

FRANCHISED HAULER'S AGREEMENT TO BE BOUND BY CITY'S WASTE DELIVERY COMMITMENT

This agreement is made as of this ____ day of _____, 2017 by and among Recology Sonoma Marin d/b/a Recology Santa Rosa, a California corporation ("Franchised Hauler"), the City of Santa Rosa ("City") and Republic Services of Sonoma County, Inc. ("Contractor"). All other words and phrases in this agreement with initial capital letters are defined in the attached Waste Delivery Agreement. This agreement shall become effective on the date of the closing of the transactions contemplated by the Asset Purchase Agreement dated August 11, 2017 between Recology Inc., the parent company of Franchised Hauler, and The Ratto Group of Companies Inc. and its owners and affiliated entities.

Franchised Hauler acknowledges that it has read and understood the Waste Delivery Agreement between City and Contractor attached as Exhibit A hereto and incorporated herein as though set forth in full. Franchised Hauler agrees to fully honor and comply with the City's Waste delivery obligations to Contractor in the Waste Delivery Agreement, and as the Waste Delivery Agreement may hereafter be modified or extended by the City and Contractor at their sole discretion. Franchised Hauler shall deliver all such Waste to Contractor and the County Facilities as required by and in accordance with the Waste Delivery Agreement. The Term of Franchised Hauler's obligations hereunder shall be coterminous with the Term of the City's Waste Delivery Agreement with Contractor, and therefore will not expire until the Term of the Waste Delivery Agreement, as it may be extended by City and Contractor, expires.

Without limiting the generality of the foregoing, Franchised Hauler agrees that:

1. Notwithstanding any other term, condition or provision in Franchised Hauler's franchise agreement with the City, Franchised Hauler will deliver all Committed City Waste that is collected, transported or otherwise handled by Franchised Hauler to Contractor and County Facilities for the Term of the Waste Delivery Agreement, as it now exists or may hereafter be modified or extended, except for Waste that is excluded from the City's Waste delivery obligation to Contractor as described in Section 2.2 and Exhibit A of the Waste Delivery Agreement. Franchised Hauler shall do all things necessary and execute any further agreements or instruments required to effectuate Franchised Hauler's obligation in this Agreement. In addition, Franchised Hauler shall deliver all Construction and Demolition Debris collected in the City to the County Facilities. This agreement by Franchised Hauler amends, supersedes and controls over any contrary or inconsistent provision in any agreement that Franchised Hauler has, or may hereafter enter into, with the City.

2. Franchised Hauler shall pay Contractor's invoices for delivery of Waste collected by Franchised Hauler in the City within thirty (30) days of the date of the invoice. Any unpaid invoiced amounts not paid within said thirty (30) days shall bear interest at the rate of one and one half percent (1.5%) per month until paid. Contractor shall be entitled to recover its attorneys' fees, expert witness fees and all other costs of litigation incurred in collecting delinquent invoices from Franchised Hauler.

3. Franchised Hauler shall commence the City-wide collection of Food Waste from commercial Premises in the City when directed to do so by the City. The Franchised Hauler's costs of this program are being fully compensated through the Facility Operations Service Fee as defined in the Agreement for Operation of Sonoma County Transfer Stations and Material Recovery

Facility dated March 21, 2013 between The Ratto Group of Companies, Inc. and Republic Services of Sonoma County, Inc. that has been subsequently assigned to Recology Sonoma Marin, and Franchised Hauler agrees not to seek additional compensation from City or Contractor for the Franchised Hauler's costs of implementing and conducting the commercial Food Waste collection program for the Term of the Agreement.

4. Franchised Hauler shall commence the City-wide collection of dry commercial Mixed Waste from commercial Premises in the City when directed to do so by the City. The Franchised Hauler's costs of this program are being fully compensated through the Facility Operations Service Fee as defined in the Agreement for the Operation of Sonoma County Transfer Stations and Material Recovery Facility dated March 21, 2013 between The Ratto Group of Companies, Inc. and Republic Services of Sonoma County, Inc. that has been subsequently assigned to Recology Sonoma Marin, and Franchised Hauler agrees not to seek additional compensation from City or Contractor for the Franchised Hauler's costs of implementing and conducting the dry commercial Mixed Waste collection program for the Term of the Agreement.

5. Franchised Hauler shall defend and indemnify the City from and against any and all losses and liabilities associated with the Franchised Hauler's breach of this Agreement.

6. The parties acknowledge that the implementation of the Waste Delivery Agreement will result in an increase in the cost of disposal at the County Facilities. City agrees that Franchised Hauler may pass through the increase in disposal costs arising from and after the effective date of this agreement. Franchised Hauler shall promptly notify City of the rate increase for each service provided by Franchised Hauler necessary to defray the increased cost of disposal at the County Facilities under the Waste Delivery Agreement.

7. This agreement shall bind Franchised Hauler and its subcontractors and affiliates and each of their respective successors and assigns.

Executed as of the day and year first above stated.

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Republic Services of Sonoma County, Inc.,
a Delaware corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Recology Sonoma Marin,
a California corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Attachment: Exhibit A, Waste Delivery
Agreement

City of Santa Rosa,
a Municipal corporation

By: _____

Title: _____

Approved as to form:

Office of City Attorney

Attest:

City Clerk

EXHIBIT A

WASTE DELIVERY AGREEMENT

by and between

CITY OF SANTA ROSA

and

REPUBLIC SERVICES OF SONOMA COUNTY, INC.

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EXIDBITS

- A. Description of Landfill Land
- B. Exclusions from Committed City Waste
- C. Franchised Hauler Agreement to Be Bound
- D. Contractor Gate Rates
- E. Scope of Services to be Provided by Contractor
- F. Corporate Guaranty
- G. Committed Cities Contingent Fee Agreement

WASTE DELIVERY AGREEMENT

This Waste Delivery Agreement (this "Agreement") is executed as of _____ 2014 by and between the City of Santa Rosa, a municipal corporation organized under the laws of California ("City"), and Republic Services of Sonoma County, Inc., a Delaware corporation ("Contractor"). The City and Contractor are jointly referred to herein as the "Parties," or individually as a "Party." [Note: All references to "city" or "cities" herein shall include the City of Santa Rosa.]

RECITALS:

WHEREAS, the County of Sonoma owns the Central Landfill, the Central Transfer Station and a network of four other solid waste transfer stations in Annapolis, Guerneville, Healdsburg, and Sonoma (the "County Facilities"), which have historically provided for the Waste Disposal needs of the County and the cities in Sonoma County; and

WHEREAS, the County wishes to contract with Contractor for the continued permitting, construction, and operation of these County Facilities, for construction of a new materials recovery facility within the Central Transfer Station building (which, when constructed, shall become part of the "County Facilities") and, ultimately, for the closure and post-closure of all of the Central Landfill in accordance with Applicable Law; and

WHEREAS, on March 14, 2013, the County of Sonoma obtained valid Waste Discharge Requirements No. RI-2013-0003 from the North Coast Regional Water Quality Control Board for operation, corrective action, new construction, and closure of the Central Landfill; and

WHEREAS, the Contractor has the expertise and resources to undertake these obligations requested by the County and is willing to do so, provided that the County and a sufficient number of cities in the County commit the delivery of their Waste to Contractor and the County Facilities; and

WHEREAS, on April 23, 2013, Contractor entered into an agreement with the County of Sonoma entitled "Agreement for Operation of the Central Landfill and County Transfer Stations," ("County Operations Agreement"), whereby Contractor has agreed, subject to various conditions including Contractor receiving adequate Waste delivery commitments from the cities in the County, to operate the Central Landfill, Central Transfer Station, Materials Recovery Facility and the County's other Transfer Stations to provide for the Waste Disposal needs of the communities in Sonoma County; and

WHEREAS, in order to satisfy a condition to the effectiveness of the County Operations Agreement and to obtain the benefits of Contractor's performance thereunder, the City has agreed to deliver its Committed City Waste, which is hereinafter defined, to the Contractor and the County Facilities for a minimum period of twenty-five (25) years, subject to the terms and conditions in this Waste Delivery Agreement; and

WHEREAS, the effectiveness of this Waste Delivery Agreement is likewise contingent on the execution of the Amended County Operations Agreement, the execution of individual Waste Delivery Agreements with the Cities of Cloverdale, Cotati, Healdsburg, Rohnert Park, Santa Rosa, Sebastopol, and

Sonoma and the Town of Windsor, as well as their individual Settlement Agreements with the County of Sonoma concerning alleged liability relating to the County Facilities.

NOW, THEREFORE, taking into account the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

Initially capitalized words, terms and phrases in this Agreement shall have the meanings set forth below. As used herein, "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term. The word "and" as used in these definitions means both "and" and "or," so that it includes both the conjunctive and the disjunctive. Definitions may be used in this Agreement in their singular or plural form. Any capitalized terms that are not defined in this Agreement but are defined in the County Operations Agreement shall have the same meaning as defined in the County Operations Agreement.

Adjustment Date "Adjustment Date" means each anniversary of the Effective Date.

Applicable Law "Applicable Law" or "Applicable Laws" means any (a) statute, law, code, regulation ordinance, rule or common law, including Environmental Laws, (b) Permit(s), (c) binding judgment, or binding judicial or administrative order or decree, (d) written directive, guideline, policy, requirement or other restriction imposed by any Governmental Authority, or (e) similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Authority, in each case, which is applicable to or has an impact on this Agreement, the County Facilities, the Land or any Party as it relates to this Agreement, whether taking effect before or after the Execution Date.

Assigned Contracts "Assigned Contracts" means those written agreements, which, pursuant to the County Operations Agreement, are assigned by County to Contractor and expressly assumed by Contractor.

Base Concession Payment "Base Concession Payment" means the base concession payments paid by Contractor to the County as defined in the County Operations Agreement, during the initial 20 year term of this Agreement, in consideration for the County's granting Contractor an exclusive right and concession to operate the County Facilities under the County Operations Agreement.

Baseline Administrative Costs "Baseline Administrative Costs" means the actual baseline administrative costs related to (i) the County's costs to comply with, implement, and/or maintain any and all County Operations Agreement duties and obligations after the County Operations Agreement is effective; (ii) the County's costs to comply with, implement, maintain and/or enforce all requirements and obligations under its Settlement Agreement with the Committed Cities, including any and all costs associated with County's administration of all Funds, including the Committed Cities Contingent Liability Fund (as defined in the Settlement Agreement); and (iii) the County's costs to oversee and maintain work required as a result of the Former Urban Landfills

Liability (as defined in the Settlement Agreement), including all consultant and contractor work required as a result of the Fonner Urban Landfills Liability. The initial estimated Baseline Administrative Costs, which represent less than 30% of the County's Fiscal Year 2011/2012 budget for the entire solid waste division, is set forth in Exhibit E to the Settlement Agreement with the Committed Cities.

