 to 50,000 tons of mixed construction and demolition debris (C&D) managed by the SBWMA annually. The material must not include significant quantities of rocks, aggregates, concrete, asphalt, rebar or other typical C&D material to be accepted as “clean dirt.”

Any loads of clean dirt will be directed to a segregated area for offloading. Clean dirt typically requires minimal handling by our facility operations.

The loads of clean dirt will be used on site for alternative daily cover (ADC), daily and intermediate cover and road subgrade throughout the year.

2. Large Aggregate (Concrete, Asphalt)

Ox Mountain Landfill will accept large aggregates (materials larger than 4 inches) as a subset of the SBWMA’s estimated 35,000 to 50,000 tons of mixed C&D managed by the SBWMA annually. Large aggregates to be accepted include concrete, asphalt, rocks, aggregates containing little or no dirt or non-aggregate materials up to a maximum of 12 inches. The load must not have significant quantities of rebar that protrude from the edge of the blocks.

Any loads of large aggregates will be directed to a segregated area for offloading. Republic Services will grind the material as needed to meet the criteria for its use onsite. Large aggregates will be used on site for road base, ADC or all weather surfaces. Any usage as ADC must comply with a grain size specification by volume of 95% less than 12 inches and 50% less than 6 inches.

3. Mixed Dirt with Rocks or Aggregates

Ox Mountain Landfill will accept mixed dirt with rocks or aggregates as a subset of the SBWMA’s estimated 35,000 to 50,000 tons of mixed construction and demolition debris C&D managed by the SBWMA annually.

Any loads of mixed dirt will be directed to a segregated area for offloading. The mixed dirt may be screened, separating the dirt from aggregates to produce beneficial, non-disposable uses for both end products.

The products will be used on site for ADC, daily and intermediate cover and road base throughout the year. Any usage of the aggregates/rock as ADC must comply with a grain size specification by volume of 95%
less than 12 inches and 50% less than 6 inches.

4. **Concrete, Asphalt, Rock**

Ox Mountain Landfill will accept concrete, asphalt, rocks and aggregates smaller than 4 inches as a subset of the SBWMA's estimated 35,000 to 50,000 tons of mixed C&D managed by the SBWMA annually. Concrete must not have significant quantities of rebar that protrude from the edge of the blocks.

Any loads of these materials will be directed to a segregated area for offloading. Republic Services will grind the material as needed to meet the criteria for its use on site. These materials will be used for road base, all weather surfaced or ADC.

5. **Mixed C&D**

Ox Mountain Landfill does not have a C&D materials recovery facility (MRF), as such, Republic Services proposes that any mixed C&D loads be delivered to our Newby Island Resource Recovery Park in San Jose for processing at our existing C&D MRF.

Newby Island C&D MRF guarantees a minimum diversion rate of 75% for all clean loads of mixed C&D, but the facility actually averages an 80%+ diversion rate. Newby Island will accept up to 7,500 tons of mixed C&D material annually from the SBWMA through the term of the Future Agreement.


Ox Mountain Landfill will accept approximately 10,000 tons of wood waste and clean yard trimmings (brush, leaves, grass, etc.) from the SBWMA annually through the term of the Agreement.

Republic Services will either acquire a grinder or subcontract the work to a third-party contractor for onsite processing. The finished product will be used on site for erosion control.

7. **Residential Organics Processing**

Republic Services and the SBWMA currently have in place an organics processing agreement at our composting facility at Newby Island. The agreement is nearing the completion of the first year of a five year extension. While Republic Services is open to considering an extension of the current agreement to meet the SBWMA's ongoing needs, additional specifics of any extension will need to be discussed so that the long term goals of both parties can be achieved.

The permitting and approval process for a new composting facility in the Bay Area is extensive and protracted, eliminating the feasibility of having such an operation running at Ox Mountain anytime in the next few years. However, we will continue to explore any opportunities and partnerships to develop one, and notify the SBWMA of any progress.

8. **Commercial Organics Processing**

Republic Services and the SBWMA currently have in place an organics processing agreement at our composting facility at Newby Island. As noted above, Republic Services is open to discussing an extension of the current agreement to meet the SBWMA's ongoing needs. However, the specifics of such and extension will need to be discussed to address the goals of both parties.

The permitting and approval process for a new composting facility in the Bay Area is extensive and protracted, eliminating the feasibility of having such an operation running at Ox Mountain anytime in the next few years. However, we will continue to explore any opportunities and partnerships to develop one, and notify the SBWMA of any progress.

9. **Biosolids**

Ox Mountain Landfill can accept approximately 50 tons of biosolids per day from the Redwood Waste Water Treatment Plant for disposal. Based on the 20% to 25% solids content expected, we are unable to use this material for any type of beneficial reuse. However, Republic Services is open to conducting a pilot project to mix the...
biosolids with green waste, ash or soil for use as ADC should the SBWMA and treatment plant be interested in exploring this possibility.

The pilot project would be contingent on approval by the facility's Local Enforcement Agency (LEA), with fees to be negotiated with the SBWMA at such time.

10. Other Services
Republic Services will purchase a new tipper to be dedicated for the SBWMA - at no additional cost impacts - for its solid waste disposal needs through the term of the Future Agreement. This will further minimize the SBWMA transfer station operator's trip time and maintain their operational efficiencies.

B. Land Leasing Services (Optional)
Republic Services is able to provide a land leasing arrangement for up to 3 acres to the SBWMA for parking 25 to 35 transfer tractors and related auto parking currently being conducted at the Shoreway Environmental Center in San Carlos as well as limited maintenance of the trucks as needed. The SBWMA may also store collection carts and possibly some equipment as space allows within the leased area.

To show how much we value our relationship with the SBWMA and our desire to have it continue with the Future Agreement, Republic Services would not charge the SBWMA any rent for the land leasing arrangement. However, the SBWMA or their subcontractor would be responsible for all permitting and establishment of any measures needed to ensure the arrangement does not cause issues with aesthetics or for the facility's operating permits and our relationship with the LEA. This includes managing the surface water runoff from the leased area and other environmental controls to manage any fluid leaks/spills from the transfer trucks and their occasional maintenance.

The area would also need to be maintained in an orderly manner to prevent vectors and other related issues.

Since Ox Mountain is already a secure site, no additional security is needed for the area to be leased. Ingress and egress will be through the landfill's main gate located on
San Mateo Road (Highway 92). The SBWMA’s transfer station operator and their employees would have access given to them Monday through Saturday, resulting in no impacts to their current operational hours.

