

**AGREEMENT
BETWEEN
THE COUNTY OF SANTA BARBARA
AND MARBORG RECOVERY, LP FOR
OPERATION OF THE TAJIGUAS
MATERIAL RECOVERY FACILITY**

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EXHIBITS

- A: Reserved
- B: Operations and Maintenance Manual
- C: Liquidated Damages
- D: Reserved
- E: Reserved
- F: Facility, ReSource Center, and Site Map
- G: Secretary's Certification
- H: Tajiguas Sanitary Landfill and ReSource Center Permits
- I: Reporting Requirements
- J: Inventory of Non-Fixed Equipment
- K: Water System Operations Guideline
- L: Product Marketing Plan
- M: Staffing Plan
- N: Material Characterization Study Methodology
- O: Reserved
- P: Performance Bond
- Q: Insurance Requirements
- R: Reserved
- S: Mitigation and Monitoring Requirements Plan
- T: Subcontractor Agreements
- U: Installment Purchase Agreement
- V: Continuing Disclosures Agreement

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1 **AGREEMENT**

2 This Agreement for the Operation of the Materials Recovery Facility (hereinafter the “Facility”) at the
3 ReSource Center, formerly referred to as the Tajiguas Resource Recovery Project (hereinafter the
4 “Agreement”) is entered into this ____ Day of _____, by and between the County of Santa Barbara
5 (“County”) and MarBorg Recovery, LP (“Operator”).

6 **RECITALS**

7 WHEREAS, Article XI, Section 7 of the California Constitution authorizes cities and counties to protect
8 public health and safety by taking measures in furtherance of their authority over police and sanitary
9 matters; and,

10 WHEREAS, the Legislation of the State of California, by enactment of the California Integrated Waste
11 Management Act (AB 939), Global Warming Solutions Act (AB 32), California Jobs and Recycling Act (AB
12 341), Organic Waste Recycling Act (AB 1826), 15 Year Disposal Capacity Policy (PRC Division 30, Part 2,
13 Chapter 4, Section 41701) Compostable Organics Infrastructure Act (AB 876), and Short-Lived Climate
14 Pollutants: Organic Waste Reductions Act (SB 1383) established a solid waste management program
15 which requires cities and counties to implement plans and develop programs to be in compliance with
16 these provisions; and,

17 WHEREAS, the ReSource Center is composed of a material recovery facility, an anaerobic digester, and a
18 composting facility to process source-separated recyclables, source-separated organics, and mixed
19 municipal waste to maximize the recovery of usable resources in the form of recyclables, soil
20 amendment, and biogas-based energy; and,

21 WHEREAS, the Tajiguas Resource Recovery Project was constructed, operations started in 2021, and the
22 Tajiguas Resource Recovery Project was designed to provide at least a 20-year waste management plan
23 for the region as well as enable all participating jurisdictions to be in compliance with the growing
24 number of stringent waste management regulations and greenhouse gas reduction requirements; and,

25 WHEREAS, in 2012, the County managed the preparation of the Subsequent Final Environmental Impact
26 Report for the Tajiguas Resource Recovery Project, including a detailed project description with the final
27 released to the public in December 2015, the County Planning Commission Finding of Conformity with
28 the County’s General Plan in January 2016, and County Board certification in July 2016; and,

29 WHEREAS, in 2016, the County Board and participating jurisdictions approved the use of public financing
30 in order to reduce the cost of the Tajiguas Resource Recovery Project to the users of the facility and
31 considered the cost of the project with public funding, the impact of funding and implementing the
32 project on the County, and identifying the necessary mechanisms to protect the County from project
33 failures; and,

34 WHEREAS, in 2016, the County negotiated and executed a contract with MSB Investors, LLC to design,
35 build, and operate the Tajiguas Resource Recovery Project, and negotiated Material Delivery and Service
36 Contracts with the cities of Buellton, Goleta, Santa Barbara, and Solvang to provide waste management

services to their residents and businesses for twenty-two (22) years, the term of the anticipated public financing; and,

WHEREAS, the Tajiguas ReSource Center was constructed and began startup, acceptance testing, and commissioning in 2021. In 2023, the County Board of Supervisors terminated the Agreement with MSB Investors, LLC.

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

ARTICLE 1. DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this Section, and as defined elsewhere in this Agreement. In the event a term is not defined in this Agreement, then it shall have the meaning set forth in the Santa Barbara County Code, or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with descending order of precedence given to definitions in the Santa Barbara County Code, and the Public Resources Code). Words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms.

1.1 AB 32

"AB 32" means the Global Warming Solutions Act of 2006 (Chapter 488, Statutes of 2006 [Nunez, AB32]), also commonly referred to as "AB 32," as amended, supplemented, superseded, and replaced from time to time. AB 32 also refers to final approved regulations issued pursuant to the statute.

1.2 AB 341

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341," as amended, supplemented, superseded, and replaced from time to time. AB 341 also refers to final approved regulations issued pursuant to the statute.

1.3 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time. AB 939 also refers to final approved regulations issued pursuant to the statute.

1.4 AB 1201

"AB 1201" means Assembly Bill 1201, approved by the Governor of the State of California on October 5, 2021, which amended Sections 42356, 42356.1, and 42357 of, and amended the heading of Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time.

1.5 AB 1826

"AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time. AB 1826 also refers to final approved regulations issued pursuant to the statute.

1.6 Acceptable Materials

"Acceptable Materials" means all of the materials collected by the Participating Agencies' Collection Contractors, including Mixed Waste, and Source-Separated Recyclable Materials, that are required to be delivered to a transfer facility and transported to the Facility and/or directly delivered to the Facility whether by Operator, the County, and/or Other Users as permitted under Applicable Law and the Facility's Permits. Acceptable Materials may include some Unacceptable Materials that must be removed by Operator before Processing or Disposal, as provided in Subsection 6.2.E. Acceptable Materials include all MDA materials collected by Collection Contractors in each of the Participating Agencies' jurisdictions, as well as Spot Market Materials.

1.7 Acceptance

"Acceptance" means approval by the County that Operator has successfully performed the Acceptance Tests and met the Acceptance Standards.

1.8 Acceptance Standards

"Acceptance Standards" means the performance standards specified for each piece of new equipment as specified by the Equipment Manufacturer at the time of installation that Operator must meet in order to achieve Acceptance.

1.9 Acceptance Tests, Acceptance Testing

"Acceptance Tests" or "Acceptance Testing" means the tests for Acceptance as specified in Subsection 5.5.H.6.

1.10 Agreement

"Agreement" means this Agreement between the County of Santa Barbara and Operator for Operation of the Tajiguas Material Recovery Facility at the ReSource Center, including all exhibits and attachments which are incorporated herein by reference.

1.11 Agreement Year

"Agreement Year" means a period commencing on July 1 of each calendar year and ending on June 30 of each succeeding calendar year, except that the final Agreement Year shall terminate upon the conclusion of ten (10) years of operation, plus any renewals or extensions.

1.12 Anaerobic Digestion Facility Operator, AD Facility Operator

"Anaerobic Digestion Facility Operator" or "AD Facility Operator" means the County or its designee in charge of the Operations and management of the Anaerobic Digestion Facility.

1.13 Anaerobic Digestion Facility, AD Facility, ADF

“Anaerobic Digestion Facility,” “AD Facility,” or “ADF” means the facility at the ReSource Center, to be operated by the AD Facility Operator for Organic Materials Processing to produce digestate, biogas for electricity generation, and Compost.

1.14 Annual Capacity Guarantee

“Annual Capacity Guarantee” means the total annual Tonnages of Acceptable Materials that Collection Contractors may deliver, that the County may cause to be delivered in accordance with Subsection 2.10.A, and/or that the County may deliver on behalf of the County and Public Participants for each Agreement Year, for which the Facility is designed and Operator’s operating expenses are assumed to accept, as provided in Section 2.10. Changes to the Annual Capacity Guarantee and any related adjustments in compensation shall be made in accordance with Section 2.10 and Section 10.4, as necessary.

1.15 Annual Percentage Change

“Annual Percentage Change” means the annual percentage change in any of the indices defined below, calculated as described in the following paragraph.

The Annual Percentage Change for a cost index shall be calculated as the Average Index Value for the most recently available twelve- (12-) month period ending during the then-current Rate Period minus the Average Index Value for the corresponding twelve- (12-) month period ending during the most recently completed Rate Period and the result of which shall be divided by the Average Index Value for the same twelve- (12-) month period ending during the most recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

For example, for the Rate application due in December of 2026 for Rates to be effective for Rate Period Two, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for December 2025 through November 2026) – (Average CPI for December 2024 through November 2025)] / (Average CPI for December 2024 through November 2025)].

1.16 Annual Settlement Process

“Annual Settlement Process” means the annual reconciliation performed at the conclusion of each Agreement Year, as provided in Article 10.

1.17 Applicable Law

“Applicable Law” means any law, rule, code, standard, regulation, requirement, consent decree, consent order, consent agreement, Permit, guideline, action, determination, order of, or legal entitlement issued or deemed to be issued by any governmental body having jurisdiction, as applicable from time to time to any activities associated with the equipping, financing, ownership, operation, Maintenance, repair, and replacement of any part of the Site, as well as the transfer, handling, transportation, Marketing, Disposal, or Processing of Products and Residuals, and any other obligations of the Parties under the Agreement. Governmental bodies include local, County, State and federal agencies and all successors thereto.

142 1.18 Available Material(s)

143 “Available Material(s)” means the total weight of each Recoverable Material type in the composite
144 material stream, calculated during each Performance Study. Available Material is the total of the weight
145 of each Recoverable Material in the Recovery Study plus the total weight of each Recoverable Material
146 missed in the Residue Study.

147 1.19 Average Index Value

148 “Average Index Value” means the sum of the monthly index values during the most recently available
149 twelve- (12-) month period divided by twelve (12) (in the case of indices published monthly) or the sum
150 of the bi-monthly index values divided by six (6) (in the case of indices published bi-monthly).

151 1.20 Baseline Revenues

152 “Baseline Revenues” means the Agreement Year 1 Revenue projected payment by the County to
153 Operator used to establish the Per-Ton Processing Rate for Agreement Year 1: \$10,451,400 minus
154 \$4,650,000 from the sale of Recyclable Materials.

155 1.21 Billing(s)

156 “Billings” means statements of charges rendered by the County to Collection Contractors and others for
157 acceptance and Processing of Acceptable Materials delivered to the Tajiguas Resource Recovery Project,
158 or parties delivering Spot Market Materials to the Tajiguas Resource Recovery Project.

159 1.22 Bypassed Waste

160 “Bypassed Waste” means any material that is: (i) weighed in at the County Scale House for delivery to
161 Facility and Accepted by Operator; (ii) not Processed at the Facility prior to Disposal; and, (iii) prior to
162 Disposal, Operator has secured written permission from the County for such material to bypass
163 Processing and be Disposed. Examples of Bypassed Waste could be Unacceptable Waste, or waste not
164 Processable due to size. Bypassed Waste includes materials Diverted from the Facility before or after
165 unloading but not Processed at the Facility.

166 1.23 Capture Rate

167 “Capture Rate” means the percentage of each individual type of Recovered Material Recovered during
168 each Acceptable Materials Recovery Study that is calculated as: the total weight of each individual type
169 of Recovered Material Recovered during each Recovery Study, divided by the total weight of each
170 individual type of Available Material during that Performance Study. Capture Rate changes with each
171 Acceptable Material Performance Study.

172 1.24 CEQA

173 “CEQA” means the California Environmental Quality Act, Section 21000, *et seq.* of the California Public
174 Resources Code and its implementing regulations and guidelines, including future amendments to or
175 recodification thereof.

176 1.25 Change in Law

177 "Change in Law" means any of the following acts, events, or circumstances to the extent that compliance
178 therewith increases or decreases the cost of performing a Party's obligations under the Agreement when
179 such changes exceed one percent (1%) of revenue in the aggregate in any one Agreement Year, subject
180 to adjustment using the methodology described in Article 10.

181 A. The enactment, adoption, amendment, promulgation, issuance, modification, repeal, or written
182 change in administrative or judicial interpretation of any Applicable Law on or after the Effective
183 Date (including, but not limited to, a new or amended prevailing wage, minimum wage, living wage
184 or similar laws or regulations), unless such Applicable Law was on or prior to the Effective Date
185 duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation,
186 in each case in final form to become effective without any further action by any governmental
187 body.

188 B. The order or judgment of any local, County, State, and/or federal (and all successors thereto)
189 governmental body having jurisdiction over the services provided in this Agreement issued on or
190 after the Effective Date (unless such order or judgment is issued to enforce compliance with
191 Applicable Law which was effective as of the Effective Date) to the extent such order or judgment
192 is not the result of willful or negligent action, error or omission, or lack of reasonable diligence of
193 Operator, the County or Public Participants, whichever is asserting the occurrence of a Change in
194 Law; provided, however, that the contesting in good faith or failure in good faith to contest any
195 such order or judgment shall not constitute or be construed as such a willful or negligent action,
196 error or omission or lack of reasonable diligence.

197 It is specifically understood, however, that a change in the nature or severity of the actions typically
198 taken by a governmental body to enforce compliance with Applicable Law that was effective as of the
199 Effective Date shall not constitute a "Change in Law".

200 1.26 Change in Scope

201 "Change in Scope" means a change in development or Operation activities directed by the County in
202 accordance with Section 2.11.

203 1.27 Collection Contractor(s)

204 "Collection Contractor(s)" means the entity or entities that are contracted, licensed, Permitted, or
205 otherwise obligated to or by a Public Participant to provide collection services and directed to Deliver
206 Acceptable Materials to the Facility.

207 1.28 Compost

208 "Compost" means product that is the result of Composting. Compost should be tested through the Seal
209 of Testing Assurance Program ("STA") and meet the standards outlined in 14 CCR Sections 17868.1
210 through 17868.5.

211 1.29 Composting, Composted

212 “Composting” or “Composted” means any controlled aerobic decomposition process for a period of not
213 less than six (6) weeks such that the resulting material meets the maximum acceptable metal
214 concentration limits specified in Section 17868.2 and pathogen reduction requirements specified in
215 Section 17868.3 of Title 14, California Code of Regulations, Chapter 3.1.

216 1.30 Composting Management Unit, CMU

217 “Composting Management Unit” or “CMU” means the area adjacent to the AD Facility to be operated
218 by the AD Facility Operator for Organic Materials Processing to produce Compost from Recovered
219 Organic Materials from the MRF, digestate from the AD Facility, or Source-Separated Organic Materials,
220 as brought to the Facility.

221 1.31 Conditions Precedent

222 “Conditions Precedent” means all conditions that must be satisfied by Operator or the County pursuant
223 to Section 2.7.

224 1.32 Construction and Demolition Debris

225 “Construction and Demolition Debris” means used or discarded construction materials including, but not
226 limited to, concrete, brick, wood, dirt, rock, cardboard, packaging materials, etc., removed from a
227 premises during the construction or renovation of a structure resulting from construction, remodeling,
228 repair, or demolition operations on any pavement, house, commercial building, or other structure.

229 1.33 Consumer Price Index, CPI-U

230 “Consumer Price Index” or “CPI-U” means the Consumer Price Index, All Urban Consumers, All Items,
231 Not Seasonally Adjusted, Los Angeles-Riverside-Orange County, California, compiled and published by
232 the U.S. Department of Labor, Bureau of Labor Statistics, Series Identification No. CUURA421SA0, or its
233 successor.