Beneficial Reuse Materials "Beneficial Reuse Materials" means materials that are incorporated into the operations of the County Facilities in accordance with Applicable Law, including but not limited to material used as or for Alternative Daily Cover, daily or intermediate soil cover, construction of drainage and erosion controls, retaining walls, French drains, sedimentation basins, roads, all weather surfaces, or other non-disposal, beneficial reuse. The term shall not include materials converted for purposes of producing energy or other products.

Central Landfill "Central Landfill" means the landfill located on a portion of the Landfill Land and that is more fully described in Exhibit A.

Central Transfer Station "Central Transfer Station" means the Transfer Station located on the Landfill Land.

Change in Law "Change in Law" means (a) the adoption of any Applicable Law after the Execution Date, or (b) any change in any Applicable Law or in the interpretation or application thereof by any Governmental Authority after the Execution Date which, in the case of both clauses (a)-(b), impacts the Landfill, Transfer Stations and/or Materials Recovery Facility, and/or Contractor's operations hereunder, including changes arising out of AB 32 relating to climate change, greenhouse gas management or reduction. "Change in Law" excludes (1) any change in or new Applicable Law proposed or pending (in the current legislative session as of the Execution Date), passed or adopted but not yet effective as of the Execution Date or which was later enacted in similar form (except for new or increased Governmental Fees that become effective after the Execution Date, which shall be reflected as an adjustment in Contractor's Gate Rates consistent with this Agreement); and (2) any existing Applicable Law issued pursuant to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, and Greenhouse Gases from In-Use Heavy Duty Diesel-Fueled Vehicles, Cal. Code Regs, title 13, section 2025.

City "City" means a city or town (including the Town of Windsor) located in the County and, as applicable based on the context in which this term is used, includes a city's or town's jurisdictional boundaries, and as those boundaries are hereafter extended through annexation.

Closed County Landfills "Closed County Landfills" means the former County landfills, some of which are located immediately adjacent to or under the Transfer Stations (other than the Central Transfer Station), and include the Annapolis, Guerneville, Occidental, Airport, Sonoma, Healdsburg, and Roblar landfills. The Central Landfill is not a "Closed County Landfill" for purposes of this Agreement.

Closure "Closure" means the process by which the Landfill, or a portion of the Landfill, that is no longer receiving Waste, undergoes all operations as required by the approved closure plan and Applicable Law to prepare the Landfill (or portion thereof as appropriate) to enable it to undergo Post-Closure. Closure shall not be complete until the Closure Date.

Closure and Post-Closure Obligations "Closure and Post-Closure Obligations" means

any and all obligations related to Closure and Post-Closure of the Landfill required by (i) Applicable Law including (A) any obligation to decommission, deactivate, demolish, seal, cover, grade, landscape, monitor, clean, remediate, excavate, investigate, analyze, test, maintain or close the Landfill or any portion thereof, and (B) the obligation to fund, deposit and maintain Financial Assurances. Closure and Post-Closure Obligations shall remain until the Closure Date and Post-Closure Date respectively.

Closure Commencement Date "Closure Commencement Date" means the date which is concurrent with the end of the Committed Waste Period, or if Contractor's operations are extended in accordance with the County Operations Agreement the County Facilities Operations Period, when among other things Contractor ceases accepting all Waste for Disposal at the Landfill.

Closure Date "Closure Date" means the date on which all Governmental Authorities with jurisdiction over Closure of the Landfill have accepted the Contractor's certification that the Landfill has been closed in accordance with Applicable Law, or alternatively when all such Governmental Authorities or the County have indicated in writing that Closure of the Landfill has been completed.

Commercial Food Waste "Commercial Food Waste" means all Food Waste except for Residential Food Waste.

Committed City "Committed City" means a City that has executed a Waste Delivery Agreement. "Committed Cities" shall be the plural of Committed City.

Committed City Contingent Liability Fee "Committed City Contingent Liability Fee" means the fee to be charged on each ton of Committed Cities Waste as set forth in the Committed Cities Contingent Liability Fund Agreement attached hereto as Exhibit G and transferred to the County to hold in trust for the Cities in accordance with the terms of the Settlement Agreement between the County and the Committed Cities.

Committed City Waste "Committed City Waste" means, as to each Committed City, Waste from the jurisdictional area of such Committed City that is described in this Agreement (excluding all exclusions therefrom as set forth in Exhibit B) for such Committed City and collected and hauled by the Committed City or the City's Franchised Haulers or by any other person or Entity over which the City has Flow Control. Committed City Waste shall also include any residual waste or other materials requiring Disposal remaining after the processing of Source Separated Recyclable Material, Generic Recyclable Materials or Waste collected in a Committed City at any Prime Subcontractor's and its Affiliates' or other entity's recycling and material recovery facility in or outside of Sonoma County that is processing Source Separated Recyclables or Waste collected under a Franchise Agreement.

Committed Waste "Committed Waste" means Committed City Waste and Committed County Waste.

Committed Waste Period "Committed Waste Period" means the first twenty five (25) years of Contractor's operations under this Agreement during which the County and the Committed Cities agree to deliver their respective Waste to Contractor for Disposal under this Agreement; and any extensions thereof pursuant to Section 3.2.

Compost Facility "Compost Facility" means the compost facility located on a portion of

the Landfill Land. The boundaries of the Compost Facility are more particularly described in Section 4.2B of the County Operations Agreement.

Construction and Demolition Wastes "Construction and Demolition Wastes" means wood, wallboard, ferrous and non-ferrous metals, glass, any fibrous material (including paper, cardboard, newspaper), plastic, concrete and other Recyclable Materials and Wastes generated by residential, commercial and industrial demolition, remodeling and construction activities.

Contractor "Contractor" means Republic Services of Sonoma County, Inc., a subsidiary of Republic Services, Inc.

County "County" means the County of Sonoma.

County Administrative Costs Fund "County Administrative Costs Fund" means the monies collected from the Base Concession Payments that are allocated to pay for the County Administrative Costs.

County Administrative Fee "County Administrative fee" means the Baseline Administrative Costs plus any Unexpected Administrative Costs (as defined in the Settlement Agreement between the County and the Committed Cities).

County Facilities "County Facilities" means the Central Landfill, the Transfer Stations, and/or the Materials Recovery Facility. As of the Execution Date of this Agreement, "County Facilities" do not include the Compost Facility or the Household Hazardous Waste Facility. In the event County exercises its option in Article 7 of the County Operations Agreement to have Contractor control the operations of the Compost Facility and/or the Household Hazardous Waste Facility, and the Contractor agrees in writing to do so, then such facility(ies) shall be deemed to be included in the definition of "County Facilities".

County Facilities Operations Period "County Facilities Operations Period" means the period after the expiration of the initial twenty-five year Committed Waste Period during which Contractor may operate either the Central Facilities or all County Facilities as provided in the County Operations Agreement, (which may include periods during which some or all of the County and Committed Cities may renew their commitment to deliver Waste to the County Facilities).

County Operations Agreement "County Operations Agreement" means the Agreement entered into by and between Republic Services of Sonoma County, Inc. and the County of Sonoma entitled "Agreement for Operation of the Central Landfill and County Transfer Stations," executed on April 23, 2013, and as it may be amended from time to time.

County Transfer Stations "County Transfer Stations " means the Annapolis, Central, Guerneville , Healdsburg, and Sonoma Transfer Stations.

CPI "CPI" means the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, "All Items" for All Urban Consumers in the San Francisco-Oakland-San Jose metropolitan area (1982-1984=100). If the CPI index is no longer in effect, the successor index that replaces the CPI index will be utilized for purposes of this Agreement.

Disposal "Disposal", "Dispose" or "Disposed" means the final disposition of Waste by burial.

Effective Date "Effective Date" means the date upon which all conditions to the effectiveness of the Amended County Operations Agreement and to this Agreement, as described in Article 4, have been fully satisfied.

Environmental Conditions "Environmental Conditions" means:

(a) **With respect to the Landfill,** the presence, release, threat of release or existence of Hazardous Substances, pollutants, contaminants, Leachate, and Landfill Gas introduced into, on, over, about or from (i) the Landfill Land; and (ii) the air, soil, surface impoundments, ditches, trenches, surface water, water runoff, storm water runoff, groundwater and/or drinking water at the Landfill Land; in all cases set forth in clauses (i)-(ii), existing prior to or as of the Effective Date and during the Term, which are required to be addressed under Applicable Law.

(b) **With respect to the Transfer Stations and Materials Recovery Facility,** the presence, release, threat of release or existence of Hazardous Substances, pollutants, contaminants, and Grey Water through air, soil, surface impoundments, ditches, trenches, surface water, water runoff, storm water runoff, groundwater, improvements, buildings, structures, fixtures, machinery and/or equipment to or from the Land, resulting from operation of these Transfer Stations or the Materials Recovery Facility during the Committed Waste Period and any County Facilities Operations Period which are required to be addressed under Applicable Law. With respect to these Transfer Stations and the Materials Recovery Facility, "Environmental Conditions" excludes any migration or contamination of Hazardous Substances, pollutants, contaminants, leachate and/or landfill gas or other hazardous conditions caused by or associated with the Closed County Landfills.

(c) **With respect to the Transportation of Waste,** the spill or release of Waste or Waste contact liquids from vehicles used by Contractor or its Prime Subcontractor in the performance of this Agreement.

(d) Unless the County exercises its option in Article 7 of the County Operations Agreement to have Contractor control the operations of the Compost Facility, Future Compost facility and/or the Household Hazardous Waste Facility, and Contractor agrees in writing to do so, then the definition of "Environmental Conditions" shall not include the presence, release, threat of release or existence of Hazardous Substances, pollutants, contaminants, compost leachate, or nuisances, arising prior to, from or after the Effective Date to the extent they are caused by or result from the presence or operation of the Compost Facility, Future Compost Facility, the Household Hazardous Waste Facility, or any other composting operation allowed by County on the Land.