All roads and all weather surfaces accessing the area will be established and maintained by the SBWMA subcontractor. The photo on the previous page shows the area to be leased. Republic Services currently uses the area for its Half Moon Bay collection operations container storage and would work with the SBWMA on rearranging the area to best meet the needs of the SBWMA and our operations.
## 2.0 Proposal Forms

### A. Enhanced Rate Proposal Form (Optional)

An Excel version of the proposal form is also included separately with our submission.

<table>
<thead>
<tr>
<th>Material</th>
<th>Component</th>
<th>Government Component</th>
<th>Total Rate</th>
<th>Anticipated Duration (days)</th>
<th>Capacity (tonnes/year)</th>
<th>Facility Name</th>
<th>Proposed Process or Use of Material (Disposal is not allowed)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landfill</td>
<td>2.0 tonnes</td>
<td>0.00</td>
<td>2.0 tonnes</td>
<td>100%</td>
<td>90.0</td>
<td>On Mountain</td>
<td>Beneficial re-use on site. Material will be used as an alternative to natural material.</td>
<td></td>
</tr>
<tr>
<td>Leachate</td>
<td>3.0 tonnes</td>
<td>0.00</td>
<td>3.0 tonnes</td>
<td>100%</td>
<td>90.0</td>
<td>On Mountain</td>
<td>Beneficial re-use on site. Material is to be used as an alternative to natural material.</td>
<td></td>
</tr>
<tr>
<td>Mixed (all)</td>
<td>4.5 tonnes</td>
<td>0.00</td>
<td>4.5 tonnes</td>
<td>100%</td>
<td>90.0</td>
<td>On Mountain</td>
<td>Beneficial re-use on site. Material is to be used as an alternative to natural material.</td>
<td></td>
</tr>
<tr>
<td>Batching</td>
<td>1.0 tonnes</td>
<td>0.00</td>
<td>1.0 tonnes</td>
<td>100%</td>
<td>90.0</td>
<td>On Mountain</td>
<td>Beneficial re-use on site. Material is to be used as an alternative to natural material.</td>
<td></td>
</tr>
<tr>
<td>Washed Products</td>
<td>1.5 tonnes</td>
<td>0.00</td>
<td>1.5 tonnes</td>
<td>100%</td>
<td>90.0</td>
<td>On Mountain</td>
<td>Beneficial re-use on site. Material is to be used as an alternative to natural material.</td>
<td></td>
</tr>
</tbody>
</table>

Note: TBD notation is intended to be a placeholder for future discussions; quantities discussed will be determined on a case-by-case basis.
A. Enhanced Rate Proposal Form (Continued)

<table>
<thead>
<tr>
<th>Section E: Government Fees</th>
<th>Proprietary Information or other material handling services held on Rate Proposal Form.</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Proposer to list each fee below)</td>
<td>Specify material/ service</td>
<td>Specify material/ service</td>
</tr>
<tr>
<td>San Mateo County Refuse Fee</td>
<td>$9.83</td>
<td>$0.00</td>
</tr>
<tr>
<td>1/1/16-3/31/20 Fee</td>
<td>$1.40</td>
<td>$0.00</td>
</tr>
<tr>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
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</tr>
<tr>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Total Government Component ($)</td>
<td>$11.23</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Note: The Total Government Component must equal the Government Component presented on the Rate Proposal Form.
B. Disposal Rate Proposal Form for Split Tonnage

At this time, Republic Services preference is to maintain our original proposal of receiving all of the volume. As such, the proposed pricing assumes the SBWMA contracts exclusively with Republic Services for all disposal services outlined within the agreement and solid waste tonnage is not split between disposal facilities.

Rate Proposal
(Valid January 1, 2020 through December 31, 2020)

<table>
<thead>
<tr>
<th>Material</th>
<th>Contractor Component ($)</th>
<th>Government Component ($)</th>
<th>Total Rate with County ABD 399 Fee ($)</th>
<th>Maximum Vehicle Turnaround Time (hrs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solid waste, 7-year initial term</td>
<td>$41.34</td>
<td>$11.23</td>
<td>$52.57</td>
<td>30</td>
</tr>
<tr>
<td>Solid waste, 10-year initial term</td>
<td>$41.34</td>
<td>$11.23</td>
<td>$52.57</td>
<td>30</td>
</tr>
<tr>
<td>Compacted solid waste, 7-year initial term</td>
<td>$41.34</td>
<td>$11.23</td>
<td>$52.57</td>
<td>30</td>
</tr>
<tr>
<td>Compacted solid waste, 10-year initial term</td>
<td>$41.34</td>
<td>$11.23</td>
<td>$52.57</td>
<td>30</td>
</tr>
</tbody>
</table>

**Notes (Optional):**

- At this time, Republic Services preference is to maintain our original proposal of receiving all of the volume. As such, the proposed pricing assumes the SBWMA contracts exclusively with Republic Services for all disposal services outlined within the agreement and solid waste tonnage is not split between disposal facilities.
- Republic Services has reduced the Contractor Component to be the same as the 7-year initial term. This is a change from our original proposal. At this time, Republic Services preference is to maintain our original proposal of receiving all of the volume. As such, the proposed pricing assumes the SBWMA contracts exclusively with Republic Services for all disposal services outlined within the agreement and solid waste tonnage is not split between disposal facilities.

**B. Rates for Other Material Handling Services ($/ton):**

- **Tuff:** $0.00
- **Gravel:** $0.00
- **Mixed C&D Processing:** $0.00
- **Organic Processing:** $0.00
- **Other materials (Optional):** $0.00

**Notes (Optional):**

- Please refer to Attachment A for updated rate information.

**C. Land Leasing Services:**

- **Land lease rate ($/sft):** $0.00

**Notes (Optional):**

- Please refer to Attachment A for updated information.

**D. Vehicle Turnaround Time:**

<table>
<thead>
<tr>
<th>Average vehicle turnaround time (minutes)</th>
<th>Solid Waste</th>
<th>Compacted Solid Waste</th>
<th>Other Materials (Optional)</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>30</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

**Notes (Optional):**

- Rates for other material handling services shall only be provided if (1) the proposal has existing capabilities to provide these services; and (2) the proposer is able to commit to providing these services to the SBWMA at the date of this agreement.
### B. Disposal Rate Proposal Form for Split Tonnage (Continued)

<table>
<thead>
<tr>
<th>Section E: Government Fees</th>
<th>Required Information</th>
<th>Optional Information on Other Material Handling Services Listed in Section D.1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Solid waste</td>
<td>Competed solid waste (g)</td>
</tr>
<tr>
<td>San Mateo County AB 934 Ton</td>
<td>19 83</td>
<td>19 83</td>
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(a) Compressed solid waste refers to solid waste compacted at a transfer or processing facility prior to delivery to the landfill.