234 1.34 Corrective Maintenance

235 “Corrective Maintenance” means non-routine and unscheduled repair activities required for operational
236 continuity, safety, and performance that are generally due to failure of equipment or to avert failure of
237 the equipment, vehicles, facilities, or some component thereof.

238 1.35 County

239 “County” means the County of Santa Barbara, California, a political subdivision of the State of California.

240 1.36 County Board of Supervisors, County Board

241 “County Board of Supervisors” or “County Board” means the Board of Supervisors of the County of Santa
242 Barbara.

243 1.37 County Obligation(s)

244 "County Obligation(s)" means each and every obligation and liability of the County specified in this
245 Agreement.

246 1.38 California Refund Value, CRV

247 "California Refund Value" or "CRV" means the additional value of an eligible Recyclable Materials
248 commodity payable by the California Department of Resources Recycling and Recovery (CalRecycle)
249 under the State's Beverage Container Recycling Program, established by the Beverage Container
250 Recycling and Litter Reduction Act passed in 1986, and related Applicable Law and implementing
251 regulations.

252 1.39 Day

253 "Day" means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

254 1.40 Direct Costs

255 "Direct Costs" means costs directly related to the implementation of this Agreement and Operator
256 Obligations that include any and all of the following:

- 257 A. Payroll costs directly related to the performance, or management or supervision of any Operator
258 Obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits,
259 including vacation, sick leave, holidays, retirement, workers' compensation insurance, federal and
260 State unemployment taxes, and all medical and health insurance benefits.
- 261 B. The costs of materials, services, direct rental costs and supplies, and professional services,
262 including, but not limited to, the services of engineers, surveyors, architects, environmental
263 consultants, and attorneys.
- 264 C. The reasonable costs of any payments to Subcontractors necessary to and in connection with the
265 performance hereunder (not including fees or profits).
- 266 D. Any other cost or expense that is directly or normally associated with the task performed; which
267 is substantiated by:
 - 268 1. A certificate signed by the principal financial officer of Operator setting forth the amount of
269 such cost and the reason why such cost is properly chargeable to the County, as the case
270 may be, and stating that such cost is an arm's length and competitive price, if there are
271 competitive prices for the service or materials supplied.
 - 272 2. If the County requests such additional back-up documentation as may be available to
273 reasonably substantiate any such Direct Cost, including invoices from suppliers and
274 Subcontractors.

275 1.41 Dispose, Disposal

276 "Dispose" or "Disposal" (or any variation thereof) means Operator's use of the Landfill for final
277 disposition of Residue and Bypassed Waste from the Facility, as restricted by Permit conditions for
278 Unacceptable Waste.

279 1.42 Diversion Guarantee

280 “Diversion Guarantee” means Operator’s minimum guaranteed Diversion level based on total delivered
281 Tonnages of Acceptable Materials, as further described in Article 9.

282 1.43 Divert, Diversion

283 “Divert” means to Recover Recyclable Materials and Organic Materials from Acceptable Materials
284 through Processing, resulting in reuse or sale of Products, or preparation for further Processing at the
285 Anaerobic Digestion Facility. “Diversion” is a broad concept that is inclusive of new technology and
286 material handling and Processing changes that may occur over the Term, including, but not limited to,
287 implementation of other innovative techniques or technology that may increase Diversion, decrease
288 costs, and/or are deemed desirable by the County for other reasons.

289 1.44 Effective Date

290 “Effective Date” means the date the Agreement is fully executed by the Parties thereto pursuant to
291 Section 2.2.

292 1.45 Effective Recovery Rate

293 “Effective Recovery Rate” means Operator’s aggregated Capture Rate of Recoverable Material during
294 each Acceptable Material Characterization Study divided by the aggregated Available Material during
295 each Acceptable Material Characterization Study. Effective Recovery Rate will change based on the
296 composition of Inbound Tons of Acceptable Material evaluated during each Acceptable Material
297 Characterization Study.

298 1.46 Environmental Laws

299 “Environmental Laws” means all federal and State statutes and County and Participant ordinances
300 concerning public health, safety, and the environment, including, by way of example and not limitation,
301 AB 32, AB 341, AB 939, AB 1826, the Comprehensive Environmental Response, Compensation and
302 Liability Act of 1980, 42 USC §9601 *et seq.*; the Resource Conservation and Recovery Act, 42 USC §6902
303 *et seq.*; the Federal Clean Water Act, 33 USC §1251 *et seq.*; the Toxic Substances Control Act, 15 USC
304 §1601 *et seq.*; the Occupational Safety and Health Act, 29 USC §651 *et seq.*; the California Hazardous
305 Waste Control Act, California Health and Safety Code §25100 *et seq.*; the California Toxic Substances
306 Control Act, California Health and Safety Code §25300 *et seq.*; the Porter-Cologne Water Quality Control
307 Act, California Water Code §13000 *et seq.*; the Safe Drinking Water and Toxic Enforcement Act, California
308 Health and Safety Code §25249.5 *et seq.*; as currently in force or as hereafter amended, and all rules and
309 regulations promulgated thereunder.

310 1.47 Environmental Performance Guarantee

311 “Environmental Performance Guarantee” means Operator’s guarantee of environmental performance
312 as described in Article 9.

313 1.48 Equipment Manufacturer

314 “Equipment Manufacturer” means, whether used singularly or collectively, a business(es) that supplies
315 the County or Operator with equipment used in the Operation of the Facility.

316 1.49 Event(s) of Default

317 “Event(s) of Default” means those events identified in Section 14.2.

318 1.50 Excessive Residue

319 “Excessive Residue” means the total percentage of actual Residue in each stream of Acceptable
320 Materials, as a percentage of Inbound Tons Processed by Acceptable Material type. Operator shall be
321 responsible to pay Excessive Residue Disposal costs at two hundred percent (200%) of the then-current
322 per-Ton rate for each Ton of Residue Disposed.

323 1.51 Exit Transition Plan

324 “Exit Transition Plan” means the transition services, including plans for temporary, short-term
325 operational procedures and activities relating to the physical and operational status of the ReSource
326 Center following conclusion of the Agreement Term, to be undertaken by Operator as more thoroughly
327 specified in Section 15.20 Agreement.

328 1.52 Extended Producer Responsibility Program

329 “Extended Producer Responsibility Program” means an environmental program or policy codified,
330 enforced, and/or monitored by local, State, or federal governments in which a producer’s, distributor’s,
331 or retailer’s administrative, financial, operational, and/or physical responsibility for a product is
332 extended to the post-consumer stage of a product’s life cycle. Extended Producer Responsibility
333 Programs may be implemented by individual producers, collective industry organizations such as a
334 producer responsibility organization or Stewardship Organization, or other regulated entities specified
335 under the program. Such programs may cover individual products or categories of products, using one
336 (1) or more funding mechanisms, as defined in the regulation(s) establishing the program.

337 1.53 Facility

338 “Facility” means the building, equipment, and all activities related to the Material Recovery Facility.

339 1.54 Facility Manager

340 “Facility Manager” means the manager employed by Operator to oversee all activities at the Facility.

341 1.55 Fiscal Year

342 “Fiscal Year” means a year commencing on July 1 and ending on June 30. Rates shall be effective for a
343 Fiscal Year in accordance with Article 10.

344 1.56 Food Scraps

345 “Food Scraps” means all Organic Materials generated during or resulting from the storage, sale,
346 preparation, cooking, or handling of food stuffs, including (i) all kitchen and table food waste; (ii) animal

or vegetable waste (iii) discarded paper and cardboard that is contaminated with food; and, (iv) fruit waste, grain waste, dairy waste, meat and fish waste. Food Scraps are a subset of Organic Materials.

1.57 Guaranteed Capture Rate

“Guaranteed Capture Rate” means either: (i) the guaranteed percentage of each individual type of Recovered Material that collectively comprise the Minimum Performance Guarantee and where each individual percentage does not change over time; or, (ii) the guaranteed percentage of each individual type of Recovered Material that collectively comprise Operator’s Recovery Guarantee and where each individual percentage does not change over time.

1.58 Good and Accepted Operating Practice

“Good and Accepted Operating Practice” means the methods, techniques, standards, and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as Good Industry Practice in Municipal Solid Waste management and Recycling and organics management industries, as practiced in the United States and the State, and consistent with the same degree of skill and care ordinarily exercised by members of this industry.

1.59 Good Industry Practice

“Good Industry Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as prudent in the Municipal Solid Waste management and Recycling and organics management industries, as practiced in the United States and the State.

1.60 Hazardous Waste

“Hazardous Waste” means any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

- A. “Hazardous Waste” pursuant to Section 40141 of the California Public Resources Code; all substances defined as acutely hazardous waste, extremely hazardous waste, or hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), and future amendments to or recodification of such statutes or regulations promulgated thereunder.
- B. “Hazardous Substances” as defined under Chapter 6.8 of the California Health and Safety Code, Division 20, Sections 25316 and 25317.
- C. Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 *et seq.*, as amended, and related federal, State, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 *et seq.*
- D. Materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, as amended, and regulations promulgated thereunder.

E. Materials regulated under the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281.

F. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or hazardous waste.

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

1.61 Inbound Tons

"Inbound Tons" means the total Tons of Acceptable Materials, by material type, delivered for Processing.

1.62 Independent Expert

"Independent Expert" means the engineer, consultant, attorney, or other technical specialist, selected in accordance with: (i) Article 9 to address issues related to Operator's failure to meet the Diversion Guarantee; (ii) Article 9 to conduct material characterizations; (iii) Section 14.12 to resolve specific types of disputes between the Parties; or; (iv) more generally, Section 2.11 to evaluate a possible Change in Scope.

1.63 Landfill

"Landfill" means the Tajiguas Landfill, a Title 3 Disposal facility.

1.64 Maintenance

"Maintenance" means those routine and/or repetitive activities required or recommended by the Equipment Manufacturers or by Operator to maximize the service life of the ReSource Center, consistent with Good Industry Practice, and Corrective Maintenance, Preventive Maintenance, and Predictive Maintenance.

1.65 Market, Marketed, Marketing

"Market," "Marketed," or "Marketing" (or other variations thereof) means providing for the sale or placement of Recovered Materials for the purpose of beneficial use, as provided in Article 8.

1.66 Material Delivery and Service Agreement(s), MDA

"Material Delivery and Service Agreement(s)" or "MDA" means the agreements between the County and each of the Public Participants wherein the Public Participants agree to deliver all franchised Municipal Solid Waste to the Facility, including a specified minimum amount.

414 1.67 Material Recovery Facility, MRF

415 “Material Recovery Facility” or “MRF” means the Facility owned by the County to be operated by
416 Operator in which Processing equipment and systems are used to Process Acceptable Materials.

417 1.68 Material Throughput Guarantee(s)

418 “Material Throughput Guarantee(s)” means Operator’s Operating the MRF equipment in accordance
419 with Equipment Manufacturer specifications for Processing to meet the equipment’s Rated Capacity.

420 1.69 Mixed Waste

421 “Mixed Waste” means Municipal Solid Waste that is available for delivery for Processing and may be
422 Processed at the Facility, and is not Unprocessable Waste or Unacceptable Waste. Mixed Waste also
423 includes commercial and industrial waste that meets the criteria defined herein, Construction and
424 Demolition Debris, agricultural plastic, and tires. Mixed Waste does not include materials that are
425 collected or delivered in a source-separated form.

426 1.70 Municipal Solid Waste, MSW

427 “Municipal Solid Waste” or “MSW” means generally the components of Mixed Waste, and specifically
428 all substances or materials that are discarded or rejected as being spent, useless, worthless, or in excess
429 of the owner’s needs at the time of discard or rejection including, without limitation, all putrescible and
430 non-putrescible solid and semi-solid waste, including garbage, rubbish, maintenance waste, Yard
431 Trimmings, bulky wastes, industrial wastes, Construction and Demolition Debris, and grit and sweepings
432 from a water pollution control plant, which are generated by residential, commercial, industrial,
433 institutional, municipal, agricultural, and other activities, which are not otherwise restricted in a Class III
434 landfill by State or federal regulations and are delivered to the Facility as Mixed Waste. Municipal Solid
435 Waste does not include: (i) Hazardous Waste; (ii) medical waste; (iii) ash; (iv) Source-Separated
436 Recyclable Materials; (v) Source-Separated Yard Trimmings; (vi) Source-Separated Food Scraps; or (vii)
437 other materials collected separately from MSW for Processing at the Facility.

438 1.71 Non-Fixed Equipment

439 “Non-Fixed Equipment” means all rolling stock and other mobile or moveable equipment required for
440 receipt and Processing of Acceptable Materials and Marketing of Products, including transport of
441 Recovered Materials to Market, as identified in Exhibit J: Inventory of Non-Fixed Equipment. Non-Fixed
442 Equipment includes office equipment, desks, and other interior furnishings required for Facility
443 Operations.

444 1.72 Notice, Notify

445 “Notice” or “Notify” (or other variation thereof) means Notice given in accordance with Section 15.11.

446 1.73 O&M

447 “O&M” means Operation and Maintenance of all activities and management of these activities at the
448 Facility in accordance with Good Industry Practice, Good and Accepted Operating Practice, and the terms
449 of the Agreement.

450 1.74 Operations

451 "Operations" means the provision of all direct and indirect services by Operator at the Facility in order
452 fulfill Operator's Obligations under this Agreement upon the Effective Date.

453 1.75 Operations and Maintenance Manual, O&M Manual

454 "Operations and Maintenance Manual" or "O&M Manual" means a document created by Operator
455 detailing all procedures associated with Operations and Maintenance, as defined in Section 5.6.

456 1.76 Operator

457 "Operator" means MarBorg Recovery, a limited partnership and operating under the laws of the State
458 of California, and its officers, directors, employees, agents, companies and Subcontractors.

459 1.77 Operator's Obligations

460 "Operator's Obligations" means each and every obligation and liability of Operator specified within this
461 Agreement.

462 1.78 Organic Materials

463 "Organic Materials" means: (i) Recovered Materials from Mixed Waste Processing at the MRF intended
464 for Processing by the AD Facility, which may include Yard Trimmings, and Food Scraps; and, (ii) sludge
465 and residuals from water and wastewater treatment.

466 1.79 Organics Study

467 "Organics Study" means the study performed on the Organic Materials Recovered during the Mixed
468 Waste Performance Study that evaluates the composition of Organic Materials Recovered during the
469 Mixed Waste Performance Study to determine the actual weight and percentage of Recyclable Material,
470 Organic Materials, and Residue produced during the Performance Study.

471 1.80 Other Users

472 "Other Users" means any Person delivering Spot Market Materials to the Facility as authorized by
473 Operator, and approved by the County, as applicable.

474 1.81 Party(ies)

475 "Party(ies)" means the County and Operator, individually or together.

476 1.82 Per-Ton Processing Rate

477 "Per-Ton Processing Rate" means the amount paid to Operator for each Ton of Acceptable Materials
478 delivered to the Facility for Processing, as set forth in Article 10.