Environmental Laws "Environmental Laws" means any Applicable Law, as in effect from time to time, relating to air quality, water quality (including surface water, storm water, groundwater, drinking water, and wastewater discharges), Hazardous Substances, Waste, Green Waste or Yard Waste, Household Hazardous Waste, Food Waste, Medical and Infectious Waste, Mixed Waste, Recyclable Materials, Organic Material, Landfill Gas, Leachate, Financial Assurance and similar environmental matters, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et

seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.) the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code§ 13020, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code§ 25249.5, et seq.), the Hazardous Substance Account Act (Cal. Health & Safety Code§ 25300, et seq.), the California Integrated Waste Management Act of 1989 (Cal. Public Resources Code§ 40000 et s.g.), Cal. Health & Safety Code§ 39000 et seq., 14 Cal. Code of Regulations§ 18010 et seq., 23 Cal. Code of Regulations§ 2510 et seq., 27 Cal. Code of Regulations§ 20005 et. seq., and the Hazardous Waste Control Act (Cal. Health & Safety Code§ 25100, et seq.).

Execution Date "Execution Date" means the date first above written, which shall be deemed the date by which duly authorized representatives of the City and Contractor have all signed this Agreement.

Flow Control "Flow Control" means the legal ability of the County or of a City to deliver, or cause an Entity to deliver, Waste to a solid waste facility. The County or a City may have "Flow Control" by means of a contract, franchise, permit, authorization or license issued by the County or City, respectively, to an Entity, or it may also exist by reason of Applicable Law.

Food Waste "Food Waste" means material that will decompose or putrefy including pre and post-consumer kitchen and table food scraps; animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; fruit waste; grain waste; dairy waste; meat and fish waste; paper or waxed cardboard contaminated with various food waste. This material can be generated at residential and commercial Premises including restaurants, grocery stores and other food processing facilities.

Force Majeure Event "Force Majeure Event" means the occurrence of any of the following events that materially and adversely affects Contractor's ability to perform obligations under this Agreement or Contractor's costs in operating the County Facilities, provided that such events (or the effects of such events) could not have been avoided by the exercise of due diligence or reasonable efforts by Contractor or Prime Subcontractor and subject to notice requirements and the duty to mitigate through the most economical means practical: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Facility, in each case occurring within the State of California; (b) any act of terrorism or sabotage, in each case occurring within the State of California; (c) biological contamination, nuclear explosion or nuclear contamination; (d) fire, explosion, flood, earthquake, landslide, fissure, volcanic activity, tsunami, ionizing radiation that causes direct physical damage to a County Facility or to all of the transportation routes to and from a County Facility; (e) a national strike or local strike not directed at Contractor (and excluding any strike within the control of Contractor); (f) the inability of or refusal by the Water Treatment Plant to accept some or all of the Leachate from the Landfill, or some or all of the liquids from the Compost Facility or Future Compost Facility that Contractor agrees may be delivered to the Water Treatment Plant through the Leachate Pipeline; (g) the unavailability for any reason of the Leachate Pipeline or the Cotati sewer line to convey to the Water Treatment Plant some or all of the Leachate from the Landfill, or some or all of the liquids from the Compost Facility or Future Compost Facility that Contractor agrees may be delivered; (h) any percentage increase in diesel fuel costs, starting from a baseline of \$5 per gallon, that is more than the percentage CPI increase for Contractor's Service Fees that

Contractor has accumulated at any given point in time and that Contractor has incurred as a result of increased payments made to the Prime Subcontractor in accordance with the Prime Subcontract; and (i) an illegal or criminal act, not caused by Contractor or its agents, that causes direct damage to a County Facility or its access or which otherwise interferes with Contractor's performance of this Agreement.

Franchised Hauler "Franchised Hauler" means a person or Entity that collects and hauls Waste pursuant to a contract, franchise, permit, authorization or license issued by the City, and as such franchises, licenses, contracts, permits and authorizations may be amended from time to time, or pursuant to any other means of Flow Control exercised by the City. Should the City elect during the Term to have its Waste delivered to the County Facilities using City forces, the City shall be treated as the "Franchised Hauler" for purposes of this Agreement.

Gate Rates or Contractor's Gate Rates "Gate Rates" or "Contractor's Gate Rates" mean those rates, fees, or charges, whether expressed as per-ton tipping fees or other charges, charged to customers (which includes the City's Franchised Hauler) of any of the County Facilities. The initial Gate Rates or Contractor's Gate Rates that shall be charged by Contractor after the Effective Date shall be those set forth in Exhibit D.

Generic Recyclable Material "Generic Recyclable Material" means glass, bottles, plastic, metal, cardboard, newspaper, fibrous material that is typically generated from residential Premises and many commercial Premises, collected under the terms and conditions of a Franchise Agreement and which is Source Separated with the intention of being delivered to a processing facility for subsequent processing, recycling, and diversion. "Generic Recyclable Material" does not include Source Separated Commercial Food Waste, which shall be a part of Committed City Waste. Generic Recyclable Material is excluded from Committed City Waste.

Governmental Authority "Governmental Authority" and "Governmental Authorities" mean either individually or collectively any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, other governmental arbitrator or arbitral body or other public agency.

Green Waste or Yard Waste "Green Waste" or "Yard Waste" shall have the meaning set forth in that certain Joint Powers Agreement dated February 11, 1992 by and among the County and the Cities of Sonoma County which defines it as "any wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, pruning, brush, and weeds."

Hazardous Substances "Hazardous Substances" means any waste, chemical, material or substance that is listed or regulated, whether presently or in the future, under Environmental Laws as a "hazardous" or "toxic" substance, including "hazardous substances" as defined in 42 United States Code section 9601 (14) and "hazardous waste" as defined in California Health and Safety Code section 25117 and 25117.9.

Household Hazardous Waste "Household Hazardous Waste" shall have the meaning set forth in Health and Safety Code § 25218.1(e) and California Code of Regulations, Title 14, Division 7, Chapter 7, Article 1.1, § 18502, or successor laws and regulations as may be amended from time to time.

Household Hazardous Waste (HHW) Facility "HHW Facility" means a facility that manages and stores Household Hazardous Waste, which is currently located on a portion of the Landfill Land.

Indemnified Claim "Indemnified Claim" means any claim specifically described in Article 6 that is covered by one of the Parties' respective indemnity obligations set forth in Article 6.

Landfill "Landfill" means that certain landfill located on the portion of the Land described on Exhibit G-1 to the County Operations Agreement and commonly known as the Central Landfill. To the extent that the landfill boundaries are altered over time, the landfill, as altered, shall be considered as part of the "Landfill".

Landfill Land "Landfill Land" means that certain real property located in the County of Sonoma, which is comprised of approximately 432 acres.

Market Rates "Market Rates" as it relates to transfer station and Transportation services shall mean the prevailing average rates (net of franchise fees, use permit fees, and other governmental fees, surcharges, taxes and assessments) in the nine San Francisco Bay Area counties for transfer station and Transportation services with a scope substantially similar to those to be provided to a City by Contractor.

Materials Recovery Facility "Materials Recovery Facility" or "**MRF**" means that portion of the Central Transfer Station building interior that will contain materials recovery and processing equipment for the purposes of sorting Recyclable Materials from Waste.

Medical and Infectious Waste "Medical and 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 including waste regulated pursuant to the California Medical Waste Management Act.

Mixed Waste "Mixed Waste" means Waste that includes both Recyclable Materials and Waste in varying proportions.

Occupant "Occupant" means a Person who may or may not hold the legal title to real property constituting the Premises, including businesses or other entities, and who permanently or temporarily lives, works, or operates a business or other venture at the Premises.

Permits "Permits" means the Solid Waste Facilities Permits, the Waste Discharge Requirements applicable to the Landfill Land (but excluding the portion of the Landfill Land used for operation of the Compost Facility and the Household Hazardous Waste Facility), the permits listed on and included within Exhibit H to the County Operations Agreement and all other necessary permits, licenses, consents, orders, certificates, authorizations, waivers, approvals and variances issued by a Governmental Authority including, in each case, all agreements, mandates, requirements, and directives related thereto, applicable to the ownership, operation and management of the County Facilities, currently in effect or issued after the Execution Date (including any transfers, modifications, successors or reissuances thereof).

Permitted Disposal Capacity "Permitted Disposal Capacity" means the capacity of the Landfill to Dispose of additional Waste (in addition to the Waste already Disposed of and in place at the time in question) under Permits in effect as of the Execution Date, as well as any additional Disposal capacity allowed in any and all future Permits.

Person "Person" means any individual, business, firm, association, organization, partnership, public or private corporation, trust, joint venture, political subdivision, special purpose district, the County of Sonoma, or public or Governmental Authority.

Post-Closure "Post-Closure" means all activities undertaken at the Landfill following Closure to maintain the integrity of the containment features and to monitor compliance with applicable performance standards which are required for Post-Closure of the Landfill under the closure plan and Applicable Law. Post-Closure shall not be complete until the Post-Closure Date.

Post-Closure Date "Post-Closure Date" means the date on which all Governmental Authorities with jurisdiction over Post-Closure of the Landfill have accepted the Contractor's certification that the Post-Closure and any then required Remediation work has been completed in accordance with Applicable Law, or alternatively when all such Governmental Authorities or the County have indicated in writing that the Remediation and Post-Closure of the Landfill has been completed.

Premises "Premises" means any land or building in the City where Committed City Waste is generated.

Recyclable Materials "Recyclable Materials" means glass, fibrous material (including paper, cardboard, newspaper), wood, green waste and organic material, food waste, concrete, plastic, ferrous and non-ferrous metal, aluminum, used motor oil and filters, and any other materials that are Recycled. Recyclable Materials does not include Waste that is not actually Recycled.

Recycle "Recycle", "Recycled" and "Recycling" each mean and refer to the process of collecting, sorting, cleansing, treating, and/or reconstituting Recyclable Materials and Mixed Wastes and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace.

Residential Food Waste "Residential Food Waste" means all Food Waste generated by persons owning or occupying single-family homes or residential structures with no more than four separate residential living units.

Self-Haul Waste "Self-Haul Waste" means all Waste, Special Waste and Beneficial Reuse Materials that are delivered to the County Facilities other than Committed County Waste and Committed City Waste.

Source Separated "Source Separated" means materials separated from an Occupant's Waste and placed in designated colored containers at the Occupant's Premises with the intention of diversion for a beneficial use, and which are collected by the City's Franchised Hauler but are not part of the City's waste delivery commitment. Source Separated materials include Generic Recyclable Materials, Wood Waste, Green Waste, and Residential Food Waste, that has no more than ten percent (10%) maximum residue that is not Recyclable Material.