(b) The Total Government Component must equal the Government Component presented on the Rate Proposal Form.
SBWMA Phase 2 RFP for Solid Waste Disposal and Other Material Handling Services
Follow-up Questions for Republic

**Republic Proposal for Clean Dirt:**

Ox Mountain Landfill will accept clean dirt as a subset of the SBWMA’s estimated 35,000 to 50,000 tons of mixed construction and demolition debris (C&D) managed by the SBWMA annually. The material must not include significant quantities of rocks, aggregates, concrete, asphalt, rebar or other typical C&D material to be accepted as “clean dirt.

Any loads of clean dirt will be directed to a segregated area for offloading. Clean dirt typically requires minimal handling by our facility operations.

The loads of clean dirt will be used on site for alternative daily cover (ADC), daily and intermediate cover and road subgrade throughout the year.

<table>
<thead>
<tr>
<th>Follow-up Question:</th>
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</thead>
<tbody>
<tr>
<td>Are there any material-specific tonnage limits per day or annually?</td>
</tr>
</tbody>
</table>

**Response:**

Ox Mountain has a material-specific limit by truck type. For soil trucks, through its BAAQMD Permit to Operate, the limit is 200 loads per day.

<table>
<thead>
<tr>
<th>Follow-up Question:</th>
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</thead>
<tbody>
<tr>
<td>What are the contamination limits to qualify as clean dirt?</td>
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</tbody>
</table>

**Response:**

We would expect that loads deemed as “Clean Dirt” by the SBWMA’s transfer station operator would consist of minimal contaminants of organic or non-organic inert material, if any. “Clean Dirt” must be suitable for use as ADC or other beneficial use with no processing as determined by site personnel and the LEA. The soil cannot contain levels of contaminants that exceed California’s non-hazardous levels and cannot emit VOC emissions. Republic will accept low-level contaminated soils, however, the material must be lab tested and classified as non-hazardous following assessment by Republic Service’s Special Waste team if there is suspected contamination. Our understanding is that the material being delivered as “Clean” is not intended to contain contaminants of this nature but: we are willing to set up parameters for acceptance of small amounts of soil that may be impacted by non-standard contamination.

<table>
<thead>
<tr>
<th>Follow-up Question:</th>
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</thead>
<tbody>
<tr>
<td>Are there any other limitations? Soil type, etc.</td>
</tr>
</tbody>
</table>

**Response:**

Soil moisture content/elasticity levels must be low enough to be evenly and consistently spread with a bull dozer in a 6-inch layer.
### Republic Proposal for Large Aggregate (Concrete, Asphalt):

Ox Mountain Landfill will accept large aggregates (materials larger than 4 inches) as a subset of the SBWMA's estimated 35,000 to 50,000 tons of mixed C&D managed by the SBWMA annually. Large aggregates to be accepted include concrete, asphalt, rocks, aggregates containing little or no dirt or non-aggregate materials up to a maximum of 12 inches. The load must not have significant quantities of rebar that protrude from the edge of the blocks.

Any loads of large aggregates will be directed to a segregated area for offloading. Republic Services will grind the material as needed to meet the criteria for its use onsite. Large aggregates will be used on site for road base, ADC or all weather surfaces. Any usage as ADC must comply with a grain size specification by volume of 95% less than 12 inches and 50% less than 6 inches.

#### Follow-up Question:

Are there any material-specific tonnage limits per day or annually?

#### Response:

Ox Mountain's BAAQMD Permit to Operate limits the facility to 175 loads per day of this material. We have no issues with capacity at this time.

#### Follow-up Question:

What are the contamination limits to qualify as clean dirt [large aggregate]? Please included what constitutes a "significant quantity" of rebar.

#### Response:

Republic will continue to work with the Authority to define contamination limits. We suggest that as part of the negotiations, Republic and the Authority conduct a visual assessment of this material and other material in question. An assessment may assist in understanding the composition of the material and in developing a specific definition for acceptable contamination levels. In general, we consider "significant quantity" of rebar any amount of rebar that connects multiple pieces of aggregate or rebar that protrudes further than 2-3 inches from the edge of the blocks.

#### Follow-up Question:

Are there limitations to what types of material will be accepted as "non-aggregate materials up to a maximum of 12 inches?"

#### Response:

Republic will continue to work with the Authority to define contamination limits. For discussion purposes, we suggest the following definition:

Republic will accept large aggregate material up to a maximum of 12 inches. Large aggregates to be accepted include concrete, asphalt, rocks, and stone. Large aggregates must contain less than 3 percent by volume of dirt or non-aggregate material and rebar that does not protrude more than 2-3 inches from the edge of the blocks.
### Republic Proposal for Mixed Dirt with Rocks or Aggregates:
Ox Mountain Landfill will accept mixed dirt with rocks or aggregates as a subset of the SBWMA's estimated 35,000 to 50,000 tons of mixed construction and demolition debris C&D managed by the SBWMA annually.
Any loads of mixed dirt will be directed to a segregated area for offloading. The mixed dirt may be screened, separating the dirt from aggregates to produce beneficial, non-disposable uses for both end products.
The products will be used on site for ADC, daily and intermediate cover and road base throughout the year. Any usage of the aggregates/rock as ADC must comply with a grain size specification by volume of 95% less than 12 inches and 50% less than 6 inches.

### Follow-up Question:
Are there any material-specific tonnage limits per day or annually?

### Response:
Ox Mountain's BAAQMD Permit to Operate limits the facility to 175 loads per day of this material. We have no issues with capacity at this time.

### Follow-up Question:
What are the contamination limits for material to be accepted as mixed dirt with rocks or aggregates?

### Response:
Republic will continue to work with the Authority to define contamination limits. For discussion purposes, we suggest the following definition:

Mixed dirt with rocks or aggregates must contain less than 3 percent by volume of contamination (i.e., non-inerts, other inerts or trash).
**Republic Proposal for Concrete, Asphalt, Rock:**
Ox Mountain Landfill will accept concrete, asphalt, rocks and aggregates smaller than 4 inches as a subset of the SBWMA’s estimated 35,000 to 50,000 tons of mixed C&D managed by the SBWMA annually. Concrete must not have significant quantities of rebar that protrude from the edge of the blocks.