479 1.83 Performance Guarantees

480 "Performance Guarantees" means Operator's minimum Capture Rate performance standard for each
481 individual type of Recoverable Acceptable Material, which is the minimum performance standard from

the Equipment Manufacturer, in accordance with the Acceptance Tests and Acceptance Standards, except that the minimum Capture Rate may be decreased at the sole discretion of the County and may be increased by mutual agreement.

1.84 Performance Study

“Performance Study” means each study performed on each Acceptable Material type in accordance with Exhibit N: Material Characterization Study Methodology that includes: (i) a Recovery Study component and a Residue Study component for Recyclable Materials, and, (ii) a Recovery Study component, an Organics Study component, and a Residue Study Component for Mixed Waste.

1.85 Permit(s)

“Permit(s)” means all federal, State, City, other local, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements of whatever kind and however described that are required under Applicable Law to be obtained or maintained by any Person with respect to the Facility or the performance of any obligation under this Agreement, as renewed or amended from time to time.

1.86 Person

“Person” means any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special purpose district, or any other entity whatsoever.

1.87 Predictive Maintenance

“Predictive Maintenance” means those non-repetitive and non-routine Maintenance activities that are identified as necessary during annual testing and inspections conducted in accordance with the O&M Manual that are outside of Preventive Maintenance and Corrective Maintenance.

1.88 Preventive Maintenance

“Preventive Maintenance” means those Maintenance activities that are routine or repetitive in nature required by the equipment or Facility manufacturer or Operator to maximize the service life and operational efficiency of the equipment, vehicles, and facilities listed in the O&M Manual, as required by warranties or otherwise identified as necessary or desirable in accordance with Good Industry Practice.

1.89 Process, Processed, Processing

“Process,” “Processed,” or “Processing” (or any other variation thereof) means the pulling, picking, sorting, controlled separation, volume reduction, or conversion of materials including, but not limited to, organized, manual, automated, or mechanical sorting; the use of vehicles for spreading Acceptable Materials for the purpose of Recovery; and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment; or as otherwise defined in 14 CCR Section 17402(a)(20) to produce Recoverable Materials.

517 1.90 Products

518 “Products” means the ReSource Center outputs that are Marketed and/or otherwise used, as provided
519 in Article 8.

520 1.91 Projected Revenues

521 “Projected Revenues” means Operator’s Baseline Revenues, adjusted for each Agreement Year, inclusive
522 of total Direct Costs, indirect costs, and an allowable management fee for the Operation of the Facility
523 and performance of all services required by this Agreement.

524 1.92 Public Participants

525 “Public Participants” means the County, the cities of Buellton, Goleta, Santa Barbara, and Solvang, and
526 any jurisdiction which enters into an individual Material Delivery and Service Agreement with the
527 County, excluding Other Users.

528 1.93 Rated Capacity

529 “Rated Capacity” means the rate (Tons per Day per Processing line) at which Tons of Acceptable
530 Materials can be Processed on a continuous basis assuming no allowances for scheduled or forced
531 outage.

532 1.94 Reasonable Business Efforts

533 “Reasonable Business Efforts” means those efforts a reasonably prudent business Person would expend
534 under the same or similar circumstances in the exercise of such Person's business judgment, intending
535 in good faith to take steps calculated to satisfy the obligation that such Person has undertaken to satisfy;
536 provided that such Person and/or any enterprise by which such Person is employed would not incur a
537 financial loss (other than time expended or otherwise compensated for such efforts herein) by reason
538 of having expended or expending such efforts.

539 1.95 Recovered Materials

540 “Recovered Materials” means Marketable commodities and/or Organic Materials that are Recovered
541 through Processing Acceptable Waste in a way that constitutes landfill reduction pursuant to 14 CCR,
542 Division 7, Chapter 12, Article 2.

543 1.96 Recover, Recovery, Recovered

544 “Recover,” “Recovery,” or “Recovered” (or other variations thereof) means the classification, extraction,
545 and aggregation of Marketable commodities, Organic Material, and other Recovered Materials from
546 Residue during Acceptable Material Processing.

547 1.97 Recovery Guarantee

548 “Recovery Guarantee” means Operator’s minimum Capture Rate Performance Guarantee for each
549 individual type of Recoverable Acceptable Material that will not change over the Term of the Agreement.

550 1.98 Recovery Study

551 “Recovery Study” means the study performed on each Acceptable Material type Processed by Operator
552 during each Acceptable Material Performance Study that evaluates the actual weight and percentage of
553 each Recovered Material for each Acceptable Material type Processed during the Characterization Study
554 and includes the actual weight and percentage of Residue generated from Processing each Acceptable
555 Material type during the Performance Study. The Mixed Waste Performance Study shall also include the
556 actual weight of Organic Materials Recovered.

557 1.99 Recyclable Materials

558 “Recyclable Materials” means, at a minimum, corrugated cardboard, newspaper, office paper, mixed
559 paper, clear glass, colored glass, flat glass, ferrous metals, non-ferrous metals, HDPE, PET, film plastic,
560 wood, polypropylene, and such other materials collected in Recycling programs in the State and
561 designated from time to time by the Public Participants, the County, or the State of California.

562 1.100 Recycled, Recycling

563 “Recycled” or “Recycling” (or other variations thereof) means treating or reconstituting materials that
564 are or would otherwise be Disposed of and returning them to the economic mainstream in the form of
565 raw material for new, reused, or reconstituted products. Recycling includes processes deemed to
566 constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling
567 does not include the use of Acceptable Materials for gasification or transformation as defined in Public
568 Resources Code Section 40201.

569 1.101 Residue, Residual

570 “Residue” or “Residual” (or other variations thereof) means the portion of Acceptable Materials
571 remaining after Processing which have not been Recovered, and subsequently require Disposal. Residue
572 does not include Recovered Materials.

573 1.102 Residue Allowance

574 “Residue Allowance” means the total percentage of allowable Residue in each stream of Acceptable
575 Materials, as a percentage of Inbound Tons Processed by Acceptable Material type, that Operator shall
576 not be responsible for paying.

577 1.103 Residue Overage

578 “Residue Overage” means the total percentage of actual Residue in each stream of Acceptable Materials,
579 as a percentage of Inbound Tons Processed by Acceptable Material type, that Operator shall be
580 responsible to pay Residue Disposal costs at one hundred percent (100%) of the then-current per-Ton
581 rate for each Ton of Residue Disposed.

582 1.104 Residue Study

583 “Residue Study” means the study performed on Residue during each Acceptable Materials Performance
584 Study for each Acceptable Material type Processed that evaluates the composition of Residue produced

585 during each Acceptable Material Performance Study by determining the weight and percentage of
586 Organic Material and Recoverable Material relative to actual Residue.

587 1.105 Residue Disposal Site

588 “Residue Disposal Site” means the Landfill approved for Operator’s Disposal of Residue from the Facility.

589 1.106 ReSource Center

590 “ReSource Center” means all aspects of the Tajiguas Resource Recovery Project, including the Material
591 Recovery Facility, Anaerobic Digestion Facility, and Compost Management Unit, as funded by the
592 County’s Financing Obligation.

593 1.107 Responsible End Markets

594 “Responsible End Markets” shall have the same meaning as in SB 54, as it may be as amended,
595 supplemented, superseded, and replaced from time to time.

596 1.108 SB 1383

597 “SB 1383” means the California’s Short-Lived Climate Pollution Reduction Law, which amended Sections
598 39730.5, 39730.6, 39730.7, and 39730.8 of the California Health and Safety Code, and added Chapter
599 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the California Public Resources Code,
600 relating to methane emissions, as amended, supplemented, superseded, and replaced from time to
601 time. For the purposes of this Agreement, SB 1383 includes any implementing regulations developed by
602 CalRecycle, as amended supplemented, superseded, and replaced from time to time.

603 1.109 SB 343

604 “SB 343” means the Environmental Advertising: Recycling Symbol: Recyclability: Products and Packaging
605 Senate Bill approved by the Governor of the State of California on October 5, 2021, which amended
606 Sections 17580, 17580.5 of the California Business and Professions Code, and amended Sections 18015
607 and 42355.5 of, and added Section 42355.51 to, the California Public Resources Code, relating to
608 environmental advertising, as amended, supplemented, superseded, and replaced from time to time.
609 For the purposes of this Agreement, SB 343 includes any implementing regulations developed by
610 CalRecycle, as amended, supplemented, superseded, and replaced from time to time.

611 1.110 SB 54

612 “SB 54” means the Plastic Pollution Prevention and Packaging Producer Responsibility Act approved by
613 the Governor of the State of California on June 30, 2022, which amended Section 41821.5 of the
614 California Public Resources Code to add Chapter 3 (commencing with Section 42040) to Part 3 of Division
615 30, as amended, supplemented, superseded, and replaced from time to time. For the purposes of this
616 Agreement, SB 54 includes any implementing regulations developed by CalRecycle, as amended
617 supplemented, superseded, and replaced from time to time.

618 1.111 Scale House

619 “Scale House” means the scale(s) and adjacent structure(s), owned and operated by the County, located
620 at the entrance to the Site, and used to weigh inbound and outbound vehicles that are delivering or
621 removing materials from the Landfill.

622 1.112 Scheduled Facility Downtime

623 “Scheduled Facility Downtime” means the time (measured in Days or hours) that the Facility is closed in
624 accordance with the schedule provided by Operator to the County as part of Operator’s updated
625 Operations and Maintenance Manual in accordance with Section 5.6.

626 1.113 Sector

627 “Sector” means the Customer’s, Person’s, or Generator’s category, including, but not limited to, single-
628 family, multi-family, commercial, self-haul, compactor customers, drop box customers, and
629 governmental entities.

630 1.114 Shrinkage

631 “Shrinkage” means the calculated percentage of moisture loss or other incidental losses established
632 during each Acceptable Material Characterization Study that is the difference between the actual weight
633 of each Acceptable Material type Processed and the actual weight of the Residue, plus the Recovered
634 Material, inclusive of the Recyclable Material Recovered and Organic Material Recovered, as applicable,
635 for that Acceptable Material Characterization Study.

636 1.115 Site

637 “Site” means collectively the ReSource Center and Landfill.

638 1.116 Solid Waste Facility Permit

639 “Solid Waste Facility Permit” means a Permit issued to a facility that is regulated by the State pursuant
640 to California Public Resources Code Section 44001 and Section 44002 and required to operate the Site.

641 1.117 Source-Separated Food Scraps

642 “Source-Separated Food Scraps” means Food Scraps segregated from other Municipal Solid Waste prior
643 to collection. Source-Separated Food Scraps may be collected separately or commingled with Yard
644 Trimmings. Source-Separated Food Scraps are Organic Materials.

645 1.118 Source-Separated Recyclable Materials

646 “Source-Separated Recyclable Materials” means Recyclable Materials that are separated by the
647 generator from Municipal Solid Waste, provided for collection by individual material type or as combined
648 materials in a single-stream program, and are delivered to the Facility for Processing and transport to
649 Market.

650 1.119 Source-Separated Yard Trimmings

651 “Source-Separated Yard Trimmings” means Yard Trimmings segregated from other Municipal Solid
652 Waste prior to collection. Operator shall Recover and Divert a minimum of ninety-eight percent (98%)
653 by weight of delivered Source-Separated Yard Trimmings. Source-Separated Yard Trimmings are Organic
654 Materials.

655 1.120 Spot Market Materials

656 “Spot Market Materials” means materials generated and delivered to the Facility by or on behalf of Other
657 Users, excluding materials generated within or by Public Participants.

658 1.121 Special Tipping Fee Review

659 “Special Tipping Fee Review” means the activities as described and defined in Article 10.

660 1.122 State

661 “State” means the State of California.

662 1.123 Stewardship Organization

663 “Stewardship Organization” means a Person(s) that is approved or designated under Applicable Law or
664 by a relevant governing body, including, but not limited to, CalRecycle, CARB, or the City, to manage,
665 coordinate, fund, or otherwise oversee one (1) or more Extended Producer Responsibility Programs. The
666 applicable Stewardship Organization for each Extended Producer Responsibility Program under this
667 Agreement shall be designated or approved by the County, at their sole discretion.

668 1.124 Subcontractors, Subcontracted

669 “Subcontractors” or “Subcontracted” means a Person or entity other than Operator who has been
670 engaged to perform an act that is necessary for, and directly related to, fulfillment of a significant portion
671 of Operator’s Obligations for providing service under this Agreement. Notwithstanding any other
672 provision in this Agreement, vendors providing materials, supplies, or professional services to Operator
673 shall be considered Subcontractors for any purpose under this Agreement. Subcontracted activities
674 include, but are not limited to, equipment Maintenance and repair, operational and administrative
675 software, and Marketing or sale of Recovered Materials.

676 1.125 Term

677 “Term” means the period of time set forth in Section 2.3, including any extension thereof granted in
678 accordance with Section 2.4, during which this Agreement shall be effective.

679 1.126 Tip Fee, Tipping Fee

680 “Tip Fee” or “Tipping Fee” (or variations thereof) means the per-Ton rate paid by the County to Operator
681 for performing services under this Agreement.

682 1.127 Ton, Tonnage

683 “Ton” or “Tonnage” means a short Ton of 2,000 pounds.

684 1.128 Unacceptable Waste(s)

685 "Unacceptable Waste(s)" means wastes that the Facility may not receive under its Permits, including,
686 but not limited to:

- 687 A. Asbestos, including friable materials that can be crumbled with pressure and are therefore likely
688 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances.
689 Material may be a Hazardous Waste if it contains more than one percent (1%) asbestos.
- 690 B. Ash residue from the incineration of Municipal Solid Wastes, including infectious waste described
691 in item (G) below, wood waste, sludge, and agricultural wastes.
- 692 C. Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances
693 that remain after the shredding of automobiles.
- 694 D. Large dead animals.
- 695 E. Hazardous Wastes, explosives, ordnance, highly flammable substances, and noxious materials.
- 696 F. Industrial solid or semi-solid wastes resulting from industrial processes and manufacturing
697 operations, including cement kiln dust, ore process residues, and grit or screenings removed from
698 a waste water treatment facility.
- 699 G. Infectious wastes, which have disease transmission potential and are classified as Hazardous
700 Wastes by the State Department of Health Services, including pathological and surgical wastes,
701 medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings,
702 bottles, drugs, patient care items such as linen or personal items, food service items from
703 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes
704 or with known infectious diseases.
- 705 H. Liquid wastes, which are not spadeable, usually containing less than fifty percent (50%) solids,
706 including cannery and food processing wastes, landfill leachate and gas condensate, boiler
707 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,
708 rendering plant byproducts, sewage sludge, and those liquid wastes that may be Hazardous
709 Wastes.
- 710 I. Radioactive wastes as defined in Section 114710 of the California Health and Safety Code and any
711 waste that contains a radioactive material, the storage or disposal of which is subject to any other
712 State or federal regulation.
- 713 J. Special wastes designated from time to time by CalRecycle, including contaminated soil.
- 714 K. Bulky items that cannot fit within standard roll-off containers or Mixed Municipal Waste collection
715 vehicles unless otherwise approved by Operator.

716 Parties shall promptly conform this definition of "Unacceptable Waste" to the extent necessary to
717 comply with Applicable Law, should a Change in Law or in Permits and Permit requirements necessitate.