Special Waste "Special Waste" means any non-hazardous solid, liquid, semi-solid, gaseous material and associated containers which would not normally be disposed of by a municipal garbage removal and disposal system, which by way of example would include materials generated as a direct or indirect result of an industrial process or from the removal of contaminants(s) from the air, water or land. "Special Waste" includes any Waste from a non-residential source that includes, but is not limited to any of the following: industrial process waste, pollution control waste,

incinerator residues, ash, spent catalyst, coke, biosolids; tires, bottom settlements and water from storage tanks, oily silt, gasoline additive residues, tars, oils, grease, contaminated soil, contaminated wood, dead animals, residue, debris, articles from the cleanup of a spill or release of materials listed in this section, and regulated asbestos-containing material as defined in 40 CFR 61.141.

Term "Term" means the duration of this Agreement, as specified in Sections 3.1 and 3.2.

Transfer Stations "Transfer Stations" means those certain County-owned facilities that receive and temporarily store Committed City Waste and then transfer such materials onto larger vehicles for Transport. The Transfer Stations include the Central Transfer Station, Annapolis

Transfer Station, Healdsburg Transfer Station, and Sonoma Transfer Station, but expressly exclude the Closed County Landfills.

Transport "Transport," "Transported" and "Transportation" means the conveyance of Franchised Materials Collected from the point of Collection to an Approved Processing Facility, Designated Recyclables Trans-Load Facility, or Approved Transfer Station or from the Approved Transfer Station to an Approved Processing Facility or to the Approved Disposal Facility.

Unpermitted Material "Unpermitted Material" means Hazardous Substances, Medical and Infectious Waste, and an other Waste that the County Facilities may not receive under Applicable Law.

Waste "Waste" means an putrescible and non-putrescible solid, semi-solid and associated liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes; discarded non-hazardous home and industrial appliances; dewatered, treated or chemically fixed non-hazardous biosolids; Special Waste; manure; vegetable or animal solid and semi-solid wastes; other discarded solid and semi-solid wastes; Mixed Waste; Construction and Demolition Wastes; Recyclable Materials, organic material, Food Waste, Beneficial Reuse Material, agricultural wastes; landscaping wastes and non-hazardous industrial wastes; residual waste from processing and any other types of Waste anowed by the Permits. Waste does not include (i) Hazardous Substances; (ii) Medical and Infectious Waste; and (iii) other Unpermitted Material that is not allowed by Permit to be received at a facility to which it is delivered.

Waste Delivery Agreement "Waste Delivery Agreement" means any agreement between Contractor and the County or any city or town in Sonoma County that has substantially the same form as this Agreement.

Wood Waste "Wood Waste" shall have the meaning set forth in that certain Joint Powers Agreement dated February 11, 1992 by and among the County and the Cities of Sonoma County which defines it as "solid waste consisting of wood pieces or particles which are generated from the manufacturing or production of wood products, harvesting, process or storage of raw wood materials, or construction and demolition activities".

ARTICLE 2. DELIVERY AND ACCEPTANCE OF WASTE

2.1 Commitment to Deliver Committed City Waste to County Facilities

(a) Commencing on the Effective Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess to deliver or cause the delivery to the Contractor and the County Facilities of all Committed City Waste, except for those categories of Waste excluded from such commitment in Section 2.2 below and Exhibit B. A City shall not avoid its commitment to deliver Committed City Waste under this Agreement by entering into a new primary hauler contract or by adopting an ordinance, resolution or other local rule that provides that Committed City Waste shall not be required to be directed to the Central Landfill.

(b) Without limiting the generality or scope of the definition of Waste, this waste delivery commitment includes the following categories of Waste generated in the City: non-Recyclable Materials, Mixed Waste, Beneficial Reuse Materials, and generally all Waste currently directed to the Central Landfill or County Facilities pursuant to the current City collection franchise agreement, subject to the exclusions below in Section 2.2 and Exhibit B.

(c) The City shall exercise its Flow Control powers to fulfill the entirety of its waste delivery commitment to Contractor throughout the Term of this Agreement.

(d) This commitment for delivery of Committed City Waste by the City is not a guaranty that any specific quantity of Waste will be delivered to Contractor and the County Facilities. This Agreement does not represent a "put or pay" arrangement in which the City or its Franchised Hauler must make a fixed or minimum monthly or annual payment to Contractor regardless of the actual amount of Waste deliveries made to Contractor under this Agreement. Contractor acknowledges that the actual Waste deliveries to Contractor and the County Facilities may be higher or lower than its projections, proposal assumptions or historical averages.

(e) Contractor shall accept all Committed City Waste described in this Agreement, except for Unpermitted Material, delivered to any of the County Facilities for transfer, processing, recycling and/or disposal, in accordance with the respective rules and operating hours of each such County Facility.

(f) For the Term of this Agreement, the Gate Rate at the Central Landfill shall be fixed by the terms of Article 11 and other sections of the County Operations Agreement and be inclusive of any costs associated with the operation of the Transfer Stations and Transport to the Central Landfill.

2.2 Exclusions from Committed City Waste

See Exhibit B, which defines the categories of Waste that are excluded from Committed City Waste for purposes of this Agreement.

2.3 Food Waste and Dry Commercial Mixed Waste Collection Program

(a) City shall authorize its Franchised Hauler to implement a City-wide commercial Food Waste collection program. The City's Franchised Hauler will commence the new City-wide

commercial Food Waste collection program when directed to do so by the City. The Franchised Hauler's costs of this program are fully compensated through the Contractor's Gate Rates, and Franchised Hauler shall agree by executing the addendum, attached hereto as Exhibit C, not to seek additional compensation from City for the commercial Food Waste collection program for the Term of the Agreement.

(b) The City's Franchised Hauler shall commence the City-wide collection of dry commercial Mixed Waste from commercial Premises in the City when directed to do so by the City. The Franchised Hauler's costs of this program are being fully compensated through the Contractor's Gate Rates, and City's Franchised Hauler shall agree by executing the addendum, attached hereto as Exhibit C, not to seek additional compensation from City for the Contractor's incremental costs of implementing and conducting the dry commercial Mixed Waste collection program for the Term of the Agreement.

2.4 New, Extended Or Modified Franchise Agreements

Whenever the City's Franchised Hauler has its contract, authorization, permit, license or franchise agreement renewed (excluding only a renewal on the basis of a unilateral option of the Franchised Hauler), extended or materially modified after the Execution Date, the City shall incorporate language in such contract, authorization, permit, license or franchise agreement, requiring the Franchised Hauler to deliver all Committed City Waste to the Contractor and County Facilities for the Term of this Agreement, any extension hereof and any other City waste delivery commitment to Contractor, excluding only those categories of Waste listed in Section 2.2 and Exhibit B.

2.5 Contractor's Scope of Services and Fees for Accepting Committed City Waste

In exchange for accepting the delivery of Committed City Waste at any of the County Facilities pursuant to this Agreement and the County Operations Agreement, Contractor shall perform the scope of services and obligations for the Committed Cities as more fully set forth in Exhibit E and incorporated herein by reference. Such obligations include, but are not limited to, the Transport of Committed City Waste from the Transfer Stations to the Central Landfill.

The Contractor's Service Fees for performing the services described in this Agreement and in the County Operations Agreement, and the Gate Rates to be charged Committed City Waste at the County Facilities, shall be determined in accordance with the provisions of Article 11 and other Sections of the County Operations Agreement; provided, however, that:

(a) notwithstanding any contrary provision in the County Operations Agreement, commencing upon the expiration of the twentieth year of the Term, the Contractor's Service Fees to City shall be reduced by five percent (5%) of the Service Fees (which are net of any County Concession Fees, Waste Management Agency Fees or any other governmental taxes, fees, surcharges or assessments) in effect immediately prior to the end of the twentieth year of the Term. Thereafter, Contractor's Service Fee shall be adjusted in accordance with the Rate Adjustment Provisions in the County Operations Agreement; and

- (b) as a condition precedent to the effectiveness of this Agreement, Contractor and County shall have agreed that the Base Concession Fee described in Article 10 and Exhibit R of the County Operations Agreement shall no longer be charged to Contractor or City during the last five years of the 25 year Initial Term; and
- (c) Contractor further agrees to include as part of the Gate Rate the Committed City Contingent Liability Fee on all waste from the Committed Cities and transfer said fees to the County to hold in trust for the Cities in accordance with the Settlement Agreement between the Committed Cities and the County and as provided for in the Amendment to the County Operations Agreement.

2.6 No Guaranty of Payment by City; Franchised Hauler's Failure To Pay Gate Rate; Delinquency and Remedies

(a) Notwithstanding the City's commitment to deliver Committed City Waste as described herein, such commitment is not a guaranty of payment from the City's general fund. Contractor shall be solely responsible for invoicing the Franchised Haulers delivering Committed City Waste and shall be responsible for obtaining Gate Rate payments from such Franchised Hauler through normal, commercial means. The City shall not have any direct responsibility or liability for unpaid amounts unless the City is itself directly hauling its Committed City Waste to the County Facilities; provided, however, the City agrees to the following process to cure any delinquencies of the Franchised Hauler:

(i) If the Franchised Hauler is delinquent in paying any invoices from Contractor for the Gate Rates applicable to its prior deliveries of Committed City Waste, then Contractor shall immediately provide City written notice of such delinquency. For purposes of this subsection, a Franchised Hauler shall be deemed delinquent if it has not paid the full amount of any invoice of Contractor within thirty (30) days of the date of the invoice, unless there is a pending good faith dispute as to the invoice.

(ii) Upon receiving written notice of the Franchised Hauler's delinquency, City shall have ninety (90) days to take reasonable internal actions to ensure payment of all undisputed invoices by the Franchised Hauler. If, after ninety (90) days, the City is unable to obtain payment by the Franchised Hauler, and there is no pending good faith dispute as to the invoice, then the Contractor may declare the City to be in breach of this Agreement and serve City with notice of breach.

(iii) The City shall be allowed a reasonable opportunity to cure the breach after receipt of written notice of breach. During the cure period, the City shall, in its sole discretion, develop an agreeable plan for curing the Franchised Hauler's delinquency. City actions to cure may include, but not be limited to, terminating the Franchised Hauler's contract, filing for receivership, obtaining financial assurances adequate to Contractor, or

selecting a new primary hauler and entering into a new franchise agreement with terms guaranteeing repayment to Contractor of all outstanding balances over a period of time through a supplemental rate structure. During the cure period, interest at the rate of one percent (1.0%) per month shall also begin to accrue on any liquidated amounts of delinquent Gate Rates. As long as City takes any of the actions described in this subsection (iii) to secure payment of an delinquent amounts, then in no event shall City be required to pay any outstanding invoices.