Any loads of these materials will be directed to a segregated area for offloading. Republic Services will grind the material as needed to meet the criteria for its use on site. These materials will be used for road base, all weather surfacing or ADC.

**Follow-up Question:**
Are there any material-specific tonnage limits per day or annually?

**Response:**
Ox Mountain’s BAAQMD Permit to Operate limits the facility to 175 loads per day of this material. We have no issues with capacity at this time.

**Follow-up Question:**
What are the contamination limits? Please included what constitutes a “significant quantity” of rebar.

**Response:**
Republic will continue to work with the Authority to define contamination limits. For discussion purposes, we consider “significant quantity” of rebar any amount of rebar that connects multiple pieces of aggregate or rebar that protrudes further than 2-3 inches from the edge of the blocks. Concrete, Asphalt, Rock must contain less than 3 percent by volume of contamination (i.e., non-inerts, other inerts or trash).
Republic Proposal for Mixed C&D:

Ox Mountain Landfill does not have a C&D materials recovery facility (MRF), as such, Republic Services proposes that any mixed C&D loads be delivered to our Newby Island Resource Recovery Park in San Jose for processing at our existing C&D MRF.

Newby Island C&D MRF guarantees a minimum diversion rate of 75% for all clean loads of mixed C&D, but the facility actually averages an 80%+ diversion rate. Newby Island will accept up to 7,500 tons of mixed C&D material annually from the SBWMA through the term of the Future Agreement.

Follow-up Question:
Please clarify what is considered a “clean load” of mixed C&D at Newby Island Resource Recovery Park.

Response:
Newby Island will accept loads with up to 25% contamination or non-C&D material.

Follow-up Question:
Please confirm that Republic is guaranteeing a minimum 75% diversion rate for clean loads of mixed C&D.

Response:
Yes, Newby Island guarantees a minimum of 75% diversion rate for C&D that meets the criteria outlined above (i.e., inbound material has no greater than 25% contamination). Please note that this is a facility average diversion rate, Newby Island does not provide diversion rates by individual loads.

Follow-up Question:
What is the guaranteed diversion rate if the mixed C&D is determined to not be a clean load?

Response:
If it exceeds Newby's threshold for contamination, the load may be redirected as MSW depending upon how much contamination is contained within the load. We believe it is best to set a threshold for contamination levels and a diversion guaranty on that vs. establishing diversion guaranties for the multitude of contamination levels that don't meet this threshold. We are willing to explore this concept in more detail should the Authority wish to establish step levels for diversion based upon inbound load quality. As noted above, the diversion for the C&D line is measured on a facility wide basis over a set period of time (i.e., monthly).

Follow-up Question:
The rate table also lists Mixed C&D Materials (ADC) at only 50% diversion. What will determine which material is sent to NIRRP and which is used at Ox Mountain for ADC?

Response:
This was offered as an alternate possible option for the SBWMA if the Authority was amenable with the material being used as ADC at Ox Mountain. However, this is contingent on approval of the LEA for such use of the material at Ox through a pilot project. At this time, all C&D loads that meet the contamination criteria outlined above should be directed to Newby Island via direct haul by the SBWMA's transfer station operator.
Republic Proposal for Wood Waste and Clean Green (without Food Waste):

Ox Mountain Landfill will accept approximately 10,000 tons of wood waste and clean yard trimmings (brush, leaves, grass, etc.) from the SBWMA annually through the term of the Agreement. Republic Services will either acquire a grinder or subcontract the work to a third-party contractor for onsite processing. The finished product will be used on site for erosion control.

Follow-up Question:

Why does the rate table show that 0% of wood waste and clean green waste/brush will be diverted? The proposal says it will be used for erosion control.

Response:

This was a typographical error, it should state 100%.

Follow-up Question:

What are the contamination limits for wood waste and yard trimmings to be accepted (or for yard waste to be considered “clean”)?

Response:

1%-2% maximum.
Republic Proposal for Residential Organics Processing:

Republic Services and the SBWMA currently have in place an organics processing agreement at our composting facility at Newby Island. The agreement is nearing the completion of the first year of a five year extension. While Republic Services is open to considering an extension of the current agreement to meet the SBWMA's ongoing needs, additional specifics of any extension will need to be discussed so that the long term goals of both parties can be achieved.

The permitting and approval process for a new composting facility in the Bay Area is extensive and protracted, eliminating the feasibility of having such an operation running at Ox Mountain anytime in the next few years. However, we will continue to explore any opportunities and partnerships to develop one, and notify the SBWMA of any progress.

Republic Proposal for Commercial Organics Processing:

Republic Services and the SBWMA currently have in place an organics processing agreement at our composting facility at Newby Island. As noted above, Republic Services is open to discussing an extension of the current agreement to meet the SBWMA's ongoing needs. However, the specifics of such and extension will need to be discussed to address the goals of both parties.

The permitting and approval process for a new composting facility in the Bay Area is extensive and protracted, eliminating the feasibility of having such an operation running at Ox Mountain anytime in the next few years. However, we will continue to explore any opportunities and partnerships to develop one, and notify the SBWMA of any progress.

Follow-up Question:

What specifics for contract extension would Republic like to discuss? What is the timeframe for having the discussion?

Response:

The specifics would be primarily related to length of the contract extension, inbound material quality (i.e., mixing residential and commercial organics) and inbound volume. Republic Services would be open to discussing the extension in mid-2019 when we have a more detailed understanding of the final permit requirements to be placed upon the facility by the BAAQMD and other agencies following our upcoming Source Test and further fine tuning of the Aerated Static Pile composting system.
Republic Proposal for Land Leasing Services:

Republic Services is able to provide a land leasing arrangement for up to 3 acres to the SBWMA for parking 25 to 35 transfer tractors and related auto parking currently being conducted at the Shoreway Environmental Center in San Carlos as well as limited maintenance of the trucks as needed. The SBWMA may also store collection carts and possibly some equipment as space allows within the leased area. To show how much we value our relationship with the SBWMA and our desire to have it continue with the Future Agreement, Republic Services would not charge the SBWMA any rent for the land leasing arrangement. However, the SBWMA or their subcontractor would be responsible for all permitting and establishment of any measures needed to ensure the arrangement does not cause issues with aesthetics or for the facility’s operating permits and our relationship with the LEA. This includes managing the surface water runoff from the leased area and other environmental controls to manage any fluid leaks/spills from the transfer trucks and their occasional maintenance. The area would also need to be maintained in an orderly manner to prevent vectors and other related issues.