718 1.129 Uncontrollable Circumstance(s)

719 "Uncontrollable Circumstance(s)" means any act, event, or condition that is beyond the reasonable
720 control of the Party relying thereon as a justification for not performing an Operator Obligation or a

721 County Obligation, or complying with any condition required of such Party under the Agreement, and
722 that materially interferes with or materially increases the cost of performing its obligations hereunder
723 (other than payment obligations), to the extent that such act, event, or condition is not the result of the
724 willful or negligent act, error, or omission, failure to exercise reasonable diligence, or breach of the
725 Agreement on the part of such Party. Such acts or events may include, but shall not be limited to, the
726 following:

- 727 A. Naturally occurring events (except weather conditions normal for the Santa Barbara area) such as
728 landslides; underground movement; earthquakes; fires; tornadoes; tidal waves; floods; epidemics;
729 storms; other acts of God; ionizing radiation; or nuclear, radioactive, chemical or biological
730 contamination.
- 731 B. Explosion, sabotage, or similar occurrence; acts of a declared public enemy; extortion; war; civil
732 war; armed conflict; terrorism; blockade; embargo; or insurrection, riot, or civil disturbance;
- 733 C. Labor disputes, except labor disputes involving employees of Operator, its affiliates, or
734 Subcontractors, which affect the performance of the Agreement services.
- 735 D. The failure of any Subcontractor or supplier other than Operator, the guarantor, or any affiliate of
736 either, to furnish services, materials, chemicals, or equipment on the dates agreed to, but only if
737 such failure is the result of an event that would constitute an Uncontrollable Circumstance if it
738 affected Operator directly, and Operator is not able, after exercising all Reasonable Business
739 Efforts, to timely obtain substitutes.
- 740 E. The failure of any appropriate governmental body or private utility having operational jurisdiction
741 in the area in which the Facility is located to provide and maintain utilities to the Facility that are
742 required for the performance of the Agreement.
- 743 F. Any failure of title to the Facility or any enforcement of any encumbrance on the Facility not
744 consented to in writing by, or arising out of any action or agreement entered into by, the Party
745 adversely affected thereby.
- 746 G. The preemption of materials or services by a governmental body in connection with a public
747 emergency or any condemnation or other taking by eminent domain of any material portion of the
748 Facility.
- 749 H. The temporary suspension of Operations due to supervening authority of law, such as the
750 designation of all or a portion of a Facility as a crime scene or as the site of an investigation by law
751 enforcement.
- 752 I. A Change in Law.

753 It is specifically understood that, without limitation, none of the following acts, events, or circumstances
754 shall constitute Uncontrollable Circumstances:

- 755 1. Any act, event, or circumstance with respect to which Operator or the County have assumed the
756 "as-is" risk under the Contract.
- 757 2. Any act, event, or circumstance that would not have occurred if the affected Party had complied
758 with its obligations under the Contract.

- 759 3. Changes in interest rates, inflation rates (other than those provided for in the Contract), labor
760 costs, insurance costs, commodity prices, currency values, exchange rates or other general
761 economic conditions, with the exception of changes resulting from a Change in Law.
- 762 4. Changes in the financial condition of the County, Operator, the guarantor, or their affiliates or
763 Subcontractors that affects the ability to perform their respective obligations.
- 764 5. The consequences of error, neglect, or omissions by the County or Operator in the performance
765 of the Contract.
- 766 6. Union or labor work rules, including requirements or demands that have the effect of increasing
767 the number of employees employed or overtime hours required at the Facility or otherwise
768 increasing the cost to Operator for meeting Operator Obligations, provided that such are not the
769 result of a Change in Law.
- 770 7. Mechanical failure of equipment not itself due to an Uncontrollable Circumstance.
- 771 8. Power outages not caused by third party utilities.
- 772 9. Reasonably anticipated weather conditions for the geographic region of Santa Barbara County.
- 773 10. Any act, event, circumstance, or change in law occurring outside the United States of America,
774 unless it has a clear, direct and measurable impact on the ability of a Party to perform its
775 contractual obligations.
- 776 11. Failure of Operator to secure applicable patents, provided that such failure is due to the acts,
777 omissions, or negligence of Operator.
- 778 12. A Change in Law pertaining to taxes that does not discriminate against Operator; or any Change in
779 Law (including the issuance of any governmental approval, the enactment of any statute, or the
780 promulgation of any regulation) the terms and conditions of which do not impose more stringent
781 or burdensome requirements on Operator than are imposed by the Agreement standards.

782 1.130 Unprocessed Waste, Unprocessable Waste

783 “Unprocessed Waste” or “Unprocessable Waste” means materials that Operator cannot Process due to
784 size or other characteristics (e.g., oversized, bulky items) and that may be delivered to the Landfill for
785 Disposal.

786 1.131 Vehicle Turnaround Guarantee

787 “Vehicle Turnaround Guarantee” means a guarantee to operate ReSource Center activities in such a
788 manner that Collection Contractor(s) are able to deliver to and unload Acceptable Materials at the
789 Facility in a timely manner, as defined in Article 5.

790 1.132 Visitor Education Center

791 “Visitor Education Center” means the designated area at the Facility where visitors can convene to learn
792 about and view Operations, as described in Subsection 5.11.C.

793 1.133 Week Days

794 “Week Days” means Monday through Friday, excepting common holidays.

795 1.134 Yard Trimmings

796 “Yard Trimmings” means those discarded materials that will decompose and/or putrefy, including, but
797 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree
798 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.
799 Yard Trimmings are a subset of Organic Materials.

800 **ARTICLE 2. GRANT AND ACCEPTANCE OF AGREEMENT**801 **2.1 Changes to Terms and Conditions of Agreement**802 **A. County Right to Make Changes**

803 Section 2.7 below identifies the Conditions Precedent, all of which must be satisfied or waived by the
804 County in writing before this Agreement becomes effective. The Parties acknowledge that in order to
805 satisfy some of these Conditions Precedent, the County may need to change certain terms and conditions
806 of this Agreement:

- 807 1. If required to do so by the County bond counsel or the financial institution as a condition of
808 providing any necessary or supplemental public financing for the Resource Center.
- 809 2. If required by applicable federal and State laws.

810 **B. County Notice of Changes Made**

811 County shall use Reasonable Business Efforts to provide written notice to Operator of any changes to
812 the terms and conditions of this Agreement, including, but not limited to, changes needed by the County
813 to satisfy the Conditions Precedent or other rights reserved by the County identified in Subsection 2.1.A
814 above, within one hundred and twenty (120) Days of the execution of this Agreement.

815 **2.2 Effective Date**

816 The “Effective Date” of this Agreement shall be the date on which the latter of the Parties signs the
817 Agreement, provided that: (i) the County Board of Supervisors has taken action approving this
818 Agreement; (ii) all Conditions Precedent identified in this Agreement have been satisfied or expressly
819 waived by the County; and, (iii) no restraining order of any kind has been issued.

820 **2.3 Term of Contract**

821 The Term of this Agreement shall commence on the Effective Date and shall remain in effect until the
822 completion of ten (10) years (June 30, 2035) from the Effective Date of July 1, 2025, plus any renewals
823 or extensions, unless earlier terminated for cause as provided for in the Agreement.

824 Notwithstanding the foregoing, the unexcused failure or refusal of Operator to perform any material
825 term, covenant, obligation, or condition contained in this Agreement shall give rise to the right, in favor

of the County, for earlier termination of this Agreement for cause in accordance with the procedures detailed in Article 14 and elsewhere contained herein.

2.4 Option to Extend Term

The County shall have the right to extend the initial ten- (10-) year Term of the Agreement for up to four (4) additional years until June 30, 2039, upon the same terms and conditions as the underlying Agreement. The County may, upon three hundred sixty-five (365) Days' advance Notice to Operator prior to the expiration of the initial Term of this Agreement or any extension thereof, exercise its extension rights. The County may reduce the extension by seven (7) months to terminate on November 30, 2038, upon notice to Operator no later than December 1, 2037.

If the County chooses to exercise its rights to extend the Term, the County may meet and confer with Operator to discuss Facility improvements, Recovery and Processing equipment, and Non-Fixed Equipment needs and related costs, if any, without waiving its sole right to extend so long as adequate Notice was given to Operator as provided above. The County reserves the right to negotiate modifications to the Agreement at that time, subject to approval by both Parties. In the event the Parties have not agreed to proposed revisions to this Agreement prior to one hundred eighty (180) Days before the end of the Term or then-current extension, the County may terminate negotiations and choose not to extend the Agreement. The County's decision to meet and confer with Operator, however, shall not impact the County's exclusive option to extend the Term under the existing Agreement terms and conditions prior to one hundred eighty (180) Days before the end of the Term or then-current extension.

The County has no obligation to renegotiate, renew, or otherwise extend the rights granted to Operator beyond the Term of the Agreement.

2.5 Survival of Certain Provisions

All representations and warranties of the Parties herein, and all indemnifications provided for herein, and any other rights and obligations of the Parties expressly stated, or by their nature, are intended to survive the expiration or termination of this Agreement and shall survive such expiration or early termination, including payment of any amounts due and owing by either Party to the other Party at the time of expiration or early termination.

2.6 Representations and Warranties of Operator

Operator hereby covenants, represents, and warrants the following to the County for the purpose of inducing the County to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date.

A. Operator Status

Operator represents and warrants that it is a limited partnership duly organized, validly existing and in good standing under California law. It is qualified to transact business 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. Authority and Authorization

Operator represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The managing partner of Operator (or the members, if necessary) have taken all actions required by law, its operating agreement, and any other organizational instruments, including its bylaws or otherwise, to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Operator have authority to do so and the Secretary's Certification in Exhibit G confirms this. Operator shall authorize one (1) employee or other agent of Operator as a single point of contact for issues arising under this Agreement, and Operator acknowledges and agrees that County may expect and assume that this employee's actions are taken on behalf of and with the full approval of Operator.

C. No Conflicts

Neither the execution or delivery by Operator of this Agreement, the performance by Operator of its obligations required by this Agreement, nor the fulfillment by Operator of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of any Applicable Law; (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which Operator is a party or by which Operator or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) 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 Operator.

D. No Approvals Required for Equipment

Operator and its affiliates shall hold or possess a right to use, and shall obtain pre-approval for the County to also use, all patents, rights to patents, trademarks, copyrights, and licenses, as the case may be ("Proprietary Property") of any equipment or software necessary for performance of Operator's Obligations, as provided in Subsection 2.7.C. As of the date hereof, Operator represents that it does not know of any material conflict with the rights of others regarding Proprietary Property.

E. No Litigation

There is no action, suit, or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Operator's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Operator or guarantor that is likely to result in an unfavorable decision, ruling, or finding that would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Operator or guarantor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Operator to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Operator or guarantor.

F. Independent Investigation of Conditions and Circumstances

Operator has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and to meet all of Operator's Obligations.

G. No Approvals

Operator has obtained all licenses, Permits, business licenses, qualifications and approvals of whatsoever nature which are legally required for Operator to operate the Facility to provide services hereunder and meet Operator's Obligations (with the exception of the Solid Waste Facility Permit issued by CalRecycle, which is held by the County). Operator further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term, all licenses, Permits, and approvals that are legally required for Operator to provide such services and meet Operator's Obligations.

H. Business Entity Legal Structure and Financial Condition

Operator has made available to the County information on its financial condition, including the limited partnership and related documents, including, but not limited to:

1. MarBorg Recovery, LP Operating Agreement(s).

Operator recognizes that the County has relied on this information in evaluating the sufficiency of Operator's financial resources to perform this Agreement. To the best of Operator's knowledge, this information is complete and accurate, does not contain any material misstatement of fact, and does not omit any fact that would contribute to the information provided being materially misleading.

I. Status as Service Provider

Other than with respect to Non-Fixed Equipment, Operator is not entitled to and will not take any tax position that is inconsistent with being a service provider to the County with respect to the Facility. For example, Operator will not take any depreciation or amortization, investment tax credit, or deduction for any payment as rent with respect to the Facility or ReSource Center components that are financed by the County.

J. Permit Compliance

Operator is warranting that it can meet all of Operator's Obligations while complying with any and all Permit conditions and mitigation measures from the CEQA requirements, but only to the extent Operator has, or should reasonably have, actual knowledge of such conditions and mitigation measures as of the date Operator executes this Agreement, in accordance with Exhibit H: Tajiguas Sanitary Landfill and ReSource Center Permits and Exhibit S: Mitigation and Monitoring Requirements Plan.

2.7 Conditions Precedent to Agreement

Satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the County in writing, is a Condition Precedent to the Agreement.

A. Furnishing of Insurance and Performance Bond

Operator shall have furnished evidence of the insurance and performance bond required by Article 13, Exhibit P: Performance Bond, and Exhibit Q: Insurance Requirements and shall comply with all ongoing requirements relating thereto.

B. Payments Due to County

Operator shall have demonstrated to the satisfaction of the County its ability to pay the amounts owed, as provided in Article 10.

C. Proprietary Products

Operator shall have received the right to use proprietary technology, processes, and equipment, if any, necessary for the Operation and Maintenance of the Facility in accordance with the provisions hereof for the Term, including authorization for the County to use such Proprietary Property as described in Subsection 2.6.E.

D. Secretary's Certification

Exhibit G: Secretary's Certification shall have been signed by the secretary of Operator, identifying Operator's representative authorized to execute this Agreement.

E. Independent Certified Public Accountant Representation

Operator shall provide County with a letter from an independent, certified public accountant that Operator has the financial ability to perform in accordance with this Agreement. The County retains the right to request Operator provide further reasonable assurances of financial capability prior to Agreement execution.

F. Material Delivery and Service Agreements

The cities of Buellton, Goleta, Santa Barbara, and Solvang shall each have entered into a Material Delivery and Service Agreement with the County.

G. County Financing

County secured financing for the Development, construction, and equipping of the ReSource Center in 2018 as part of the County financing obligations to the project formally known as the Tajiguas Resource Recovery Project. The County financing obligations include obligations for the payment of money described incurred by the County at any time during the Term of this Agreement, provided that the use of funds derived from the incurrence of the obligations is used for Construction, improvement, reconstruction, repair, or equipping of the Facility in accordance with the County's financing documents. Pursuant to Exhibit U: Installment Purchase Agreement, the Facility shall be used as part of the County's solid waste system for the length of the financing bonds. The County is required to make continuing disclosures related to the ReSource Center in accordance with Exhibit V: Continuing Disclosures Agreement. Operator shall not impede the County's financing obligations.

H. Effectiveness of County's Approval

County's approval of this Agreement shall become effective, pursuant to California law, on or before the Effective Date.

In the event that any condition set forth in this Section is not satisfied, waived by the County, or otherwise revised or extended pursuant to Section 2.4 within one hundred eighty (180) Days of the execution of this Agreement, this Agreement shall be void and shall have no further force or effect. Each

Party is obligated to perform in good faith the actions, if any, that this Agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

2.8 Delegation of Authority

The administration of this Agreement by the County shall be under the supervision and direction of the County Department of Public Works and the actions specified in this Agreement, unless otherwise stated, shall be taken by the Director of the County Department of Public Works, or their designee, on behalf of the County.

2.9 Changes in Law or Permit Status

Neither this Agreement nor any provision hereof may be amended, waived, discharged, or terminated except by an instrument in writing signed by the County and Operator.