(iv) Nothing in this Section is intended to limit or inhibit Contractor from asserting any legal rights it may have against City's Franchised Hauler in order to secure payment of delinquent invoices. For example, Contractor at its sole discretion may place any Franchised Hauler or other entity on a Cash on Delivery (COD) payment basis if the Franchised Hauler is deemed delinquent as wen as any other legal remedies as may be available to it subject to the terms of this Agreement.

2.7 Flow Control Enforcement.

(a) The City shall not enter into any new contract, franchise, permit, authorization or license, or grant any assignment or transfer of an existing contract, franchise, permit, authorization or license, or grant any other approval or take any other action that is inconsistent with the requirements of this Agreement, including the City's commitment to deliver Committed City Waste to the Contractor and County Facilities as required herein except as may be agreed to by Contractor.

(b) The City agrees that the Contractor shall be a third party beneficiary of the obligation of all City Franchised Haulers over which the City has exercised flow control to deliver Committed City Waste to the Contractor and County Facilities, and that Contractor may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchised Hauler of the Contractor's third party beneficiary rights. Delivery of a funy executed copy of this Agreement to the Franchised Hauler shan constitute such notification.

(c) The City, in cooperation with the Contractor, shall establish, implement, carry out and enforce a waste flow enforcement program that is sufficient to reasonably assure the delivery of an Committed City Waste to the Contractor and County Facilities consistent with this Agreement. The waste flow enforcement program shall consist of amending City contracts, franchises, permits, authorizations or licenses with Franchised Haulers, to the extent required by this Agreement, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with this Agreement, but shall not be limited to: (J) granting or issuing contracts, franchises, permits, authorizations or licenses to Franchised Haulers, upon the condition of compliance with this Agreement, and (2) providing for and taking appropriate reasonable enforcement action under any such contract, franchise, permit, authorization or license, such as, but not limited to, the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchised Haulers as determined appropriate by the City in its sole discretion.

(d) Contractor may initiate enforcement action as a third party beneficiary of this

Agreement at its sole cost and expense, if the City's Franchised Hauler fails to honor its commitments to deliver Committed City Waste to Contractor ten (10) days after providing written notification to the City. The City shall reasonably cooperate with Contractor if Contractor initiates such action.

(e) The City shall use its good faith efforts to preserve, protect and defend its rights to exercise and comply with this Agreement against any challenge thereto, legal or otherwise (including any lawsuits involving the City as Party, whether as plaintiff or defendant), by any Franchised Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. At the request of the Contractor and at the option of the City, the City may assign its rights and obligations pursuant to this paragraph to the Contractor, and the Contractor shall, at Contractor's election, accept such assignment and the Contractor shall defend the City at the Contractor's sole cost and expense or indemnify the City for the payment of any costs incurred by the City in defense of any such challenge. The City and Contractor shall cooperate and coordinate in any such defense.

(f) The City shall immediately notify the Contractor of any changes in the contract, franchise, permit, authorization or license of its Franchised Hauler that may affect the Franchised Hauler's obligation or ability to comply with the City's commitment to deliver Committed City Waste to Contractor and the County Facilities. Notwithstanding the foregoing this clause shall not relieve the City of its obligations under Sections 2.1, 2.4 and 2.7 of this Agreement.

(g) The City shall cooperate with the Contractor in collecting information and otherwise monitoring the City's Franchised Hauler in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Committed City Waste collected, stored, processed and disposed of, and all other information which is reasonably available to the City and may be required by the Contractor in connection with this Agreement.

(h) A breach or default by the City as to its commitment of Committed City Waste under this Section shall not be considered a breach or default by the County or any other Committed City. A breach or default by the County as to its commitment of Committed County Waste under this Section shall not be considered a breach or default by any Committed City. In no event shall the City have any obligation for any other Committed City or any Committed City have any obligation for the County and no joint or several liability shall apply under any circumstance.

(i) In the event Contractor, by reason of a Force Majeure Event, is unable to accept delivery of the City's Committed City Waste at the Central Landfill, then Contractor shall ensure that the Committed City Waste is transferred to and disposed of at another permitted facility, at no additional cost to the City, until the Force Majeure Event is lifted.

(j) It is the intention of the Parties that this Agreement and the obligations and rights of the City hereunder, including particularly the commitment of delivery of Committed City Waste to Contractor and the County Facilities, shall to the extent permitted by Applicable Law extend to any territory annexed by the City and shall bind any successor or restructured Governmental Authority which shall assume or succeed to the rights of the City under Applicable Law.

ARTICLE 3. TERM OF AGREEMENT

3.1 Initial Twenty Five-Year Term

The initial Term of this Agreement shall commence on the Effective Date and continue until the twenty-fifth (25th) anniversary of the Effective Date. As used herein, the "Effective Date" of this Agreement is and shall be the same as the Effective Date of the County Operations Agreement.

3.2 Option to Extend Agreement

Under Section 12.5 of the County Operations Agreement, the County and each Committed City shall independently have six (6) successive options to continue to commit its Committed City Waste to Contractor for an additional five (5) years per option. The County and/or each City seeking an extension must provide written notice of its decision to exercise each option no later than twelve (12) months prior to the expiration of the then-prior period under which the City's Waste has been committed (e.g., the initial option must be exercised by the twenty fourth (24th) year anniversary of the Effective Date). The exercise of the options shall be within the sole respective discretion of the County or City and the exercise of one option does not guaranty or mean that the succeeding option or options will be exercised; provided, however, that the subsequent options may not be exercised unless the immediately preceding option has been exercised. The terms of the County's and each City's six (6) successive options, assuming a Commencement Date in 2014, follow below:

Option #1: Years 2039-2044

Option #2: Years 2044-2049

Option #3: Years 2049-2054

Option #4: Years 2054-2059

Option #5: Years 2059-2064

Option #6: Years 2064-2069

(a) Notwithstanding the foregoing, Contractor shall not be obligated to accept deliveries of any Waste from the County or any Committed City at any point in time after the initial Term of this Agreement unless both of the following conditions are met:

- (1) The Central Landfill shall have sufficient Permitted Disposal Capacity to Dispose of all Waste to be delivered by the County and Committed Cities extending their Waste delivery commitments to Contractor; and
- (2) Jurisdictions timely exercising their options to extend their Waste delivery commitments shall have contributed through their Franchised Haulers at least sixty percent (60%) of the total Committed Waste deliveries of all jurisdictions delivering material to the County Facilities for the two year period immediately preceding the date by which these jurisdictions must have exercised their options to extend their commitment.

3.3 Right To Use County Transfer Stations At Market Rates.

Provided that Contractor remains under contract with the County to operate any or all of the County Transfer Stations following the expiration of the City's Waste Delivery Agreement, Contractor agrees to and shall provide transfer station and Transportation services for the City's Committed Waste at Market Rates for as long as the Contractor has the right to operate any such Transfer Station. Any disputes regarding whether Contractor is offering to provide such services at Market Rates may be submitted by either party to Dispute Resolution, but the dispute must be submitted to Dispute Resolution no later than 45 days following the expiration of the Initial Term.

ARTICLE 4. CONDITIONS PRECEDENT

4.1 Conditions Precedent.

This Agreement shall not become effective, and the Parties shall have no obligations to each other by reason of this Agreement, until the following conditions precedent have been met, or unless otherwise agreed to in writing between Contractor and City.

(a) Waste Flow Commitments.

All of the Cities listed below shall have entered into Waste Delivery Agreements with Contractor whereby each City has agreed to deliver and/or shall cause all of their Franchised Haulers to deliver all Committed City Waste to the Contractor and County Facilities for a minimum period of twenty-five (25) years, commencing on the Effective Date. The Cities that must enter into such Waste Delivery Agreement to satisfy this condition are: Cloverdale, Cotati, Healdsburg, Rohnert Park, Santa Rosa, Sebastopol, Sonoma, and the Town of Windsor.

(b) Water Treatment Plant Discharge Agreement and Permits.

Contractor shall receive as the operator of the Landfill a valid permit for leachate disposal with the Subregional Wastewater Treatment and Reclamation System Laguna Plant allowing acceptance of leachate generated from the Landfill for a fee not to exceed one percent (1%) over the current fees for such disposal. The County has entered into an Agreement for Sewer Transmission Services with the City of Cotati wherein Cotati agrees

to allow the County to use its sewer line to transfer leachate from the Landfill to the Subregional Wastewater Treatment and Reclamation System Laguna Plant.

(c) Landfill and Landfill Expansion Permits.

This condition precedent has already been met. On March 14, 2013, Contractor received as the operator of the Landfill a valid Solid Waste Facilities Permit, Waste Discharge Requirements, NSPS permit and all other Permits required for the operation of the Landfill and the construction and operation of an additional 8.5 million cubic yards of new Disposal capacity adjacent to the existing Landfill and on the Landfill Land, which Permits shall be in a form satisfactory to Contractor in its sole discretion.

(d) Validity of City or Town Council Approval of this Agreement.

The City/Town Council of City shall have duly authorized the City's signing and performance of this Agreement, and of all of the City's obligations in this Agreement shall be legally enforceable and binding obligations of the City.

(e) Franchised Hauler's Execution of Exhibit C.

To the extent (i) the City exercises Flow Control over its Committed City Waste, and (ii) the Committed City Waste does not include Construction and Demolition Wastes, then the City's Franchised Hauler(s) shall have duly approved and executed the Franchised Hauler's Agreement to be bound by the City's Waste Delivery Agreement in the form attached hereto as Exhibit C. It is expressly understood that this specific provision is limited to a commitment of Construction and Demolition Debris by Franchised Haulers only.

(f) Settlement Agreements With Cities.

The County and the Committed Cities shall each have entered into written Settlement Agreements pertaining to the Cities' alleged liabilities arising out of or relating to the County Facilities.

(g) Corporate Guaranty.

Contractor shall have delivered to City a duly approved and executed parent company guaranty in the form attached hereto as Exhibit F.

(h) Accuracy of Contractor's Representations.

The Contractor's representations in Article 7 and throughout this Agreement shall be true, correct and not misleading due to a material omission as of the Execution Date and as of the Effective Date.