Since Ox Mountain is already a secure site, no additional security is needed for the area to be leased. Ingress and egress will be through the landfill’s main gate located on San Mateo Road (Highway 92). The SBWMA’s transfer station operator and their employees would have access given to them Monday through Saturday, resulting in no impacts to their current operational hours. All roads and all weather surfaces accessing the area will be established and maintained by the SBWMA subcontractor. The photo on the previous page shows the area to be leased. Republic Services currently uses the area for its Half Moon Bay collection operations container storage and would work with the SBWMA on rearranging the area to best meet the needs of the SBWMA and our operations.

Follow-up Question:
Can Republic please provide a plan view map, preferably with topo, of the area to be provided?

Response:
Please see attached.

Follow-up Question:
What improvements are needed to properly manage storm water, pollution prevention, etc.?

Response:
All weather surfacing, fencing, lighting and surface water retention and treatment for runoff from the area. Additional improvements may be required depending upon input from various regulatory agencies.

Follow-up Question:
Proposal says that SBWMA would be responsible for not causing issues with aesthetics. What are the concerns for aesthetics and what would constitute an “issue”?

Response:
Our expectations would be that both transfer trucks and employee personal vehicles be parked in an orderly fashion; trucks swept with no residue when parked; all containers stored empty with lids closed in an orderly manner; no leaking trucks/vehicles; any leaks immediately addressed, contained and cleaned; no litter from employees; maintenance parts stored and properly handled, as well as covered fencing to contain the area.
Follow-up Question:
Proposal says that SBWMA would be responsible for maintaining the site in an orderly manner to prevent vectors and other related issues. Are there currently vector issues on the site?

Response:
There are no issues currently and Republic Services would like to maintain it so. Many of the items listed under “aesthetics” are to prevent vector issues.

Follow-up Question:
Proposal says all roads and all weather surfaces accessing the area will be established and maintained by the SBWMA subcontractor. What is the current state of the surfaces? Does this include roads accessing other parts of the site as well, or only a limited portion of the access roads? What is the current state of the access roads? Map preferred.

Response:
The SBWMA transfer station operator would be responsible for the access road to the deck where their trucks/vehicles and containers would be staged. Please refer to the attached map. A fresh layer of aggregate road base would need to be placed to improve all weather access and accommodate the heavier transfer trucks.

Ox Mountain Operating Hours:
Identify if Republic has ever pursued an extension of Ox Mountain Landfill operating hours beyond the current hours of 4 am to 4:30 pm to include off-peak hours (e.g., 4:30 pm to 4:00 am, or midnight to 4:00 am). If so, describe steps taken and why such an extension did not occur.

Response:
No, we are not aware of Republic Services pursuing an extension of Ox Mountain Landfill’s operating hours in the past.

Follow-up Question:
If Republic hasn’t pursued extended operating hours at Ox Mountain Landfill, identify its willingness to do so, the process and timeline, potential concerns, and estimated rate for acceptance of waste during off-peak hours.

Response:
Republic Services is willing to consider pursuing extended the operating hours at Ox Mountain Landfill upon request by the SBWMA, if the SBWMA’s transfer station operator is able to have its vehicles leave the Shureway Environmental Center during the specified off-peak hours. To do so, we would need detailed information from the SBWMA on specific hours, number of vehicles anticipated and other related information. This information is needed in order for Republic Services to submit the request to the LEA and other governing agencies as needed. Once we determine how serious the SBWMA is related to this request, Republic Services can contact the LEA to determine exact process, timeline, potential concerns and estimated rate of acceptance of waste during off-peak hours.
January 20, 2019

Tracy Swanborn
Senior Manager
HF&H Consultants, LLC
201 N. Civic Drive, Suite 230
Walnut Creek, CA 94596

RE: Republic Responses to SBWMA Phase 2 Follow-Up Questions – Land Lease

Dear Tracy:

Per the South Bayside Waste Management Authority's (SBWMA) Request for Proposal (RFP) for Solid Waste Disposal and Other Material Handling Services, the following is our response to the January 10, 2019 clarification questions regarding Land Leasing Services. Our goal is to make the Land Leasing component as convenient as possible to the SBWMA with only those improvements necessary to ensure Ox Mountain’s compliance with its Solid Waste Facility Permit (SWFP), Waste Discharge Requirements and other regulatory requirements. As such, you will note that we have removed some items from the list of improvements previously stated as required.

We have included two files that include the topographic map for the Land Leasing Services. One denotes the designated area for the lease and the other is a higher resolution file providing greater detail.

**Improvements**
- Based on further review of the site, the main improvements needed would be grading and all weather resurfacing for 80,000 square feet to accommodate the SBWMA’s transfer station operator’s transfer trucks. Republic Services is no longer requiring surface water retention and treatment for runoff from the area. On the latter issue, we will require the transfer station contractor to employ Best Management Practices for equipment maintenance and monitoring of runoff quality so that runoff discharge into our sediment basin is not adversely impacted. While we are not requiring fencing, there may be a need to place K-rail or some type of delineation as to where parking for transfer and employee vehicles would be allowed. We would recommend the operation of one or two portable light plants for safety and visibility, and we would want to discuss the need for visual screening such as fencing. At this point we don’t believe it will be necessary, but it could be an inexpensive means of keeping the leased area delineated from other segments of the landfill operations.

Estimated Cost: $145,000 without fencing. Fencing is estimated to cost an additional $20,000.

**Regulatory Compliance**
- Based on further review of Ox Mountain’s SWFP and Joint Technical Document (JTD), it is likely that an amendment to the existing JTD to accommodate parking of transfer trucks and employee vehicles will be required as our current JTD only allows for our existing fleet. Based on our recent
experience with amending our JTD, the SBWMA would likely need a consultant to manage the process. We anticipate that it would take approximately 9 to 12 months for the amendment process to be completed.

Estimated Cost: $65,000

As previously stated, we expect that the SBWMA's transfer station operator would maintain its fleet, employee personal vehicles, containers and other related items, and address any leaks, litter, housekeeping and other related issues immediately to minimize any potential impacts to the area and environment. Further clarification of any of these items can be provided during Hilary's site visit. We propose scheduling the site visit sometime during the week of February 4, 2019. Please let us know what dates and times work best.