In the event that:

- A. There is a Change in Law that impacts Operator's Obligations or the County held Permits; or,
- B. There is a change in County held Permits driven by a request from Operator that may materially impact existing regulatory and Permit requirements; or,
- C. There is a change directed by a regulatory agency due to a failure of Operator to meet Operator's Obligations under the County held Permits; then,

the Parties will follow the procedures set forth in Article 10 to negotiate amendments to the Agreement, and/or the Material Delivery and Service Agreements, or separate protocols, to account for such changes, attempting in all events to restore or maintain for each Party as nearly as possible, its respective rights, obligations, and benefits. Operator shall be responsible for providing the County at least thirty (30) Days' written Notice of any such Change in Law, including written documentation setting forth the basis for the Change in Law, the estimated costs of compliance, and a description of the actions that need to be taken to comply with the Change in Law.

If, based on a Notice of a Change in Law, the unaffected Party reasonably concludes that a Change in Law or its impact on the affected Party, the Facility, or the ReSource Center will continue: (i) for a period of one hundred and twenty (120) or more consecutive calendar Days; or, (ii) for an aggregate period of one hundred and eighty (180) or more non-consecutive calendar Days, in the case of any claimed Change in Law or series of claimed Change in Law events, the unaffected Party shall have the right to terminate the Agreement effective upon Notice to the affected Party.

2.10 Material Delivery Requirements

The relevant portions of this Section are incorporated into the Material Delivery and Service Agreements between the individual Public Participants and the County.

A. County Material Delivery Requirement

The County commits to annually deliver (or cause to be delivered) to Operator all Tons of Acceptable Materials pursuant to the Material Delivery and Service Agreements between the County and Public

Participants, which require the County and each Public Participant to direct their Collection Contractors to deliver all Acceptable Materials collected under the terms of their franchise collection agreements to the Facility and Operator. The County does not and cannot guarantee the quantity or composition of Recyclable Materials or Mixed Waste Delivered to Operator during the Term of the Agreement.

B. Per-Ton Processing Rate

The Per-Ton Processing Rate shall apply to all Tonnages of Acceptable Materials delivered, as provided in Article 10.

C. Initial Projected Facility Tonnages

The projected Tonnages to be Delivered to the Facility for Agreement Year 1 are identified below in Table 2-1. Tonnages for Agreement Years that are less than twelve (12) months in duration will be prorated. The Tonnage projections in Table 2-1 in no way constitute a minimum delivery requirement or other guarantee of Tonnage; provided, however, that the County shall fulfill its obligations under the Material Delivery and Service Agreement from Subsection 2.10.A of this Agreement.

**Table 2-1:
Projected Facility Tonnage**

Participating Agency	Mixed Waste (Tons)	Source-Separated Recyclable Materials (Tons)	Projected Annual Delivery TOTAL TONS
MDA Tons			
County of Santa Barbara	40,474	9,536	50,010
Santa Barbara	59,224	16,073	75,297
Goleta	22,074	5,618	27,692
Solvang	3,632	0	3,632
Buellton	4,064	868	4,932
<i>Subtotal</i>	<i>129,468</i>	<i>32,095</i>	<i>161,563</i>
Other Waste			
County Facility Self-Haul	14,237	0	14,237
<i>Subtotal</i>	<i>14,237</i>	<i>0</i>	<i>14,237</i>
Total	143,705	32,095	175,800

D. Operator's Initial Annual Capacity Guarantee

The Parties acknowledge and agree that Operator's Projected Revenues include certain cost and operating assumptions and projections for Operator to Operate the Facility and fully utilize the Processing equipment and systems used to Process Acceptable Materials up to Operator's initial Annual Capacity Guarantee identified in Table 2-2 below. The County may, in each Agreement Year, deliver (or cause to be delivered) Acceptable Materials up to Operator's initial Annual Capacity Guarantee. Except as otherwise provided in Section 10.4, Operator shall not be entitled to any adjustment to Operator's Revenue Requirement or Per-Ton Processing Rates to Process Acceptable Materials delivered.

1028
1029

**Table 2-2:
Operator's Initial Capacity and Throughput Guarantee**

Acceptable Materials Source(s)	Annual Capacity Guarantee *	Weekly Throughput Guarantee
Franchised Waste	188,539	3,625
Other Waste	24,204	466
Total	212,743	4091

1030

*Based on projected Tonnages over the Term of the Agreement

1031

E. Adjustment to Operator's Initial Annual Capacity Guarantee

1032 The County may, in each Agreement Year, deliver (or cause to be delivered) Acceptable Materials up to
 1033 the total Tonnages identified in Table 2-2 above. If either Party becomes aware that the total Tons
 1034 delivered in any Agreement Year are projected to exceed the annual Tons identified in Table 2-2,
 1035 Operator and the County shall promptly meet to discuss any adverse impact(s) to Operator's Operations
 1036 to Accept material beyond Operator's initial Annual Capacity Guarantee, if any. While Operator shall not
 1037 be obligated to accept Acceptable Materials in excess of the aggregate Annual Tonnages identified in
 1038 Table 2-2, Operator shall be obligated to use Reasonable Business Efforts to accept such excess
 1039 deliveries, including accepting less Spot Market Materials.

1040 If Operator cannot make reasonable adjustments in Operations to accommodate the additional
 1041 Acceptable Materials, the County will determine if: (i) they shall exercise other options for managing
 1042 excess Acceptable Materials, in which case the County requirements in Subsection A to direct all
 1043 Acceptable Materials to the Facility shall be waived for the additional Acceptable Materials; and/or, (ii)
 1044 whether a Special Tipping Fee Review is warranted with the potential for an adjustment in
 1045 compensation, if necessary, to increase Operator's Annual Capacity Guarantee for subsequent
 1046 Agreement Years, as provided in Section 10.4.

1047

F. Spot Market Materials

1048 The County shall approve Spot Market Materials being Delivered to the Facility. The County or Operator
 1049 may hold a written agreement for Spot Market Materials being Delivered to the Facility; provided
 1050 however, Operator shall not enter into any agreement to Accept Spot Market Materials without written
 1051 approval from the County. Spot Market Materials shall be charged the agreed-upon per-Ton rate for that
 1052 material type in accordance with the Spot Market Material written agreement, and billed by the County,
 1053 unless the County and Operator mutually agree on an alternative Billing arrangement. The County shall
 1054 charge Other Users for Spot Market Material Tons Delivered to the Site and remit payment to Operator
 1055 for Processing, as described in Article 10.

1056

G. Other Provisions

1057 The Parties acknowledge that the quantity and/or composition of, and relative allocation between,
 1058 Recyclable Materials and/or Mixed Waste are subject to change during the Term of the Agreement based

1059 on a number of unpredictable factors. Operator is solely responsible for meeting Performance
1060 Guarantees regardless of variations in Tonnages or material composition.

1061 **2.11 Changes in Scope**

1062 **A. General**

1063 The County may request Operator to make changes in Operations, including, but not limited to,
1064 performing additional services (including implementation of new Diversion programs, implementation
1065 of conversion technologies, etc.) or modifying the manner in which it performs existing services (e.g.,
1066 increased Diversion Guarantee, existing or new Extended Producer Responsibility programs, etc.). If the
1067 County and Operator cannot agree upon the performance and compensation for the additional services,
1068 the County reserves the right to award a contract for such additional services to a third party.

1069 **B. Procedure for Making Changes in Scope**

1070 Operator shall present, within thirty (30) calendar Days of the County's written request, a written
1071 proposal to implement the requested Change in Scope. Operator shall not be compensated for the
1072 proposal preparation costs or costs incurred during the negotiation of its proposal for the Change in
1073 Scope of such services. At a minimum, the proposal shall contain a complete description of the following:

- 1074 • Methodology to be employed
- 1075 • Equipment to be utilized
- 1076 • Labor requirements (i.e. number of employees by classification)
- 1077 • Type(s) of material to be Recovered and Processed
- 1078 • Provisions for program publicity/education/Marketing
- 1079 • Implementation timeline
- 1080 • Compensation
- 1081 • Three (3) year projection of the financial results of the program's Operations in an operating
1082 statement format, including documentation of the key assumptions underlying the projections
1083 and the support for those assumptions.

1084 County shall review Operator's proposal for the Change in Scope. The County may negotiate with
1085 Operator to amend the Agreement to reflect the Change in Scope or the County may choose not to
1086 negotiate with Operator. In the event that the County or Operator requests a Special Tipping Fee Review
1087 as a result of the Change in Scope, the provisions of Section 10.4 shall apply.

1088 If the County chooses to negotiate with Operator, and Operator and the County cannot agree on terms
1089 and conditions of such services within one hundred twenty (120) calendar Days from the date when the
1090 County first requests a proposal from Operator to perform such services, Operator acknowledges and
1091 agrees that the County may perform or authorize other Persons besides Operator to provide additional
1092 services not otherwise specifically described in this Agreement.

C. Implementation of New Services

Operator's implementation of the new services or modification to existing service shall occur in a timely, smooth, and seamless manner such that neither the County nor the Public Participants experience a disruption in Operations. Operator shall be responsible for managing the implementation of new or modified Operations and other related services and shall do so in accordance with an implementation plan that has been approved by the County.

2.12 Voluntary Use of Residue Disposal Site(s)

Operator, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Landfill for Disposal of Residue and Bypassed Waste requiring Disposal. Such decision by Operator in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof. If the Landfill becomes unavailable for Disposal for any reason, Operator shall use another Residue Disposal Site, selected by Operator and approved by the County. The County shall reimburse Operator for any increased transportation and/or Disposal costs associated with the use of such alternate landfill. However, the County shall only reimburse Operator for Disposal of material up to the agreed-upon amount of the material delivered to the Facility, in accordance with Section 10.2.

2.13 Facility Capacity to Accept and Process**A. Unable to Accept Acceptable Materials**

If Operator is unable to accept Acceptable Materials at the Facility for Processing for more than twenty-four (24) consecutive hours during normal receiving and operating hours, as set forth in Section 5.3, Operator will be responsible for ensuring that such Acceptable Materials are accepted by a(n) alternate facility(ies) and/or Processed in accordance with the Section below. If Operator uses an alternate facility to accept Acceptable Materials, then: (i) such an alternate facility(ies) shall be under Operator's control; or, (ii) Operator shall obtain advance written permission by the County if Operator desires to use a County-owned facility. Operator shall ensure that Acceptable Materials are not held at a(n) alternate facility(ies), as described above, for more than seventy-two (72) hours prior to being transferred to the Facility for Processing.

B. Unable to Process Acceptable Materials

If Operator is unable to Process Acceptable Materials that have been accepted at the Facility for more than seventy-two (72) consecutive hours during normal receiving and operating hours, as set forth in Section 5.3, Operator will be responsible for ensuring that such Acceptable Materials are transferred to a(n) alternate facility(ies) for Processing. In such cases, Operator shall be responsible for loading any Acceptable Materials that were accepted at the Facility but that Operator is unable to Process at the Facility and transferring such materials to an alternate Processing facility(ies) arranged by Operator. Operator shall be responsible for paying all costs associated with the loading, transferring, and Processing such Acceptable Materials at the alternate Processing facility(ies).

If Operator is unable to accept Acceptable Materials at the Facility, Operator has utilized another alternate facility(ies) in accordance with Subsection 2.13.A above, and Operator is unable to Process

1131 such Acceptable Materials that were not accepted at the Facility, then Operator shall be responsible for
1132 all activities related to loading and delivering or causing the delivery of any Acceptable Materials
1133 delivered to an alternate facility. Operator shall be responsible to pay all costs associated with the
1134 transfer, transport, and Processing of Acceptable Materials at such alternate Processing facility(ies).

1135 **C. Capacity and Compensation**

1136 If Operator fails to accept and/or Process any Acceptable Materials as described above, then any
1137 resulting reduction in revenue to Operator or increase in costs to Operator shall not be eligible for a
1138 Special Tipping Fee Review in accordance with Section 10.4. After identification of a(n) facility(ies)
1139 capable of Processing the different components of Acceptable Materials, Operator shall seek County
1140 approval before delivering or arranging the delivery of Acceptable Materials to the alternate location(s).
1141 Provided, however, that if such failure to accept Acceptable Materials at the Facility or failure to Process
1142 Acceptable Materials at the Facility was due to an Uncontrollable Circumstance, the sole responsibility
1143 of the County, or a catastrophic failure of equipment, as described in Subsection 5.5.H.10, that was not
1144 in any way caused by Operator's failure to perform, then Operator shall be entitled to receive and retain
1145 any revenue for Acceptable Material accepted at the Facility and shall not be responsible for paying costs
1146 associated with the transfer or transport of materials.

1147 **ARTICLE 3. DISPOSAL**

1148 **3.1 General**

1149 The County owns and operates the Landfill, which has been issued all Permits from federal, State,
1150 regional, and County agencies necessary for it to operate as a sanitary landfill. The County owns the
1151 ReSource Center, which is located at the Landfill and comprised of the MRF, ADF, and CMU facilities.
1152 Operator operates the MRF, which Processes materials but results in Residue, which must be Disposed
1153 in a landfill.

1154 **3.2 Operator's Obligations**

1155 Operator shall implement a load screening program, subject to the reasonable approval of the County,
1156 and in accordance with Good Industry Practice, to inspect for and exclude Hazardous Waste, Household
1157 Hazardous Waste and other special waste not permitted to be Disposed in the Landfill from Residue from
1158 the Facility that it delivers to the County for Landfill Disposal.

1159 If Operator rejects a load or a partial load of Unacceptable Waste, or otherwise unpermitted material
1160 delivered to the Facility, the Collection Contractors or other hauler(s) delivering the Unacceptable Waste
1161 or otherwise unpermitted material shall be solely responsible for the transportation of such material to
1162 a permitted disposal site and the cost of disposal or Processing.

1163 Operator shall load Residue from the Facility and Bypassed Waste that has been delivered to the Facility
1164 into County-provided vehicles, unless otherwise agreed to between the Parties, and as further described
1165 in Section 5.12.

1166 Operator shall generate a weight tag for each and all vehicles delivering Residue for Disposal. Operator
1167 shall provide County with a weekly report of Residue Tonnage delivered, summarized by Day, and
1168 reconciled in accordance with Article 10.

1169 In accordance with Section 10.4, Operator shall pay the County for Disposal of material in excess of the
1170 Performance Guarantee pursuant to Article 9.

1171 Operator shall comply with the Days and hours of operation listed on the Solid Waste Facility Permit.

1172 **3.3 County's Obligations**

1173 Throughout the Term, the County shall, at its sole expense, keep in force all existing Permits and
1174 approvals for the County's performance under this Agreement and any law or regulations applicable to
1175 the Landfill.

1176 If the County rejects a load or a partial load of Unacceptable Waste at the Landfill, or otherwise
1177 unpermitted material delivered to the Landfill, the Collection Contractors or other hauler(s) delivering
1178 the Unacceptable Waste or otherwise unpermitted material shall be solely responsible for any costs
1179 associated with reloading or otherwise removing Unacceptable Waste or otherwise unpermitted
1180 material and all costs associated with transportation of such material to a Permitted disposal site and
1181 the subsequent disposal or Processing.

1182 County shall receive, inspect, accept, and safely and lawfully Dispose of, at the Landfill, Residue from the
1183 Facility. If the Landfill is unavailable for Disposal, the County shall provide for Residue Disposal at an
1184 alternate Facility.