ARTICLE 5. ASSUMED AND EXCLUDED LIABILITIES

5.1 Assumed Liabilities

Subject to the terms and conditions set forth herein and upon the Effective Date of the County Operations Agreement, Contractor shall assume and retain, at its sole cost and expense, all obligations and liabilities of any kind or nature whatsoever related to, arising from or associated with any of the following items set forth in this Section (collectively, "Assumed Liabilities") provided, however, that the Assumed Liabilities shall not include any of the Excluded Liabilities described below and the Assumed Liabilities shall not apply to any obligations or liabilities, including Third Party Environmental Claims, associated with the Household Hazardous Waste Facility or the Compost Facility, Future Compost Facility or any other composting operation on the Landfill Land, unless and until the Contractor assumes operation of the Household Hazardous Waste Facility and/or the Compost Facility or Future Compost Facility consistent with the terms of the County Operations Agreement. The Assumed Liabilities are the obligations and liabilities of the County and the alleged liabilities of Committed Cities and are assumed and retained by Contractor irrespective of the cause thereof or any alleged fault by the County, a Committed City, a third party or any other entity related thereto. The Assumed Liabilities are as follows:

(a) Indemnification Obligations. Payment and performance of all of Contractor's

defense and indemnity obligations under Article 6.

(b) Landfill Liabilities. Although County will be retaining ownership of the Landfill, Contractor shall assume all liabilities related to the ownership or possession of the Landfill arising on or after the Effective Date including liability arising out of: (i) any Remediation determined necessary or desirable by Contractor or required by the Permits, Applicable Law or any Governmental Authority; (ii) any Environmental Conditions; (iii) the ownership or possession of any equipment, structures, fixtures, surface impoundments or any other facility used for the treatment, storage, handling or disposal of Hazardous Substances, leachate and/or landfill gas; (iv) liabilities concerning the Landfill and other solid waste handling operations on the Landfill Land conducted by Contractor or its subcontractors after the Effective Date and arising pursuant to Applicable Law, Permits and Governmental Authorities; (v) Closure and Post-Closure Obligations and (vi) taxes (including property, business and income taxes) incurred and assessed after the Effective Date. Notwithstanding the foregoing, Assumed Liabilities shall not include liabilities under this Section to the extent arising out of or caused by the HHW Facility, Compost Facility or any future compost facility, to the extent such facilities continue to be operated by a third party over whom Contractor has no control, or any Closed County Landfill, including but not limited to any leachate or landfill gas migrating from any Closed County Landfill. The foregoing Assumed Liability and the indemnity associated therewith in Section 6.1(a) (iii) is intended to operate as an agreement pursuant to section 107(e) of CERCLA, 42 U.S.C. §9607(e), and California Health & Safety Code §25364, to defend, protect, hold harmless and indemnify the City from all losses and liabilities described in this subsection 5.1 (b).

(c) Transfer Station and Materials Recovery Facility Liabilities. Although County will be retaining ownership of the Transfer Stations and Materials Recovery Facility, Contractor shall assume all Liabilities and Losses related to ownership, possession, use and operation of the Transfer Stations and Materials Recovery Facility during the Committed Waste Period and any County Facilities Operations Period during which Contractor operates the Transfer Stations including for any (i) Environmental Conditions; (ii) Transportation of Waste and other materials as provided for in this Agreement; (iii) work (including work to address Environmental Conditions) determined necessary or desirable by Contractor or as the result of a Third Party Environmental Claim; (iv) the ownership, operation, use or possession of any equipment, structures, fixtures, surface impoundments or any other facility used for operation of the Transfer Facilities or Materials Recovery Facility, including the treatment, storage, handling or Disposal of Hazardous Substances, leachate and/or landfill gas; (v) all operations conducted at or associated with the Transfer Facilities or Materials Recovery Facility or the business conducted at the Transfer Facilities or Materials Recovery Facility; and (vi) compliance with the Permits and Applicable Law. Notwithstanding the foregoing, Assumed Liabilities shall not include (1) Liabilities under this Subsection to the extent arising out of or caused by any Closed County Landfill, including any leachate, landfill gas or Hazardous Substances at or released or migrating from any Closed County Landfill, or (2), unless otherwise agreed in a writing subsequently signed by both parties hereto, Liabilities relating to the Compost Facility, Future Compost Facility, any other composting operation on the Landfill Land or the Household Hazardous Waste Facility.

(d) Compliance Liabilities. Any and all liabilities and obligations arising out of or related to compliance after the Effective Date with (i) the Permits; (ii) Governmental Authority mandates, directives, orders, agreements, claims rights, actions, causes of actions, investigations, proceedings, suits and obligations of any kind related to the solid waste operations on the Landfill Land and/or the Facilities; and (iii) Applicable Law. Notwithstanding the foregoing, Assumed Liabilities shall not include Losses or Liabilities to the extent arising out of or caused by (1) any Closed County Landfill, including any leachate, landfill gas or Hazardous Substances at or released or migrating from any Closed County Landfill or (2), unless otherwise agreed in a writing subsequently signed by both parties hereto, Losses or Liabilities relating to the Compost Facility, Future Compost Facility, any other composting operation on the Landfill Land or Household Hazardous Waste Facility.

(e) Pending Permit Applications. Obligations to process, obtain approval of and satisfy any applicable conditions relating to any pending Permit applications, new Permits or any amendments, modifications, extensions or renewals of any existing Permits, variances, certificates, licenses, consents, authorizations and approvals, in each case relating to the Landfill or other County facilities and arising or accruing from and after the Effective Date.

(f) Contractual Liabilities. Obligations and liabilities of Contractor under the Waste Delivery Agreements and the Assigned Contracts arising or accruing from and after the Effective Date; provided, however, Contractor shall assume all obligations and liabilities under the Assigned Contracts relating to Environmental Conditions and Remediation of the Central Landfill irrespective of the date on which such obligations or liabilities arise or accrue. Notwithstanding the foregoing, Assumed Liabilities shall not include liabilities under this subsection to the extent arising out of or caused by any Closed County Landfill, including any leachate, landfill gas or Hazardous Substances at or released or migrating from any Closed County Landfill.

(g) Changes in Assumed Liabilities. Any modification, increase, alteration or change in the Assumed Liabilities after the Effective Date for any reason, including modifications, increases, alterations or changes arising out of, related to or caused by any Change in Law, a Force Majeure Event or a change in Permit requirements or obligations; provided, however, that the foregoing shall not diminish any rights that Contractor has under this Agreement in the event of a Change in Law or a Force Majeure Event.

(h) Other Specified Liabilities. All other liabilities, obligations or responsibilities expressly allocated to Contractor, and not excluded as an Excluded Liability, in the County Operations Agreement.

S.2 Excluded Liabilities

Except as explicitly and expressly set forth in this Agreement, Contractor shall not, by the execution and performance of this Agreement or otherwise (including under theories of successor liability), assume, become responsible for or incur any liability or obligation of any nature of County or of the Committed Cities whatsoever arising, or relating to events occurring, on or prior to the Effective Date, whether legal or equitable or matured or contingent including but not limited to:

(i) any obligation to reimburse the County or City for expenditures made by the County, City or

other Entity or expenditures which accrued and were payable under contract (or would have been payable if billed) but were unpaid prior to the Effective Date on account of any of the Assumed Liabilities; and (ii) any Excluded Liabilities as set forth in this Section "Excluded Liabilities" means:

(a) any Liability under (A) any employment, severance, retention or termination agreement with any employee of County, or (B) any collective bargaining agreement covering any employee of County, or (C) under any employee benefit plans maintained by, or contributed to, by County, or (D) relating to payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, retirement benefits, health care plans or benefits or any other employee plans, programs or benefits of any kind for employees or former employees of County;

(b) any Liability arising out of or relating to any employee grievance, whether or not the affected employees are hired by Contractor, relating to events occurring on or prior to the Effective Date.

(c) any Liability resulting from County's failure to comply with any applicable plant-closing Laws.

(d) Losses and Claims for contract damages (including quantum meruit), indemnity or equitable relief based on the breach or default by the County or City prior to the Effective Date under a contract (including an Assigned Contract) related to the Landfill Land or the Facilities.

(e) a Third Party Claim for tort damages, personal injury and/or property damage which is caused by the County or City and directly arising out of the County Facilities (other than the Landfill) prior to the Effective Date.

(f) any amounts owing to Third Parties under contract from the County or City that have accrued as of the Effective Date.

(g) Losses and Claims arising out of disposal by the County, City or Third Parties of the County's Hazardous Substances, Household Hazardous Waste and unpermitted Waste prior to the Effective Date to facilities other than the Landfill, Vasco Road Landfill, Potrero Landfill or Keller Landfill (including the Transportation and conveyance to such other facilities).

(h) The nonpayment by the County of permit fees to the Board of Equalization, LEA RWQCB and applicable Air Quality Management Districts relating to the County Facilities for the period prior to Effective Date.

(i) In the event the County does not exercise its option in Article 7 of the County Operations Agreement to have Contractor control the Compost Facility or Future Compost Facility and/or any composting operations on the Landfill Land and/or the Household Hazardous Facility on the Landfill Land, and Contractor does not agree in writing to assume responsibility for such operations, then Excluded Liabilities shall include any Liabilities, Losses or Claims arising from or relating to: (a) the presence or operation of the Compost Facility, Future Compost Facility and any other composting operation on the Landfill Land and the Household Hazardous Waste Facility, and (b) any agreements between the County, the Waste Management Agency and/or the operators of the Compost Facility, relating to any composting operation on the Landfill Land, and/or the Household Hazardous Waste Facility.

(j) In the event the County does not exercise its option in Article 7 of the County Operations Agreement to have Contractor control the Compost Facility or Future Compost Facility and/or any composting operations on the Landfill Land and/or the Household Hazardous Facility on the Landfill Land, and Contractor does not agree in writing to assume responsibility for such operations, then Excluded Liabilities shall also include any Liabilities, Losses or Claims arising from or relating to: the Compost Facility, Future Compost Facility, any composting operations on the Landfill Land, and/or the Household Hazardous Waste Facility, and including without limiting the generality of the foregoing, any groundwater contamination, surface water contamination, subsurface migration, odors, disease vectors, nuisance vectors, trespass and/or nuisance claims, notice of permit violation, notice to comply, or violations of Applicable Law relating to any of the foregoing facilities or operations.