We look forward to the site visit and follow-up interview in early February.

Sincerely,

Michael Mahoney
General Manager
EXHIBIT E: Insurance

1. General Liability Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001). $10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. An excess liability policy may be used to obtain required limit.

The Commercial General Liability Business policy must contain blanket-form endorsements in substantially the following form, or the policy form must include:

(i) Thirty (30) calendar days’ prior written notice shall be given to the South Bayside Waste Management Authority in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Executive Director
South Bayside Waste Management Authority
600 Elm Street
San Carlos, CA 94070

(ii) The South Bayside Waste Management Authority, its officers, employees, and agents are additional insureds on this policy. The Authority requires form CG2010 1004.

(iii) This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by the South Bayside Waste Management Authority, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.

(iv) Inclusion of the South Bayside Waste Management Authority as an insured shall not affect the Authority’s rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor’s liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one party had been named as an insured.

2. Automobile Liability Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto", and endorsement CA 0025 (occurrence form).

$10,000,000 combined single limit per accident for bodily injury and property damage. An excess liability policy may be used to obtain required limit.

The Automobile Liability policy must contain the same endorsements as required for Comprehensive General Liability and CA 99 48 Broadened Auto Pollution Liability and MCS 90 upset and overturn coverage.

The Workers' Compensation policy must contain a blanket-form endorsement in substantially the
following form:

The insurer must waive all rights of subrogation against the Authority, its officers, employees, and
volunteers for losses arising from work performed by the Contractor for the Authority, except for the sole
negligence of the Authority.

4. **Environmental Impairment Liability** in the amount of $10,000,000 covering liability arising from the
release of pollution at the Landfill. The Environmental Impairment Liability policy must contain the same
endorsements as required for Comprehensive General Liability.
EXHIBIT F: Authority and Contractor Representatives

The Contractor Representative is: Michael Mahoney, General Manager
Republic Services
1680 Edgeworth Avenue
Daly City, CA 94015
(415) 756-4813

Date: Effective Date

If the Contractor changes the Contractor Representative upon Notice from Contractor Representative to Authority Representative, the amended form will be substituted and attached. The dated signature of each Party Representative on the changed designation form will be deemed evidence that Notice was duly given in accordance with Section 8.09, that Authority consented, and that the new attachment supersedes the prior attachment.

The Authority Representative is: SBWMA Executive Director
610 Elm Street, Suite 202
San Carlos, CA 94070

Date: Effective Date

If the Authority changes the Authority Representative upon Notice from Authority Representative to Contractor Representative, the changed designation will be substituted and attached. The dated signature of each Party Representative on the amended form will be deemed evidence that Notice was duly given in accordance with Section 8.09, that Authority consented, and that the new attachment supersedes the prior attachment.
EXHIBIT G: Guaranty Agreement

This Guaranty, made as of the date written below by Republic Services, Inc. ("Guarantor"), a corporation duly organized and existing in good standing under the laws of the State of California, to and for the benefit of the South Bayside Waste Management Authority ("Authority"), a municipal corporation of the State of California (the "State").

WITNESSETH

WHEREAS, Browning-Ferris Industries of California, Inc. (the "Contractor"), a wholly owned subsidiary of the Guarantor, and the Authority have negotiated the AGREEMENT BETWEEN THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY AND BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC. FOR SOLID WASTE DISPOSAL SERVICES dated as of the latter of the date of execution thereof by the Authority or the Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof (the "Agreement"), which Agreement is incorporated in this Agreement by reference and by this Agreement made part of this Agreement;

WHEREAS, it is in the interest of Guarantor that the Contractor enter into the Agreement with the Authority;

WHEREAS, the Authority is willing to enter into the Agreement only upon the condition that the Guarantor execute this Guaranty;

WHEREAS, in the event Contractor fails to timely and fully perform its obligations, including the payment of moneys, pursuant to the Agreement, Guarantor is willing to Guaranty, Contractor's timely and full performance thereof; and

WHEREAS, it is a condition precedent to the Authority's obligations under the Agreement that the Guarantor provide this Guaranty.

NOW, THEREFORE, as an inducement to the Authority to enter into the Agreement, the Guarantor agrees as follows:

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

(1) Guaranty of Contractor's Performance Under Agreement. Guarantor by this Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Contractor's obligations under the Agreement in accordance with the terms and conditions contained therein or to cause that timely and full performance. Within thirty (30) Days' written request therefore by the Authority, Guarantor will honor the Guaranty. Notwithstanding the unconditional nature of the Guarantor's payment obligations set forth in this Agreement, the Guarantor may assert the defenses provided in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims made under this Guaranty.
(2) Governing law; consent to jurisdiction; service of process. This Guaranty is governed by the laws of the State of California. The Guarantor by this Guaranty agrees to the service of process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the Superior Court of San Mateo County, and to the extent permitted by law, the United States District Court for the Northern District of California, will have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the Authority may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of any suit, action, or proceeding, and consents to the service of process in any suit, action, or proceeding by prepaid registered mail, return receipt requested.

(3) Enforceability; no assignment. This Guaranty is binding upon and enforceable against Guarantor, its successors, assigns, and lawful representatives. It is for the benefit of the Authority, its successors and assigns. The Guarantor may not Assign or delegate the performance of this Guaranty without the prior written consent of the Authority in its sole discretion. Any assignment made without the consent of Authority is voidable by the Authority in its sole discretion. Together with its request for Authority consent, Guarantor will pay Authority $20,000 to pay Authority its reasonable expenses for private attorneys' fees and investigation costs ("assignment expenses") necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any assignment. Authority will reimburse Guarantor the excess, if any, over those assignment expenses it incurs. Contrariwise, Guarantor will pay Authority the excess assignment expenses, if any, over $20,000 Authority incurs within thirty (30) Days of Authority's request therefore. Guarantor will further pay to Authority the Authority's Reimbursement Costs for fees of attorneys who are not Authority employees and investigation costs necessary to enjoin the assignment or to otherwise enforce this provision within thirty (30) Days of Authority's request therefore ("injunction costs").