1185 County may refuse to accept partial or whole loads of waste delivered by Operator, if such load contains
1186 Unacceptable Waste, or other materials that may not be legally accepted at the Landfill. In such event,
1187 the County shall have no further responsibility for disposition of such Unacceptable Wastes.

1188 County shall accept for Disposal, without charge, up to the agreed-upon Residual amount for Mixed
1189 Waste Processing, as described in Article 9, and the agreed-upon Residual amount for Recyclables
1190 Processing, as described in Article 9. Annually, the County shall invoice Operator for Disposal of material
1191 in excess of the Residual for both Acceptable Materials, in accordance with Section 10.4.

1192 In providing the services required under this Agreement, the County shall at all times comply with
1193 Applicable Law, Permits, and approvals pertaining to the County's performance under this Contract;
1194 provided, however, that this provision shall not preclude County from being entitled to an increase in
1195 the Disposal rate due to a Change in Law. In the event of any conflict between this Agreement and
1196 Applicable Law, Applicable Law shall govern, and the County shall not be in breach of this Agreement if
1197 the County complies with such Applicable Law in contravention of this Agreement.

1198 ARTICLE 4. RESERVED**1199 ARTICLE 5. GENERAL OPERATIONS REQUIREMENTS****1200 5.1 Responsibilities of the Parties****1201 A. General Apportionment of Responsibility**

1202 Operator is solely responsible for all Operation and Maintenance activities conducted at, or with relation
1203 to, the Facility in accordance with the requirements of the Agreement, using Good Industry Practices
1204 and meeting all Performance Guarantees. County responsibilities are limited to those specifically
1205 enumerated in this Section and further described in Article 5, or as may otherwise be specified in the
1206 Material Delivery and Service Agreements. The County will cooperate with and assist Operator to the
1207 extent specifically provided in this Section.

1208 B. County Responsibilities

1209 Responsibilities of the County during Operations are limited to:

- 1210 1. Receiving, inspecting, accepting, weighing, directing, and charging customers for Acceptable
1211 Materials delivered to the Facility in accordance with Material Delivery and Service Agreements,
1212 and Spot Market Materials, as applicable.
- 1213 2. Making payments to Operator calculated in accordance with this Agreement, County-approved
1214 rates, and Tonnage delivered to the Facility.
- 1215 3. Reviewing and monitoring Operator compliance with Performance Guarantees and providing
1216 general oversight of Operations.
- 1217 4. Providing operational information to the general public and coordinating with Operator regarding
1218 Operator's responsibilities.
- 1219 5. Coordinating and managing the Annual Settlement Process specified in Article 10.
- 1220 6. Directing Changes in Scope, as provided in Section 2.11.
- 1221 7. Reviewing and approving or denying requests for Special Tipping Fee Reviews, as provided in
1222 Article 10.
- 1223 8. Reviewing and approving reports submitted by Operator pursuant to Article 12.
- 1224 9. Reviewing and approving plans and other required submittals, including the Operations and
1225 Maintenance Manual, to be developed by Operator pursuant to Article 5.
- 1226 10. Reviewing Operator compliance with the Agreement, including, but not limited to, assessment of
1227 damages, penalties, costs, and Events of Default as described in Section 14.2.
- 1228 11. Complying with the annual delivery requirement, as provided in Subsection 2.10.A.
- 1229 12. Reviewing, through supporting documentation or Site visits, loads of Residue received at the
1230 Landfill that contain Recyclable Materials or Unacceptable Materials to determine suitability for
1231 Disposal per the provisions of this Agreement.

- 1232 13. Maintaining and operating the County Scale House to provide Operator with weighing services as
1233 specified in this Article.
- 1234 14. Providing the Facility through the Term.
- 1235 15. Assisting Operator with factual information about the Facility and the Landfill.
- 1236 16. Transporting and Disposing of Residue and Bypassed Waste for Disposal at the Landfill, in
1237 accordance with the Landfill Permit requirements in accordance with Sections 3.3 and 5.12, unless
1238 otherwise agreed to between the Parties.
- 1239 17. Transporting Organic Materials from the Processing of Mixed Waste to the ADF or CMU in
1240 accordance with Section 6.3, unless otherwise agreed to between the Parties.
- 1241 18. Continuing to act as lead agency for CEQA, as necessary.
- 1242 19. Continuing to ensure compliance with operational mitigation measures, as required by Exhibit S:
1243 Mitigation and Monitoring Requirement.
- 1244 20. Directing self-haul Tonnage containing Acceptable Materials to the Facility.
- 1245 21. Participating with Operator in marketing available capacity to companies or agencies who are not
1246 already delivering Acceptable Materials under a Material Delivery and Service Agreement with the
1247 County.
- 1248 22. Operating and maintaining Facility Landfill gas energy system including generator, gas clean-up
1249 systems, evaporator, flarer, and other associated equipment.
- 1250 23. Operating and maintaining Facility water and waste water systems.

1251 **C. Operator Responsibilities**

1252 Operator, at its sole expense, shall provide uninterrupted Operations at the Facility in accordance with
1253 the Facility Permits, and receiving Days and hours of Operation, as specified in Section 5.3. Operations
1254 conducted by Operator pursuant to this Agreement shall include, but not be limited to, the furnishing of
1255 all management, labor, supervision, equipment, materials, supplies, and all other items necessary to
1256 perform the services required. Operations shall at all times adhere to Applicable Law, Good Industry
1257 Practice, Good and Accepted Operating Practice, the Operation and Maintenance Manual, the
1258 Operations and Maintenance standards, the Performance Guarantees, and all other applicable
1259 requirements of this Agreement. At no time shall Operator use or permit the use of the Facility for any
1260 purpose other than those contemplated by this Agreement.

1261 Operator's primary Operations responsibilities include, but are not limited to, the following, as further
1262 specified in this Article, in Articles 6, 7, 8, and 11, and in other portions of the Agreement as referenced
1263 below:

- 1264 1. Commence conducting Operations, Maintenance, and Marketing upon the Effective Date.
- 1265 2. Hiring, training, and maintaining qualified and experienced staff, and providing continuing
1266 appropriate staff training and other personnel-related requirements, as provided in Article 11.
- 1267 3. Paying all Operations, Maintenance, and Marketing costs.

- 1268 4. Loading Residue from the Processing of Acceptable Materials into County vehicles for subsequent
1269 transport to the Landfill for Disposal in accordance with Section 3.2.
- 1270 5. Loading Organic Materials from the Processing of Mixed Waste into vehicles for subsequent
1271 transport to the ADF or CMU for further Processing.
- 1272 6. Storing and loading Bypassed Waste for County transport for Disposal.
- 1273 7. Arranging for, managing, and compensating vendors and Subcontractors for work performed, as
1274 provided in Article 11.
- 1275 8. Providing and Operating equipment required for handling Acceptable Materials on the MRF floor.
- 1276 9. Maintaining and repairing all Operator-occupied portions of the Facility, including fencing, lighting,
1277 brush-cutting, and cleanup of litter.
- 1278 10. Maintaining and operating scales located at the Facility.
- 1279 11. Performing repairs, replacements, and purchases in accordance with Applicable Law, including
1280 those for public bidding and prevailing wage of Labor Code Section 1771.
- 1281 12. Remitting to the County all payments, as specified in Article 10.
- 1282 13. Assuming legal responsibility for Facility Operations as the named operator on all federal, State,
1283 City, and any other governmental unit Permits, orders, licenses and approvals, and CEQA
1284 mitigations required by Applicable Law for Operation, including, but not limited to, those Permits
1285 listed in Exhibit H: Tajiguas Sanitary Landfill and ReSource Center Permits.
- 1286 14. Complying with and maintaining all federal, State, City and any other governmental unit Permits,
1287 orders, licenses, approvals and CEQA mitigations, as described in Exhibit S: Mitigation and
1288 Monitoring Requirement, required by Applicable Law for the Facility.
- 1289 15. Holding and maintaining in its own name all licenses or other agreements necessary for use of
1290 equipment or software.
- 1291 16. Maintaining records, providing records upon request, preparing and submitting regular reports,
1292 and addressing periodic information requests from the County in accordance with Article 12.
- 1293 17. Preparing and implementing a technical and safety training plan and program for the Facility in
1294 accordance with Applicable Law and Good Industry Practices, whichever are most stringent, as
1295 provided in Section 5.7.
- 1296 18. Preparing an Emergency Preparedness Plan (EPP) in accordance with federal and State regulations
1297 governing emergency action and fire prevention plans, and in cooperation with the County and
1298 federal, State, and other local officials and public safety departments.
- 1299 19. Cooperating to the fullest extent with County during any activities necessary to comply with CEQA
1300 that affect the ReSource Center or the Landfill, and paying for all costs associated with CEQA
1301 mitigation measures identified in Exhibit S: Mitigation and Monitoring Requirements Plan.
- 1302 20. Marketing available capacity at the Facility to companies or agencies who are not already
1303 delivering Acceptable Materials under a Material Delivery and Service Agreement with the County,
1304 subject to County approval.

- 1305 21. Cooperating to the fullest extent with the County with any material characterization study(ies),
1306 and reviewing and commenting on study design to ensure study yields any information Operator
1307 deems necessary to meet Performance Guarantees and Applicable Law.
- 1308 22. Developing and updating an Exit Transition Plan, and providing transition services as necessary for
1309 a smooth, uninterrupted transition of service, whether at the end of the Term or upon earlier
1310 termination, as provided in Article 15.
- 1311 23. Using Good and Accepted Operating Practices to maintain the Site in good condition, and
1312 mitigating any negative environmental impacts (such has Hazardous Waste and groundwater
1313 contamination) to the Site and roadways used to access the Site.
- 1314 24. Implementing and maintaining the stormwater pollution prevention plan to comply with Permits
1315 and Applicable Law.
- 1316 25. Conducting all other activities as necessary to meet Operator's Obligations and Performance
1317 Guarantees.

1318 **D. County Right to Observe**

1319 The County and/or its representative(s) shall have the right, but not the obligation, to observe
1320 equipment testing and Maintenance performed by Operator. Operator shall provide the Parties with
1321 access to the Facility to observe and monitor the tests.

1322 **5.2 Operator's Use of the Facility**

1323 Subject to the limitations imposed by this Agreement, Operator shall have the right to use the Facility
1324 (including the administrative, Maintenance, and repair areas) every Day of the year. The Facility includes
1325 painted and carpeted office and interior space, but Operator is responsible for providing at its expense
1326 all Non-Fixed Equipment, furniture, and supplies for areas it will occupy. No lease or other property
1327 interest is created by this Agreement.

1328 If the Facility is destroyed or damaged (including, but not limited to, fire, earthquake, or other similar
1329 event) so that Operations as contemplated in this Agreement are impossible or commercially infeasible,
1330 the County has the right, but no obligation, to repair or rebuild the Facilities.

1331 County will notify Operator promptly (no later than one hundred twenty (120) Days after destruction or
1332 damage occurs) whether or not it will repair and rebuild the Facilities. If the County elects not to repair
1333 and rebuild, this Agreement shall terminate thirty (30) Days after the County notifies Operator of that
1334 decision.

1335 If the County elects to repair and rebuild, then until reconstruction is sufficiently completed for Operator
1336 to resume Operations, the obligations of Operator to perform and the obligations of the County to pay
1337 compensation will both be abated or modified in a commercially reasonable and equitable manner
1338 reflecting, for example, the ability of Operator to resume partial Operations, and the compensation
1339 appropriately due for doing so.

5.3 Receiving and Operating Hours

Operator shall at all times Operate and Maintain the Facility in accordance with the Solid Waste Facility Permit, and shall accept deliveries of Acceptable Materials consistent with Scale House Operating hours and delivery practices at the Landfill ("Landfill Hours"). The Landfill is closed on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The County projects the Landfill will operate two hundred sixty-seven (267) Days per year following the Effective Date.

Operator shall schedule repair and Maintenance activities at times other than the Landfill Hours specified above in such a manner that Operator can fulfill its Material Throughput Guarantees and other Performance Guarantees. In no event shall inadequate Maintenance or repair excuse Operator Events of Defaults described in Section 14.2.

If Operator cannot accept Acceptable Materials, or Operate the Facility for any reason during the above Days and Landfill Hours for a period of twelve (12) hours or more, it shall immediately provide notice to the County by telephone, followed by written notice detailing the nature and expected duration of the shutdown and its impact on Operator's ability to fulfill Operator's Obligations, including all Performance Guarantees. In the event Operator is unable to accept Acceptable Materials for more than twenty-four (24) hours, Section 2.13 shall prevail. Such notice shall not relieve Operator of Operator Obligations, may result in assessment of liquidated damages, as provided in Section 14.9 and Exhibit C: Liquidated Damages, and, if uncured, may be an Event of Default, as provided in Section 14.2.

5.4 Vehicle Weighing

A. Assignment of Responsibility

County is responsible for managing the Scale House and providing all vehicle weighing in accordance with this Section. Weighing includes, at a minimum: all in-bound Collection Contractor, self-haul (including Spot Market), and County vehicles delivering Acceptable Materials to the Facility. Exhibit I: Reporting Requirements provides a detailed listing of the incoming and outgoing data that Operator is required to collect and maintain. Operator is solely responsible for ensuring that incoming and outgoing vehicles arrive at the Scale House during the Landfill Hours specified in Section 5.3 unless other arrangements are made and agreed upon by Operator and the County.

Either Party may request, and the County shall reasonably accommodate during Landfill Hours, non-routine vehicle weighing needs including, but not limited to, those related to conducting material characterizations or assessing Operator compliance with Performance Guarantees, as provided in Article 9.

Operator may, with five (5) Week Days' notice, request County make the Scale House available to weigh vehicles during times other than Landfill Hours. The County may assess an hourly fee for such services.

Operator may use scales located at the MRF to weigh trucks loaded with Residue prior to transport to the Landfill for Disposal, conveyor belts transporting Organic Materials from the MRF to the AD Facility

1376 or CMU, and any materials leaving the Site when the County-operated scales are not available. Weekly
1377 reports recording these weights shall be provided to the County.

1378 Operator shall maintain required certifications, including annual registration with the County's Sealer of
1379 Weights and Measures, for scales located at the MRF to ensure accuracy and compliance with State
1380 requirements and shall comply with all the provisions of this Section. Operator shall allow the County to
1381 weigh outbound material from the AD Facility and CMU at the Facility scales at no additional cost to the
1382 County.

1383 **B. Scale Operation and Maintenance**

1384 County shall maintain State certified motor vehicle scales at the Scale House in accordance with
1385 Applicable Law and operate the scales in a manner that allows for vehicles with tare weights to bypass
1386 the Scale House when exiting the Landfill after unloading Acceptable Materials. All scales shall be linked
1387 to a centralized computer recording system to record weights for all incoming and outgoing materials.
1388 The County shall provide Operator monthly summary Scale House reports, and shall provide Operator
1389 reasonable access to scale records and reports during Landfill Hours. The County shall provide back-up
1390 generator(s) capable of supplying power to the scales in the event of a power outage.