(k) Any Liabilities or Losses arising after the termination of Contractor's operation of the Transfer Stations and Materials Recovery Facility in accordance with the terms of the County Operations Agreement and relating to the presence of these Facilities or the operation of these Facilities by a Third Party, but excluding any work required to address Environmental Conditions arising from Contractor's operations;

(l) Any Liabilities or Losses arising from, relating to or connected with any of the Closed County Landfills or any Hazardous Substances, landfill gas or leachate in or from such Closed County Landfills;

(m) Any Liabilities or Losses arising from, relating to or connected with the matters described in the Notice of Violations And Intent to File Suit under the Federal Water Pollution Control Act from the law firm of Lozeau Drury LLP to the County dated November 9, 2012, and any litigation arising therefrom, except to the extent specifically agreed to by Contractor in writing prior to the Effective Date;

(n) Any Liabilities or Losses arising from, relating to or connected with any abandoned, removed or leaking underground fuel storage tanks at the Guemeville, Annapolis, Healdsburg and Sonoma Transfer Stations arising before the Effective Date;

(o) Any Liabilities or Losses arising from, relating to or connected with the operations by the County or by Third Parties of the Guemeville Maintenance Site and the Reuse and Recycling Operations at Sonoma Transfer Station;

(p) All other Liabilities or Losses expressly allocated to County, the City and/or the Committed Cities in this Agreement.

ARTICLE 6. INDEMNIFICATION , RELEASE AND COVENANT NOT TO SUE

6.1 Indemnification by Contractor

(a) Contractor shall indemnify, defend and hold the City harmless from and against all

losses which arise out of, result from or relate to any of the following ("Indemnified Claims"):

- (i) Any material breach or material default under the County Operations Agreement, and/or this Agreement by Contractor;
 - (ii) Any material breach of any of the representations or warranties made in the County Operations Agreement and/or this Agreement;
 - (iii) Any and all Assumed Liabilities (but excluding Excluded Liabilities), including the failure of Contractor to pay, perform, satisfy or otherwise discharge in full when due the Assumed Liabilities;
 - (iv) The use, exploration, production, recovery, sale, transfer and/or distribution of landfill gas from the Landfill (and any byproducts or end products thereof, including electricity) from and after the Effective Date and during the Term;
 - (v) Any claim challenging this Agreement or the County Operations Agreement, including any counterclaim or cross-claim arising therefrom, by a partner, officer, shareholder, director or other entity deriving its rights by or through the Contractor and challenging the Agreement;
 - (vi) The past, present and future acceptance, disposal, treatment, processing or sorting by Contractor of Waste and other materials in or at any County Facility from and after the Effective Date and during the Term;
 - (vii) The screening by Contractor or any affiliate of any Waste and other materials in or at any County Facility;
 - (viii) The past, present and future acceptance, disposal, treatment, processing or sorting by Contractor or any affiliate of any Waste and other materials at or in any facility other than the County Facilities;
 - (ix) The screening by Contractor or any affiliate of any Waste and other materials at or in any facility other than the Facilities (including facilities located outside of the County of Sonoma) during the Term;
 - (x) Any Claim (a) asserted by a Third Party arising out of, related to or resulting from the Land or the County Facilities (other than Excluded Liabilities and those Claims expressly covered by the County's indemnities), and (b) where such Third Party Claim is a result of, related to or arises from Contractor's actions to pursue an Entity for: (i) any Indemnified Claim; or (ii) any Assigned Environmental Claim;
 - (xi) Any claim, counterclaim or right to contribution by a third party arising out of, related to or resulting from the Landfill or the County Facilities (other than those claims, counterclaims or rights to contribution expressly covered by the County's indemnities under Section 15.6 of the County Operations Agreement or related to or arising from any Excluded Liability); and
 - (xii) Any claim, counterclaim, or right of contribution against the City as a result of or arising from Contractor's actions to pursue an entity for any Indemnified Claim.
- (b) Contractor's duty to indemnify and defend shall survive the expiration or earlier

termination of this Agreement.

(c) Notwithstanding the foregoing or any other provision of this Agreement, Contractor shall retain and have the right and ability (but not the obligation) to pursue any or all third parties for any Indemnified Claims. Contractor shall indemnify City if such third party files a claim against City for any Indemnified Claims.

(d) Furthermore, nothing in this Section or this Agreement shall be construed to impose any defense or indemnity obligation or any other form of liability on Contractor, its subcontractors or any member of the Contractor Parties or their successors and assigns in any way whatsoever relating to, arising from or connected with the Closed County Landfills.

(e) Nothing in this indemnity shall be construed to create any duty or include any obligation of Contractor to defend, hold harmless or indemnify the County, any Committed City or any other Entity from any Liabilities, Losses or Claims arising from or relating to: the Compost Facility, Future Compost Facility, any composting operations on Landfill Land, and/or the Household Hazardous Waste Facility, and including without limiting the generality of the foregoing, any groundwater contamination, surface water contamination, subsurface migration, odors, disease vectors, nuisance vectors, trespass and/or nuisance claims, notice of permit violation, notice to comply, or violations of Applicable Law relating to any of these facilities or operations.

6.2 Contractor's Release Of County Group And Committed Cities

CONTRACTOR, FOR ITSELF AND ON BEHALF OF EACH OF ITS MEMBERS, SHAREHOLDERS, SUBSIDIARIES, AFFILIATES, AND EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, DOES HEREBY RELEASE, HOLD HARMLESS AND FOREVER DISCHARGE THE COUNTY, EACH MEMBER OF THE COUNTY GROUP AND THE COMMITTED CITIES FROM ANY AND ALL LOSSES, IN EACH CASE, OF ANY KIND OR CHARACTER, WHETHER KNOWN OR UNKNOWN, HIDDEN OR CONCEALED, TO THE PERSON OR PROPERTY OF CONTRACTOR, ITS SUCCESSORS AND ASSIGNS, RESULTING FROM OR ARISING OUT OF (1) ANY LOSSES COVERED BY CONTRACTOR'S INDEMNITIES, SET FORTH IN SECTION 6.1; (2) THE PAST, PRESENT, CONTINUED AND FUTURE SCREENING, ACCEPTANCE, DISPOSAL, TREATMENT, SORTING, HANDLING AND PROCESSING BY THE CONTRACTOR GROUP OF WASTE OR OTHER MATERIAL (INCLUDING COMMITTED COUNTY WASTE, COMMITTED CITY WASTE AND SELF-HAUL WASTE) AT OR IN THE LANDFILL, EXCEPT FOR SCREENING, TREATMENT OR PROCESSING THAT OCCURRED AT RECYCLETOWN ON THE LANDFILL PRIOR TO THE EFFECTIVE DATE; (3) THE SCREENING, ACCEPTANCE, DISPOSAL, TREATMENT, SORTING, HANDLING AND PROCESSING OF WASTE OR OTHER MATERIAL (INCLUDING COMMITTED COUNTY WASTE, COMMITTED CITY WASTE AND SELF-HAUL WASTE) AT THE TRANSFER STATIONS OCCURRING DURING THE COMMITTED WASTE PERIOD AND ANY COUNTY FACILITIES OPERATING PERIOD; (4) THE DISPOSAL OF WASTE BY CONTRACTOR AFTER THE EFFECTIVE DATE COMING FROM THE COUNTY AT FACILITIES OTHER THAN THE COUNTY FACILITIES (INCLUDING FACILITIES LOCATED OUTSIDE OF THE COUNTY BUT EXCLUDING FACILITIES NOT OWNED OR OPERATED BY CONTRACTOR OR ITS PRIME SUBCONTRACTOR); (5) ANY REMEDIATION, CLOSURE AND POST-CLOSURE

OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (6) ANY MATTER OR ITEM INCLUDED WITHIN THE ASSUMED LIABILITIES (BUT EXCLUDING ANY EXCLUDED LIABILITIES); (7) ANY ENVIRONMENTAL CONDITION AT THE TRANSFER STATIONS OCCURRING DURING THE COMMITTED WASTE PERIOD OR COUNTY FACILITIES OPERATIONS PERIOD; AND (8) ANY ENVIRONMENTAL CONDITION AT THE MATERIALS RECOVERY FACILITY OCCURRING DURING THE COMMITTED WASTE PERIOD OR THE COUNTY FACILITIES OPERATING PERIOD.

CONTRACTOR HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS THAT IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT BY VIRTUE OF THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA (OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT), WHICH PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

IN THIS CONNECTION, CONTRACTOR HEREBY AGREES, REPRESENTS, AND WARRANTS THAT IT REALIZES AND ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CLAIMS THAT ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND IT FURTHER AGREES, REPRESENTS, AND WARRANTS THAT THIS RELEASE HAS BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND IT NEVERTHELESS HEREBY INTENDS TO RELEASE THE COUNTY, THE OTHER MEMBERS OF THE COUNTY GROUP AND THE COMMITTED CITIES FROM THE LOSSES AND MATTERS DESCRIBED IN THIS SECTION.

NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, THIS RELEASE SHALL NOT RELEASE THE COUNTY OR ANY MEMBER OF THE COUNTY GROUP OR THE COMMITTED CITIES FROM ANY OBLIGATIONS EACH OF THEM MAY HAVE UNDER THIS AGREEMENT OR ANY OTHER CONTRACT DOCUMENT, INCLUDING THE COUNTY'S INDEMNITY OBLIGATIONS UNDER SECTION 15.6 OF THE COUNTY OPERATIONS AGREEMENT. THIS RELEASE SHALL ALSO NOT RELEASE THE COMMITTED CITIES FROM THEIR RESPECTIVE OBLIGATIONS UNDER THEIR RESPECTIVE WASTE DELIVERY AGREEMENTS.

Contractor's Initials____ _

Notwithstanding the foregoing, the release set forth herein shall not preclude Contractor from, and Contractor hereby expressly reserves its right to, pursue all Third Parties (which expressly exclude any entity released hereby) for any matter covered by the release set forth in this Section.

6.3 Covenant Not to Sue

(a) Neither Contractor, nor any entity claiming through Contractor, shall have any rights, claims, remedies or actions against the City for any matter with respect to which Contractor

has provided indemnification under this Agreement or a release under this Agreement. Notwithstanding the foregoing, Contractor is not assuming any liabilities or obligations for any matter covered by the Contractor's exceptions to indemnity under Section 6.4 of this Agreement

(b) Contractor, for itself, does hereby covenant forever and unconditionally not to sue, make any claim or take any action against the City for any loss arising out of, relating to (i) any Assumed Liabilities (but excluding Excluded Liabilities); (ii) any other matter with respect to which Contractor has provided indemnification or a release under the County Operations Agreement; and (iii) facilities other than the County Facilities at which Contractor disposes of or processes Waste from the County of Sonoma. The foregoing covenant not to sue shall not apply to any matter covered by the Contractor's exceptions to indemnity under Section 6.4 of this Agreement.