For purposes of this Guaranty, "assign" and "assignment" means:

(i) selling, exchanging, or otherwise transferring effective control of management of the Guarantor (through sale, exchange or other transfer of outstanding stock or otherwise);

(ii) issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Guarantor;

(iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of Ownership or control of Guarantor;

(iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Guarantor, appointment of a receiver taking possession of any of Guarantor's tangible or intangible property; and, 

(v) any combination of the forgoing (whether or not in related or contemporaneous transactions) which has the effect of any transfer or change of Ownership or control of Guarantor.

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

(4) Guaranty absolute and unconditional. The undertakings of Guarantor set forth in this Agreement are
absolute and unconditional, and the Authority is entitled to enforce any or all of those undertakings
against Guarantor without being first required to enforce any remedies or to seek to compel the
Contractor to perform its obligations under the agreement or to seek, or obtain recourse against any other
party or parties, including but not limited to the Contractor or any assignee of the Contractor, who are, or
may be, liable therefore, in whole or in part, irrespective of any cause or state of facts whatever. Without
limiting the generality of the foregoing, the Guarantor expressly agrees that its obligations under this
Guaranty will not be affected, limited, modified, or impaired by any state of facts or the happening from
time to time of an event, other that the payment of monetary obligations by the Contractor to Authority
under the Agreement in accordance with the terms of the Agreement, including, without limitation, any
of the following, each of which is by this Guaranty expressly waived as a defense to its liability under this
Guaranty, except to the extent those defenses would be available to the Contractor and release,
discharge, or otherwise offset Contractor’s obligations under the Agreement:

(a) the invalidity, irregularity, illegality, or unenforceability, of any defect in or objections to the
Agreement;

(b) any modification or amendment or compromise of or waiver of compliance with or consent to
variation from any of the provisions of the Agreement by the Contractor;

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

(d) any defense based upon the election of any remedies against the Guarantor of the Contractor, or
both, including without limitation, any consequential loss by the Guarantor of its right to recover any
deficiency, by way of subrogation or otherwise, from the Contractor or any other person or entity;

(e) the recovery of any judgment against the Contractor to enforce any of that collateral or
performance bond;

(f) the Authority or its assigns taking or omitting to take any of the actions which it or any of that
assign is required to take under the Agreement; any failure, omission, or delay on the part of the
Authority or its assigns to enforce, assert, or exercise any right, power, or remedy conferred on it
or its assigns by the Agreement, except to the extent that failure, omission, or delay gives rise to an
applicable statute of limitations defense by the Contractor with respect to a specific obligation;

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

(h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor or the
Authority, or any order or decree of a court, trustee, or receiver in any proceeding;

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

(j) the existence or absence of any action to enforce the Agreement;

(k) subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present
or future law or order of any government or of any agency thereof, purporting to reduce, amend, or
otherwise affect the Agreement or to vary any terms of payment or performance under the
Agreement;

provided that, notwithstanding the foregoing, Guarantor will not be required to pay any monetary
obligation of Contractor to Authority from which Contractor would be discharged, released, or otherwise
excused under the provisions of the Agreement.

(5) Waivers. Guarantor by this Guaranty waives:

(a) notice of acceptance of this Guaranty and of the creation, renewal, extension, and accrual of the
limited financial obligations Guaranteed under this Guaranty;

(b) notice that any person has relied on this Guaranty;

(c) diligence, demand of payment, and notice of default or nonpayment under this Guaranty or the
Agreement, and any and all other notices required under the Agreement;

(d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the
Contractor;

(e) any right to require a proceeding first against the Contractor or with respect to any collateral or
lien, including, without limitation, any performance bond, or any other requirement that the Authority
exercise any remedy or take any other action against the Contractor or any other person, or in respect
of any collateral or lien, before proceeding under this Guaranty;

(f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or
(iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any
performance bond) for the obligations of the Contractor under the Agreement; any pursuit of
exhaustion of remedies against the Contractor or any other obligor or guarantor of the obligations;
and, any requirement of promptness or diligence on the part of any person in connection therewith;

(g) to the extent that it lawfully may do so, any and all demands or notices of every kind and
description with respect to the foregoing or which may be required to be given by any statute or rule
of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty
or the obligations of the Contractor under the Agreement, except any Notice to the Contractor
required pursuant to the Agreement or Applicable Law which Notice preconditions the Contractor's
obligation or the defenses listed in Section 8 below.

To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to waive, and does
by this Guaranty absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does
by this Guaranty covenant not to assert, any appraisement, valuation, stay, extension, redemption, or
similar laws, now or at any time hereafter in force, which might delay, prevent, or otherwise impede the
due performance or proper enforcement of this Guaranty, the Agreement, or the obligations of the
Contractor under the Agreement, and by this Guaranty expressly agrees that the right of the Authority
under this Guaranty may be enforced notwithstanding any partial performance by the Contractor or the
Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given
by the Contractor for its performance of any of its obligations under the Agreement.

(6) Agreements between Authority and Contractor; Waivers by Authority. The Guarantor agrees that,
without the necessity for any additional endorsement or Guaranty by or any reservation of rights against
Guarantor and without any further assent by Guarantor, by mutual agreement between the Authority and
Contractor, the Authority and Contractor may, from time to time:

(a) renew, modify, or compromise the liability of the Contractor for or upon any of the obligations
by this Guaranty Guaranteed; or

(b) consent to any amendment or change of any terms of the Agreement; or

(c) accept, release, or surrender any security (including, without limitation, any performance bond),
or

(d) grant any extensions or renewals of the obligations of the Contractor under the Agreement, and
any other indulgence with respect thereto, and to effect any release, compromise, or settlement with
respect thereto,

all without releasing or discharging the liability of Guarantor under this Guaranty.

The Guarantor further agrees that the Authority or any of its assigns will have and may exercise full power
in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this
Guaranty, to waive compliance with and any default of the Contractor under, the Agreement.

(7) Continuing Guaranty. This Guaranty is a continuing Guaranty and will continue to be effective or be
reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is
rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the
Contractor or Guarantor or otherwise, all as though payment had not been made.

(8) Defenses. Notwithstanding any provision in this Guaranty to the contrary, the Guarantor may exercise
or assert any and all legal or equitable rights, defenses, counter claims, or affirmative defenses under the
Agreement or Applicable Law which the Contractor could assert against any party seeking to enforce the
Agreement against the Contractor, and nothing in this Guaranty will constitute a waiver thereof by the
Guarantor.

(9) Payment of costs of enforcing Guaranty. Guarantor agrees to pay all costs, expenses, and fees,
including all reasonable attorney’s fees, which may be incurred by the Authority in enforcing this Guaranty
following the default on the part of the Guarantor under this Guaranty whether the same is enforced by
suit or otherwise.