1391 **C. Vehicle Tare Weights**

1392 Within the twenty (20) Week Days prior to the Effective Date, Operator shall coordinate with County to
1393 ensure that all Collection Contractor or Spot Market vehicles used to deliver Acceptable Materials to the
1394 Facility and all of Operator's vehicles used to transport Recovered Materials from the Facility are
1395 weighed to determine unloaded ("tare") weights. Operator is solely responsible for ensuring that
1396 vehicles requiring weighing, other than County vehicles, are made available to be weighed prior to use.
1397 The County shall be responsible for taking tare weights for vehicles used by the County to transport
1398 Residue for Disposal and Organic Materials to the AD Facility and CMU. The County shall electronically
1399 record the tare weight, contractor or public agency name, and vehicle identification number for each
1400 vehicle. The County shall promptly provide Operator with a report listing the vehicle tare weight
1401 information.

1402 When additional, repaired, or replacement vehicles are placed in or returned to service by Operator,
1403 Collection Contractors, the County, or other parties, the County shall promptly weigh such additional,
1404 repaired, or replacement vehicles and provide the tare weight(s) to Operator. Operator is solely
1405 responsible for ensuring that additional or replacement vehicles requiring weighing, other than County
1406 vehicles, are made available to be weighed prior to use. Operator shall have the right to request re-taring
1407 of vehicles as reasonably required to ensure accuracy but not more than two (2) times per year. The
1408 County shall check tare weights at least annually, or within ten (10) Week Days of an Operator request.

1409 **D. Substitute Scales**

1410 To the extent practicable, if any scale is inoperable, or being tested, or is otherwise unavailable, vehicles
1411 shall be weighed on the remaining operating scales. To the extent that all the scales are inoperable,
1412 being tested, or are otherwise unavailable, the County shall substitute portable scales until the
1413 permanent scales are replaced or repaired. The County shall arrange for any inoperable scale to be
1414 repaired as soon as possible, and in any event, within three (3) Week Days of the failure of the permanent

1415 scale. The County shall arrange to immediately obtain a temporary substitute scale(s) should the repair
1416 of the permanent scale require more than three (3) Week Days.

1417 **E. Weight Estimates**

1418 Pending substitution of portable scales, the County shall, if necessary, estimate the Tonnages of
1419 Acceptable Material delivered to the Facility, and Recovered Materials and Residue being transported
1420 from the Facility, on the basis of delivery truck and transfer trailer volumes, tare weights, and Landfill
1421 and/or other available Facility weight records. These estimates shall take the place of actual weights
1422 while scales are inoperable, and shall be identified as estimates in electronic records and reporting.

1423 **5.5 Equipment**

1424 **A. Fixed Equipment**

1425 Operator shall be solely responsible for Operating and Maintaining all fixed equipment necessary to
1426 Operate each activity at the Facility throughout the Term. Fixed equipment includes, but is not limited
1427 to, equipment required for receipt and Processing of Acceptable Materials and Marketing of Products.
1428 Fixed equipment shall at all times be sufficient in type, number, and capacity to safely and efficiently
1429 meet Operator's Obligations, including all Performance Guarantees. All fixed equipment shall comply
1430 with all Applicable Laws. Operator shall perform periodic Maintenance in accordance with the
1431 Operations and Maintenance Manual, as further provided in Section 5.6.

1432 The County has the right to arrange and pay for independent third-party reviews of Operator's
1433 equipment Maintenance programs. Operator shall cooperate with reasonable requests from the County
1434 or its agent regarding such reviews, and shall provide access to the Facility in accordance with Section
1435 5.10.

1436 **B. On-Site Vehicles and Non-Fixed Equipment**

1437 Operator shall be solely responsible for acquiring, Operating, and Maintaining all onsite vehicles and
1438 Non-Fixed Equipment as necessary to Operate each activity at or related to the Facility. Non-Fixed
1439 Equipment shall at all times be sufficient in type, number, and capacity to safely and efficiently meet
1440 Operator's Obligations, including all Performance Guarantees. All vehicles and Non-Fixed Equipment
1441 shall comply with Applicable Laws. Operator shall perform periodic Maintenance in accordance with the
1442 Operations and Maintenance Manual, as further provided in Section 5.6. Ownership of all Non-Fixed
1443 Equipment shall be transferred to the County at no cost when such equipment becomes fully
1444 depreciated. To the extent Operator intends to purchase new or replacement onsite vehicles or other
1445 Non-Fixed Equipment necessary to Operate each activity at or related to the Facility, and requests
1446 consideration from the County for any sort of adjustment in compensation for such purchase under
1447 Section 10.4 at any time, Operator shall provide the County with notice prior to purchasing such onsite
1448 vehicles and/or Non-Fixed Equipment, and the County shall have no obligation to consider Operator's
1449 request for consideration under Section 10.4 if Operator failed to provide notice. The County shall have
1450 the right, but not the obligation, to secure such Non-Fixed Equipment on behalf of Operator to the extent
1451 the County has the ability to secure more favorable pricing. Any adjustment in compensation that results
1452 from a Special Tipping Fee Review, as provided in Section 10.4, will provide for only those costs necessary
1453 to respond to the extraordinary condition and shall be limited to those that are reasonable relative to

1454 similar purchases that are generally available for comparable equipment under comparable terms, and
1455 will not be subject to profit. Additionally, even if Operator does not have an intent to request any
1456 adjustment in compensation pursuant to Section 10.4, Operator may Notify and request the County
1457 investigate whether more favorable pricing might be available through the County; provided, however,
1458 that County shall be under no obligation to do so.

1459 Operator may, with County approval, use financing to acquire any necessary equipment. The County
1460 shall have the exclusive option to purchase undepreciated Non-Fixed Equipment from Operator at the
1461 end of the Term or upon Agreement termination, in accordance with Section 15.20.

1462 **C. Equipment Inventory**

1463 Operator shall at all times maintain a spare parts inventory sufficient in type and number to ensure
1464 uninterrupted Operation in accordance with Exhibit B: Operations and Maintenance Manual.

1465 **D. Scheduled Downtime**

1466 Operator shall plan for any scheduled downtime to occur in a manner that minimizes any disruption in
1467 Operations.

1468 **E. Offsite Non-Fixed Equipment**

1469 All Operator vehicles or other Non-Fixed Equipment that regularly travel off the Facility grounds shall be
1470 kept clean. Such Non-Fixed Equipment shall be thoroughly washed on the exterior at least one (1) time
1471 every week, and thoroughly cleaned with pressurized hot water at least one (1) time every six (6)
1472 months. Offsite Non-Fixed Equipment shall be repainted and/or refurbished at County request to
1473 present a reasonably acceptable and uniform appearance. Operator's names and truck identification
1474 numbers shall be clearly marked on offsite Non-Fixed Equipment.

1475 **F. Equipment Purchase and Lease Approval**

1476 Operator may purchase or lease to purchase fixed equipment or Non-Fixed Equipment. Leases must be
1477 maintained at the Facility and made available to the County upon request, as provided in Subsection
1478 12.2.A.

1479 Any adjustment in compensation resulting from a Special Tipping Fee Review, as provided in Section
1480 10.4, will provide for reimbursement of any fixed equipment purchases or leasing costs necessary to
1481 respond to the extraordinary condition. Such fixed equipment purchases or leasing costs shall be limited
1482 to those that are reasonable relative to similar purchases or leases that are generally available for
1483 comparable equipment under comparable terms, and will not be subject to profit.

1484 **G. Change in Tonnages and Related Equipment Needs**

1485 Operator and the County recognize that the total Tonnage of Acceptable Materials and/or the relative
1486 Tonnages of Mixed Waste and Source-Separated Recyclable Materials delivered for Processing may
1487 increase or decrease over time. Operator may make adjustments to its equipment inventory as needed,
1488 including acquiring and Operating additional Non-Fixed Equipment and/or other equipment as needed
1489 to meet Operator's Obligations, including all Performance Guarantees. There shall be no adjustment in

Operator's compensation provided in Article 10 as a result of changes in equipment needs related to the increases or decreases in the Tonnages of Acceptable Materials, except as provided in Subsection 2.10.E, and as the result of a Special Tipping Fee Review, as provided in Section 10.4.

H. Capital Improvement Plan and Process

1. **General.** Operator and the County recognize that Operator's ability to meet the Performance Standards outline in Article 9 requires Operator to optimize the performance of existing equipment and to perform both ongoing repairs and Maintenance as issues are encountered, as further described in Exhibit B: Operations and Maintenance Manual. Operator and the County acknowledge that, during the Term of the Agreement, the Facility may need to change and/or be updated, or equipment may need to be replaced, whether as a result of the useful life of equipment diminishing or expiring, in response to the composition of Acceptable Materials received by Operator for Processing, as the composition of Acceptable Materials change and/or Markets for Recovered materials evolve. The Parties further acknowledge and agree that while the County shall have the primary responsibility to invest in capital improvements to the Facility to ensure the Facility is capable of being operated in a manner to achieve the Performance Standards outlined in Article 9, Operator has the primary responsibility to maintain and operate all equipment in the Facility to meet the Performance Standards outlined in Article 9. The County has funding reserved for capital improvements for the Facility and shall review requests made by Operator made in accordance with the provisions of this Section.

The County budget process begins approximately twelve (12) months prior to the beginning of each County Fiscal Year, and it is imperative that the County and Operator maintain close communications throughout the Term of the Agreement in order to plan for the future. The Parties agree to meet, at least quarterly, to discuss the prior quarter's report on Facility status, as further described in Exhibit I: Reporting Requirements, wherein Operator shall provide updates on the status of each material piece of Facility equipment and capital enhancements suggestions as part of its quarterly report. Both Parties agree to have a technically qualified representative attend all such quarterly meetings, which may include the County's engineering team, and Operator shall summarize and provide verbal updates on the prior quarter's report and make suggestions on changes to the plan for capital improvements to the Facility ("Capital Improvement Plan"), as further described below.

2. **Capital Improvement Plan.** In order to appropriately plan ahead for upcoming changes to the Facility and/or equipment replacement, Operator and the County agree to develop and annually update a Capital Improvement Plan, as described below, that will provide the County with the necessary visibility into upcoming capital improvement requests by Operator.

The Capital Improvement Plan shall include, at a minimum:

- (i) Identifying replacements for equipment at the end of its useable life.
- (ii) Adding new equipment or technology to the Facility or replacing existing equipment that has become obsolete or is ready to be retired.

- 1528 (iii) Redesigning the Facility to improve or optimize Operations, which may include replacing or
1529 adding new equipment, including the installing or relocating quality control stations or
1530 other adjustments in the layout and/or sequencing of equipment that conveys material.
- 1531 (iv) Redesigning or enhancing the Facility to improve Diversion by:
- 1532 a. Increasing the Recovery of commodities.
- 1533 b. Maximizing Organic Material Recovery to the ADF and/or minimizing Organic Materials
1534 to Landfill.
- 1535 c. Increasing Marketability of Recovered Material for highest and best use, even if Residue
1536 may increase or have a positive financial impact on Operator.
- 1537 d. Increasing environmental benefit, even if Residue may increase or have a positive
1538 financial impact on Operator.
- 1539 (v) Minimizing incompatible materials to the ADF.
- 1540 (vi) Establishing the incremental Diversion improvements for making the capital improvement
1541 and the impact to Diversion for not making the capital improvement.
- 1542 (vii) Estimating the incremental change in total commodity revenue and/or commodity revenue
1543 for a specific Recyclable Material.
- 1544 (viii) Scheduling the implementation of the capital improvements, including Operations
1545 downtime of the Facility, potential changes in expected daily throughput during
1546 installation, and/or timing for the County to process payments and purchase.
- 1547 (ix) Estimating costs for enhancements allocated by capital, and installation and/or labor costs,
1548 including any labor savings for the installation of new and/or replacement equipment.
- 1549 If Operator fails to accurately report on the status of equipment in the quarterly reports, fails to
1550 have its technically qualified representative participate in regular meetings, fails to timely take all
1551 necessary actions to install and commission approved equipment purchased, or fails to deploy the
1552 labor required to optimize the efficiency and/or reduce downtime on the new capital equipment,
1553 then Operator shall be precluded from asserting any failures to meet the performance standards
1554 outlined in Section 9.2 and Article 14.
- 1555 County shall have sixty (60) Business Days to provide a written response to the Capital
1556 Improvement Plan with a determination on the purchase of new equipment.
- 1557 3. **Process for Operator to Make Requests.** Operator shall be responsible for preparing a Capital
1558 Improvement Plan proposal for the County review no later than September 1 of each year
1559 Operator is requesting the County secure funding for a capital improvement to the Facility for the
1560 subsequent Fiscal Year. Operator shall prepare a proposal in accordance with the required

information described in Subsection 5.5.H.2 and shall provide supporting documentation that includes a binding quote provided by Operator's requested Equipment Manufacturer, and shall provide the County with any additional information, as reasonably required by the County, in order to support the County's review of Operator's request and meet the minimum requirements necessary for the County to incorporate any proposal(s) into the County's annual budget process.

4. **County Approval Process.** If Operator's proposal is accepted by the County and approved by the Board of Supervisors as part of the County's annual budget process, the County shall meet with Operator within thirty (30) Days of the County Board of Supervisors' approval of the budget allocation to affect the purchase and plan for the installation and testing of the equipment.

Further, in the event that the County approves the Operator's proposal, and the funding needed to make the purchase exceeds the budget allocation approved by the County Board of Supervisors, the County and Operator may agree to meet and confer to discuss whether Operator shall be authorized to make the purchase on behalf of the County using Operator's own funds and discuss and agree to the repayment provisions, which in no case shall allow Operator or obligate the County to pay Operator any interest for Operator's advancement of funds.

5. **Installation.** The County will purchase equipment and Operator will manage installation in most cases. During installations performed by a third party such as the equipment vendor, Operator shall arrange for a technically qualified representative of Operator to be onsite at least five (5) Days per week during the equipment vendor's installation of the equipment to observe the installation and to advise the County. During the period of equipment installation by a third party, Operator shall cooperate with the third party and shall modify its Operations as reasonably needed to facilitate the equipment installation in a manner agreed upon by the Parties.

Any parties involved in equipment installation shall cooperate to reduce any significant disruptions to Facility Operations. In the event that the installation of the equipment requires the Facility Processing to be suspended for any period of time, Operator or the relevant third party will perform installation in off-hours, or temporarily redirect material flows through the Facility to avoid the installation area, as approved by the County.

6. **Testing.** Upon completion of the installation of equipment or capital enhancements, Operator shall immediately start up and Operate the equipment for a commissioning period of no less than ten (10) Days and no more than nine (9) months prior to commencing the Acceptance Test.

The system's Acceptance Test and performance test protocols will be determined with the selected equipment vendor, the County, and Operator during the equipment design phase. At a minimum, Operator acknowledges that it will be responsible for Operating the equipment during the Acceptance Testing process.

If the County accepts the equipment, it will require Operator to assist in the ongoing measurement of the Recovery and product quality standards contained in the Acceptance Test, as well as any other performance representations made by the Equipment Manufacturer or the equipment vendor to the County.

7. **Maintenance.** Pursuant to Section 5.6, Operator shall maintain any new or upgraded equipment and add equipment to Exhibit B: Operations and Maintenance Manual.