6.4 Exceptions to Scope of Contractor's Indemnity, Release and Covenant Not To Sue.

A. Compost Facility and HHW Facility at Landfill Land.

(i) Unless Contractor agrees to assume operation of the Compost Facility or future Compost Facility pursuant to Article 7 of the County Operations Agreement, Contractor shall have no obligation to defend, hold harmless or indemnify the City for any liabilities, losses, claims or Environmental Conditions that Contractor proves by a preponderance of evidence were or are caused by the presence or operation of any Compost Facility, the future Compost Facility, or other composting operation on the Landfill Land that may occur from and after the Effective Date, and Contractor's release and covenant not to sue shall not apply to any such claims or Environmental Conditions. Without limiting the foregoing and by way of example only, such post-Effective Date Environmental Conditions may include vehicle fuel or lubricant spills, contamination of or failure to control surface water run-off from composting operations, air emissions from composting operations, composting odors, nuisance claims, and aspergillum or other biological contamination of water or air caused by the composting of organic materials such as Food Waste, permit violations, notices to comply, or violations of Applicable law; provided, however, that under all circumstances Contractor's indemnity, release and covenant not to sue shall apply to any leachate or landfill gas generated by the Central Landfill or Landfill operations.

(ii) Unless Contractor assumes operation of the Household Hazardous Waste Facility pursuant to Article 7 of the County Operations Agreement, Contractor shall have no obligation to defend, hold harmless or indemnify the City for any liabilities, losses, claims or Environmental Conditions that Contractor proves by a preponderance of evidence were or are caused by the presence or operation of the Household Hazardous Waste Facility at the Landfill Land, and Contractor's release and covenant not to sue shall not apply to any such claims or Environmental Conditions.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Contractor.

Contractor, by acceptance of this Agreement, hereby makes the following representations and warranties for the benefit of the City as of the Execution Date, each of which shall be deemed remade as of the Effective Date, unless Contractor specifies in writing otherwise.

(a) Corporate Status.

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California. Contractor is qualified to transact businesses in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

(b) Corporate Authorization and Binding Obligation.

Contractor has the authority to enter into and perform its obligations under this Agreement. The officers of Contractor have taken all actions required by law, its articles of incorporation, bylaws, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Contractor to comply with each of the provisions of this Agreement, except as such enforceability may be limited by Applicable Laws of general application affecting the rights of contracting parties, bankruptcy, insolvency or other similar Applicable Laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

(c) Agreement Will Not Cause Breach.

Neither the execution and delivery by Contractor of this Agreement, nor the performance of Contractor of its obligations hereunder:

1. Conflicts with, violates or will result in a violation of any existing applicable law; or
2. Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound; or
3. Will result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor which will interfere materially with Contractor's performance hereunder.

(d) No Litigation.

To the best of Contractor's knowledge, after reasonable investigation, and except as disclosed to the City, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or Governmental Authority, commission, board, agency or instrumentality decided,

pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the City in writing.

(e) No Adverse Judicial Decisions.

To the best of Contractor's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement or subjects this Agreement to legal challenge.

(f) Ability to Perform.

Contractor possesses the business, professional, and technical capabilities to operate the Landfill, accept and dispose of Waste at the Landfill and operate the Transfer Stations and Material Recovery Facility; Contractor possesses or knows of no impediment to its obtaining the Permits to perform this Agreement; and Contractor possesses the equipment, facility, and employee resources required to perform this Agreement.

(g) Contractor's Investigation.

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

(h) Conflict of Interest.

Contractor warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Agreement, the compensation to be paid under it and, further, that no City employee who acts in the City as a "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director, or proprietor of the Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the Contractor.

(i) Representatives of the Parties.

Contractor has designated and submitted to the City, in writing, the name, title and contact information of a responsible officer who shall serve as the representative of Contractor and who shall have authority in all daily operational matters related to the Agreement. The City may rely upon action taken by such designated representative as action of Contractor unless for actions not

taken within the scope of the Agreement. Unless otherwise specified in this Agreement, any action authorized or required to be taken by the City may be taken by the City Council or by an official or agent designated by the City Council.

U) Financial Ability, Disclosures, No Material Changes.

Contractor has sufficient financial resources to perform all aspects of its obligations hereunder. Contractor has provided the County with audited financial statements which present fairly, in accordance with generally accepted accounting principles, the financial resources of Contractor. There has been no material adverse change in Contractor's or Contractor's parent company's financial circumstances since the date of the most recent financial statements.

(k) Contractor's Statements.

Contractor's proposal and any other supplementary information submitted to the City that the City has relied on in negotiations and entering into this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

(l) Landfill Disposal Capacity

Contractor has determined that the Central Landfill has sufficient Permitted Disposal Capacity to accept and dispose of all Committed City Waste delivered during the first twenty five (25) years of this Agreement.

7.2 City Representations and Warranties.

The City, by acceptance of this Agreement, hereby makes the following representations and warranties for the benefit of the Contractor as of the Execution Date, each of which shall be deemed remade as of the Effective Date, unless the City specifies in writing otherwise:

(a) Organization and Existence.

The City is a municipal corporation of the State.

(b) Execution, Delivery and Enforceability.

The City has full power to enter into, and to carry out its obligations under, this Agreement. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action required on the part of the City. This Agreement constitutes the valid and legally binding obligations of the City, enforceable against the City in accordance with its and their terms, except as such enforceability may be limited by Applicable Laws of general application affecting the rights of contracting parties (including those applying to enforcement against public entities), bankruptcy, insolvency or other

similar Applicable Laws of general application relating to or affecting the enforcement of creditors' rights and by general equitable principles.

(c) No Litigation.

To the best of the City's knowledge, after reasonable investigation, there is no claim, at law or in equity, before or by any court or Governmental Authority, third party, commission, board, agency or instrumentality decided, pending or threatened against the City wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the City of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of the City.

(d) No Adverse Judicial Decisions.

To the best of the City's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement or subject this Agreement to legal challenge.

(e) No Consents.

No consent or approval of, filing with or notice to any entity is required to be obtained or made by the City in connection with the City's execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated hereby, which, if not obtained or made, would prevent the City from performing its obligations hereunder or thereunder.

ARTICLE 8: EVENTS OF BREACH AND DEFAULT

8.1 Events of Breach

All provisions of this Agreement are considered material and City or Contractor's failure to perform any one of its obligations or services set forth in this Agreement shall constitute an event of breach. In addition, each of the following shall also constitute an event of breach:

(a) **Failure to Perform Obligations.** Contractor ceases to perform its services and obligations for the Committed Cities set forth in Exhibit E, for a minimum of either two (2) consecutive business days or three (3) non-consecutive business days within one (1) week for any reason within its control, but excluding a Force Majeure Event.

(b) **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and effect insurance, liability, or indemnification coverage as required by this Agreement and Section 14.2 of the County Operations Agreement.

(b) **Violations of Applicable Law.** City or Contractor violates Applicable Law relative to this Agreement, including any orders or filings of any regulatory body having authority over the Party relative to this Agreement, provided that the Party may contest any such orders or filings in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred

upon final resolution of the contest or appeal in favor of the Party.

(d) **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor's operating equipment, including, without limitation, its maintenance or office facilities, or any part thereof.

(e) **City's Failure to Perform Obligations.** The City ceases to perform its obligations as required under Article 2 of this Agreement, unless due to a Force Majeure Event. With respect to its requirement to cure delinquent payments by Franchised Hauler, as more fully set forth above in Section 2.7, the City is unable to obtain payment from the Franchised Hauler for delinquent invoices due to Contractor.

(t) **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, a receiver is appointed or Contractor's assets are involuntarily transferred or assigned, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

8.2 Rights to Remedy Breach

The Party in breach shall promptly, or as soon as practicable, provide the other Party written notice of the breach. Upon written notice, the Party shall have a reasonable time to cure, but such cure period shall not exceed ninety (90) days, except as otherwise provided for the City in Section 2.7.

8.3 Events of Default

Each of the following shall constitute an event of default:

(a) **Failure to Cure Breach.** Failure to cure an event of breach as provided above in Section 8.2.

(b) **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the combination of breaches constitutes a material failure by the Party to perform its obligations, even if each individual breach is later cured.

(c) **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.

(d) **False or Misleading Statements.** Any representation or disclosure made to the City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement. In addition, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting typographical and grammatical errors.

(e) **Criminal Activity.** Either Party, its officer, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement.

(f) **Assignment Without Approval.** Contractor transfers or assigns this Agreement without express written approval of the City.

8.4 Event of Default Not Curable

Neither Party shall have the right to cure an event of Default as set forth in Section 8.3. However, either Party may waive a default as provided below in Section 9.2.

ARTICLE 9: REMEDIES AND RESOLUTION OF DISPUTES

In addition to the flow control enforcement remedies provided above in Section 2.7, City and Contractor shall each have the following remedies, upon a determination that the other party has committed an event of default:

9.1 Right to Terminate

City or Contractor may terminate this Agreement. The Party seeking termination shall (a) first, provide written notice to the other Party that it intends to terminate; and (b) second, obtain a court order from a court of competent jurisdiction in Sonoma County in order to effectuate termination. Termination shall be effective on the date specified in the court order.

9.2 Waiver of Default

City or Contractor may waive any default of the other Party if, in the Party's sole discretion, such a waiver would be in the best interests of both parties. A Party's waiver of default is not a waiver of future events that may have the same or similar conditions.

9.3 Other Available Remedies

A Party's election of one or more remedies described herein shall not limit that Party from any and all other remedies at law and in equity.

9.4 Dispute Resolution

(a) **Informal Resolution.** Should any dispute arise with respect to the performance and obligations of the Parties hereunder, at any time during the term of this Agreement, the provisions of this Section shall apply. Either Party shall give the other written notice of such dispute. Such notice shall specify a date and location for the Parties to meet and confer in good faith to resolve any dispute that may arise in a cooperative and mutually satisfactory manner. City and Contractor shall attempt to resolve their disputes informally to the maximum extent possible. In the event the Parties cannot resolve such dispute within thirty (30) days of such notice, either Party may propose to enter mediation or non-binding arbitration, as set forth below.

(b) **Mediation.** Either Party may propose the appointment of a mediator for advice and non-binding mediation, and the Parties shall cooperate in promptly scheduling the mediation.

(i) The mediation shall be conducted by the Judicial Mediation and Arbitration Service (JAMS) or such other service the parties agree on. The neutral shall be selected by the