(10) Enforcement. The terms of this Guaranty may be enforced as to any one or more breaches either
separately or cumulatively.
(11) Remedies cumulative. No remedy in this Agreement conferred upon or reserved to the Authority under this Guaranty is intended to be exclusive of any other available remedy or remedies, but each and every remedy is cumulative and is in addition to every other remedy given under the Guaranty and the Agreement or in this Agreement after existing at law or in equity or by statute.

(12) Severability. The invalidity or unenforceability of any one or more phrases, sentences, or clauses in this Guaranty contained will not affect the validity or enforce ability of the remaining portions of this Guaranty, or any part thereof.

(13) Amendments. No amendment, change, modification, or termination of this Guaranty is made except upon the written consent of Guarantor and the Authority.

(14) Term. The obligations of the Guarantor under this Guaranty will remain in full force and effect until (i) all monetary obligations of the Contractor under the Agreement will have been fully performed or provided for in accordance with the Agreement, or (ii) the discharge, release, or other excuse of those obligations in accordance with the terms of the Agreement.

(15) No set-offs, etc.

By Guarantor. The obligation of Guarantor under this Guaranty will not be affected by any set-off, counterclaim, recoupment, defense, or other right that Guarantor may have against the Authority on account of any claim of the Guarantor against the Authority; provided that Guarantor reserves the right to bring independent claims not arising from the Agreement against the Authority so long as any claims will not be used to set-off or deduct from any claims which the Authority many have against the Guarantor arising from this Guaranty.

By Contractor. The obligation of Guarantor under this Guaranty is subject to any set-off, counterclaim, recoupment, defense, or other right that the Contractor may assert pursuant to the Agreement, if any, but the obligation of Guarantor under this Guaranty will not be subject to any set-off, counterclaim, recoupment, defense, or other right that the Contractor may assert independently of and outside the Agreement.

(16) Warranties and representations. The Guarantor warrants and represents that as of date of execution of this Guaranty:

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

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

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

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

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

(19) **Notices.** All notices, instructions, and other communications required or permitted to be given to or made upon any party to this Guaranty is in writing, and is given in the manner and to the addresses provided in the Agreement.

(20) **Separate suits.** Each and every payment default by Contractor under the Agreement will give rise to a separate cause of action under this Guaranty, and separate suits may be brought under this Guaranty by the Authority or its assigns as each cause of action arises.

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

(22) **Entire Agreement.** This Guaranty constitutes the entire agreement between the parties to this Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the Authority, and their permitted successors and assigns under this Guaranty any rights or remedies under or by reason of this Guaranty.

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

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

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

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

(c) Failure to give Notice of proposed assignment, etc. The Guarantor fails to give Authority notice in accordance with Section 19 within ten (10) Days of the first to occur of:

(i) Contractor or any Affiliate issuing a press release as to any proposed assignment, (within the meaning of Section 3, or consolidation, merger, conveyance, transfer, or lease described in subsection 24.d or;

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

( paragraphs (i) and (ii) together defined as, “Change Notice”);

(d) Consolidation, merger, conveyance of assets. The Guarantor consolidates, merges, or conveys, transfers, or leases assets in violation of Section 17 despite Authority Board of Directors action following Change Notice in preceding paragraph (c) withholding or denying Authority consent, and on or before fifteen (15) Days thereafter, does not provide Authority with a substitute Guarantor satisfactory to Authority in Authority’s sole discretion;

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

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

(f) Breach of Representations or Warranties. Any representation or warranty of Guarantor is untrue as of the date thereof; Guarantor knowingly makes, causes to be made, or condones the making of any false entry in its books, accounts, records, and report under this Guaranty.
Upon any Event of Default the Authority may proceed first and directly against the Guarantor
under Guaranty without proceeding against or exhausting any other remedies which it may have.
The Guarantor acknowledges that any Contractor Default comprises a Default under the
Agreement.

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

By: ___________________________ Date: ___________________________

Attest: ___________________________ Date: ___________________________

Proper notarial acknowledgment of execution by Guarantor must be attached.

(1) Chairman, president, or vice-president, and (2) secretary, assistant secretary, chief financial officer,
or assistant treasurer, must sign for corporations. Otherwise, the corporation must attach a resolution
certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to
bind the corporation.
EXHIBIT H: Contractor’s Representations and Warranties

A. Status. Contractor is a corporation duly organized, validly existing, and in good standing under the laws of California and is qualified to do business in the State.

B. Authority and Authorization. The Contractor has full legal right, power, and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid, and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

C. No Conflicts. Neither the execution or delivery by the Contractor of this Agreement, the performance by the Contractor of its Service obligations, nor the fulfillment by the Contractor of the terms and conditions of this Agreement: (1) conflicts with, violates, or results in a breach of any Applicable Law; (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which the Contractor or any of its Subcontractors or Affiliates is a party or by which the Contractor or any of its Subcontractors or Affiliates’ properties or assets are bound, or constitutes a default thereunder.

D. No Approvals Required. No approval, authorization, license, permit, order or consent of, or declaration, registration, or filing with any governmental or administrative authority, commission, board, agency, or instrumentality is required for the valid execution and delivery of this Agreement by the Contractor, except those as have been duly obtained from its Board of Directors.

E. No Litigation. As of the Effective Date, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality pending or, to the best of the Contractor’s knowledge, threatened, against the Contractor wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations under this Agreement or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforce ability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated by this Agreement.

F. Due Diligence. Contractor has made an independent investigation, examination, and research satisfactory to it of the conditions and circumstances surrounding the Agreement and best and proper method of providing Services (including Service types) and labor, equipment, and materials for the volume of Services to be provided. Contractor agrees that it will make no claim against the Authority based on any estimates, statements, or interpretations made by any officer, employee, agent, or consultant of the Authority in connection with the procurement of this Agreement which proves to be in any respect erroneous.

G. Compliance with Applicable Law. Contractor further represents and warrants that it has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.

H. Ability to Perform. Contractor warrants that it possesses the business, professional, and technical capabilities to provide Services; has secured and maintains in full force and effect Permits; and possesses the equipment, facility, and employee resources required to fully and timely perform Services.

I. Capacity. Contractor warrants that as of the Effective Date it has Landfill capacity to Dispose of Authority’s Solid Waste throughout the Term and that it will maintain that capacity through the Term.