8. **Operator Funded Improvements (Purchased or Leased).** If Operator wishes to purchase equipment that is not approved for purchase by the County or to lease (rather than purchase) equipment which it chooses to furnish, any such lease shall require written consent by the County and each lease shall provide that the lessor will, if requested, consent to its assignment to the County without charge (beyond the established lease payment obligations defined in Operator's leasing agreement, which shall be assumed by the County) upon the expiration or earlier termination of this Agreement and further shall provide adequate mechanisms for the County to acquire title to equipment if desired.

County approval is required for Operator funded improvements and modifications if the improvements or modifications have a material effect on the Facility. Operator funded modifications to the Facility infrastructure and/or equipment shall be considered material if they may: (i) void the equipment warranty; (ii) negatively impact the equipment, such that its resale value falls below Market; or, (iii) have a negative impact on equipment value exceeding fifty-thousand dollars (\$50,000). Material modifications are prohibited unless otherwise approved by the County prior to modification.

Operator funded improvements and modifications shall become property of the County at the end of the Term of the Agreement under Sections 2.3, 2.2, 14.6, and 15.20.

9. **Performance Standards.** Any new or replacement equipment shall be added to the Performance Standards described in Section 9.2 and, as applicable, all Recovery and other Performance Guarantees provided by the Equipment Manufacturer shall be added to Subsection 9.2.E and the County and Operator shall agree to the percentage increases that shall be added to Subsection 9.2.D, as shown in Exhibit N-3: Material Characterization Study Methodology.

10. **Emergency Replacement.** Operator and the County recognize that unexpected equipment failures do occur in Diversion facilities, even when properly maintained, and that in the event of such a failure, equipment may need to be immediately replaced to keep the Facility Operational. On an annual basis, the County shall take appropriate measures during the County budget process to ensure one million five hundred thousand dollars (\$1,500,000) will be available for emergency replacement funds for a catastrophic equipment failure and that such funds will be restricted for this Agreement.

For the purposes of this Subsection 5.5.10, catastrophic equipment failure shall include any one (1) or more pieces of independent or integrated equipment systems that fail completely and without warning, such that they are inoperable, and that are: (i) no longer under Equipment Manufacturer's warranty; (ii) are essential for Operation and there is no available bypass option for material; and, (iii) Operator is unable to obtain the parts needed for that specific equipment.

Once Operator becomes aware of such catastrophic equipment failure, Operator shall immediately notify the County of when the failure occurred, which equipment has failed, how it is directly impacting the Operation of the Facility, and any remedies Operator may have conducted to remedy such failure. Both Parties shall meet and confer to discuss an action plan to address the catastrophic failure. The County shall work with Operator to secure bid(s) to replace equipment and present the bid option(s) to the Director of the County Department of Public Works, or their

1641 designee. Upon the Director's, or their designees', approval, the County shall procure new
1642 equipment for the Facility.

1643 If Operator proposes to replace equipment with new or different technologies than the equipment
1644 that catastrophically failed, Operator shall provide information required in Subsection 5.5.H.3. The
1645 County is not obligated to spend more than the current cost for a one-to-one replacement of the
1646 failed equipment. If Operator determines that new or different technologies are the preferred
1647 replacement and does not have County's approval, Operator may purchase or lease new
1648 equipment and the provisions in Subsection 5.5.H.8 shall apply. All equipment purchased using
1649 emergency replacement funds are subject to the installation, testing, Maintenance, and
1650 performance procedures outlined in Subsection 5.5.H.

1651 **5.6 Operations and Maintenance Manual and Practices**

1652 **A. General**

1653 Operator shall develop, and at all times adhere to, the provisions of the Operations and Maintenance
1654 Manual (O&M Manual) to guide Operator in the Operation and Maintenance of all activities at the
1655 Facility. The O&M Manual shall provide a level of comprehensiveness, detail, and specificity comparable
1656 to manuals commonly used for operation of similar types of waste management operations. As of the
1657 Effective Date, Exhibit B: Operations and Maintenance Manual contains the O&M Manual as approved
1658 by applicable regulatory agencies prior to the Effective Date.

1659 The O&M Manual shall include all requirements and procedures that may be required to meet
1660 Operator's Obligations, the Performance Guarantees, Good Industry Practice, and Applicable Law
1661 (including those relating to public bidding and payment of prevailing wages), whichever is more
1662 stringent. The O&M Manual shall clearly identify all Maintenance and repair activities. All Preventative
1663 Maintenance and Predictive Maintenance activities shall be identified and scheduled, and coordinated
1664 with the provisions of Section 15.20, to ensure that, at the end of the Term, all Facility equipment is
1665 operating to manufacturers' specifications, and at least as effectively as on the Effective Date or the date
1666 of installment, whichever is later.

1667 **B. Review and Revision of O&M Manual**

1668 On or before the beginning of each Agreement Year thereafter, Operator shall complete a review of the
1669 O&M Manual, and make such revisions as are necessary to reflect any changes in O&M procedures
1670 during the previous Agreement Year. Operator shall provide the County with an electronic copy of the
1671 revised Operations and Maintenance Manual, with highlighted changes. The County has the right to
1672 require revisions to the Operations and Maintenance Manual at times other than at the beginning of a
1673 new Agreement Year, should changes in Facility Operations so warrant.

1674 **C. County Rights**

1675 County has the right, but not the obligation, to review and comment on the initial O&M Manual, and any
1676 revisions to the O&M Manual. Neither the review nor comment upon, nor the failure of the County to
1677 comment upon the Operations and Maintenance Manual shall: (i) relieve Operator of any of its
1678 obligations and responsibilities hereunder; (ii) impose any liability upon the County, or; (iii) be deemed

1679 to be a representation by the County that Operator's Operations meet Operator's Obligations or are in
1680 compliance with Applicable Law.

1681 **D. Damages for Failure to Revise O&M Manual**

1682 If Operator fails to update the O&M Manual as required, the County may assess liquidated damages as
1683 specified in Section 14.9 and Exhibit C: Liquidated Damages, and, if uncured, may be an Event of Default,
1684 as provided in Section 14.2.

1685 **5.7 Safety and Security**

1686 **A. General**

1687 Operator acknowledges that safety, fire prevention, and security are of critical importance for
1688 management of the Facility. Operator shall maintain safety and security at the Facility at all times during
1689 the Term, using methods and procedures that are consistent with the Operations and Maintenance
1690 Manual, Applicable Law, Permits, licenses, approvals, safety inspections, Good Industry Practices, and
1691 Operator Obligations.

1692 **B. Safety**

1693 Operator's safety measures shall include, but not be limited to, the following:

- 1694 1. Ensuring safety of all personnel working at the Facility.
- 1695 2. Ensuring safety of all Persons visiting the Facility.
- 1696 3. Ensuring safe and orderly vehicular movement.
- 1697 4. Developing a "Fire Control/Handling Plan," and meeting all federal, State, and County Permitting
1698 requirements regarding fire prevention, general fire procedures, and fire drills.
- 1699 5. Developing and updating an "Employee Health and Safety Plan Handbook."
- 1700 6. Providing ongoing staff safety training.
- 1701 7. Accommodating reasonable County requests for modifications or additions to safety procedures
1702 without additional compensation.
- 1703 8. Updating Facility safety plans.

1704 Safety procedures shall be fully in place and tested prior to the Effective Date, and detailed in the O&M
1705 Manual. Operator's failure to develop and maintain the safety program may result in assessment of
1706 liquidated damages, as provided in Section 14.9 and Exhibit C: Liquidated Damages; and, if uncured, may
1707 be an Event of Default, as provided in Section 14.2.

1708 **C. Security**

1709 Operator security measures shall include, but not be limited to, the following:

- 1710 1. Maintaining a security system meeting Good Industry Practices.
- 1711 2. Implementing a sign-in procedure for all visitors.

- 1712 3. Providing ongoing staff training in security.
 - 1713 4. Taking all responsible actions to prevent vandalism to the Landfill and the ReSource Center.
 - 1714 5. Providing, upon County request, twenty-four (24) hour per Day access to the security
1715 video/camera surveillance system.
 - 1716 6. Accommodating reasonable County requests for modifications or additions to the security system
1717 with reasonable additional compensation.
- 1718 The security system shall be fully in place and tested prior to Effective Date, with procedures detailed in
1719 the O&M Manual. Operator failure to develop, staff, and maintain the security system may result in
1720 assessment of liquidated damages, as provided in Section 14.9 and Exhibit C: Liquidated Damages, and,
1721 if uncured, may be an Event of Default, as provided in Section 14.2.

1722 **5.8 Environmental Performance and Prevention of Nuisances**

1723 Operator shall be sensitive to the impact that “poor housekeeping,” undesirable odors, noise, excessive
1724 light, or other such operational and environmental factors can have on community relations. Operator
1725 shall manage the Facility in accordance with all Permit conditions, Exhibit S: Mitigation and Monitoring
1726 Requirements Plan, Good and Accepted Operating Practices, and Applicable Law to prevent nuisances
1727 that can be avoided and minimize all others. In order to meet its Environmental Performance
1728 Guarantees, Operator shall address in the Operations and Maintenance Manual, at a minimum, all of the
1729 issues specified below. All provisions of this Section shall be addressed in conformance with Applicable
1730 Laws and Good Industry Practice. The County may assess liquidated damages in accordance with Section
1731 14.9 and Exhibit C: Liquidated Damages for failure to prevent nuisances as described in this Section.
1732 Depending on the nature, duration, and magnitude of Operator’s failure to meet its Environmental
1733 Performance Guarantees and/or remedy any such violations of this Section, the County may, in addition
1734 to or in lieu of issuing liquidated damages, require Operator to directly pay costs to remedy such
1735 violations or breaches, withhold payment to cover the County’s Direct Costs, and take any other actions
1736 to remedy any failures of Operator to meet its Environmental Performance Guarantees.

1737 **A. Litter and Vectors**

1738 Operator shall maintain the Facility in a neat and orderly condition that discourages rodents, insects,
1739 birds, and litter. Operator will develop and implement a rodent and insect management program,
1740 including contracting with a professional pest control vendor to inspect the Facility on a periodic basis.
1741 In the event of apparent vector activity, Operator shall implement vector control measures sufficient to
1742 remedy the vector nuisance. Operator will ensure the exterior of the Facility is clear of litter and Operate
1743 the Facility and Non-Fixed Equipment to minimize littering on the Site.

1744 **B. Odor**

1745 Operator shall diligently manage Operations to minimize odors and ensure that odors cannot be
1746 detected beyond the boundary of the Facility in accordance with Good and Accepted Operating Practices
1747 and Permit conditions issued by the Santa Barbara County Air Pollution Control District and CalRecycle
1748 to Operate the Facility. Odor control must address: (i) good housekeeping practices to maintain clean
1749 facilities; (ii) proper management of Acceptable Materials, Products, and Residue; (iii) efficient Process
1750 controls for each unit Operation on the Facility; (iv) evaluating odor control systems on an ongoing basis;

and, (v) minimizing onsite inventories of Acceptable Materials, Products, and Residue. In the event an odor complaint is due to Mixed Solid Waste Processing, Operator shall perform an odor control evaluation and provide a report of the results to the County, as provided in Article 12, at Operator's expense. In the event of County or public odor complaint(s), Operator shall, within twenty-four (24) hours of County request, arrange to meet with the County to discuss the nature of complaint(s), and Operator's plans for responding to future odor concerns.

C. Noise

Operator shall at all times be in conformance with Applicable Law regarding noise, including the California Occupational Safety and Health Act. Operator shall take special care to minimize noise impacts outside of Operating hours.

D. Air Quality

Operator shall at all times manage Facility Operations in order to maintain compliance with the conditions of the Santa Barbara County Air Pollution Control District to Operate the Facility, for which the County is listed as the Legally Responsible Party. In the event any areas of concern and/or Permit violations related to Operator's Obligations for the Facility are identified by the Santa Barbara County Air Pollution Control District, Operator shall be responsible for any resulting corrective actions needed, at no cost to the County.

E. Water Use, Wastewater and Storm Water Management

Operator shall use Good Industry Practice in managing and monitoring the storm water quality at the Facility. Operator shall be responsible for meeting all storm water monitoring, sampling, and reporting requirements for the Facility, as directed by the County. Operator shall be solely responsible for any actions or best management practices needed at the Facility to maintain compliance with the Industrial General Permit. Operator shall access groundwater sources for potable and sanitary uses, as described in Exhibit K: Water System Operations Guidelines. Domestic wastewater services for the Facility are provided by a wastewater treatment plant that Recycles the wastewater for reuse at the ADF as percolate makeup water. Wastewater facilities are operated by licensed parties contracted separately by the County.

F. Solid Waste Facility Permit Compliance

Operator shall use Good Industry Practice in Facility Operations in order to maintain compliance with the conditions of the CalRecycle Solid Waste Facility Permit for the Landfill and Resource Center, for which the County is the Legally Responsible Party. Operator is responsible for operating the Facility in accordance with the Transfer/Processing Report for the Solid Waste Facility Permit. In the event any areas of concern and/or Permit violations related to Operator's Obligations for Facility Operations are identified by the Local Enforcement Agency, Operator shall be responsible for any resulting corrective actions needed.

G. Hazardous Waste Management

Operator shall use Good Industry Practice in Facility Operations in order to maintain compliance with the "Hazardous Materials Business Plan Program" for Operator's handling, using, or storing reportable

amounts of hazardous materials. Operator is responsible for obtaining the applicable Santa Barbara County Certified Unified Program Agency (CUPA) Permit and submitting inventories, site maps, and other documentation relating to those materials to CUPA, and developing appropriate employee training and emergency procedures in accordance with Section 5.9. To the extent the County recognizes that, as of the Effective Date, Operator has made a good faith effort to obtain the required CUPA Permit and has been unable to do so, the Parties may otherwise agree, to temporarily suspend the requirements of this Subsection until the CUPA Permit is obtained. Any temporary suspension of this requirement shall be agreed to in writing.

H. Laboratory Analysis

Operator shall perform all required sampling, testing and laboratory analyses for the various Operations at the Facility, and prepare and file required reports with applicable regulatory agencies.

I. Applicable Law Compliance

Operator shall perform all the requirements to comply with all federal, State, City and any other governmental unit Permits, orders, licenses, approvals, and CEQA mitigations required by Applicable Law for the Facility.

5.9 Emergency Response

Operator shall prepare an emergency preparedness plan ("EPP") in accordance with federal and State regulations governing emergency action and fire prevention plans and in cooperation with federal, State and local officials and public safety departments. The EPP shall identify specific potential emergency situations and provide specific actions to minimize the chance of an emergency. Operator shall develop written policies, preventative measures, and response actions necessary to manage high hazard Unacceptable Wastes and high hazard chemicals used at the Facility that may pose a threat to the safety of workers and the surrounding community environment. These written policies shall be developed and implemented as necessary to comply with federal and State safety, health, and environmental regulations governing specific high hazard Unacceptable Wastes and high hazard chemicals used at the Facility.

In addition, the EPP shall address actual response and notification requirements for each type of anticipated emergency. The notification, depending on the situation, shall include the local Fire, Police, and Public Works Departments, the Office of Emergency Management, and the applicable State and federal agencies. The EPP shall also identify specific response actions that shall be taken by Operator and specific local or other applicable agencies to ensure that Operator's Obligations are met without interruption, or that any disruption is minimized to the maximum extent possible.

The EPP shall be in conformance with and contain all elements of Operator's proposal to:

- A. Fully address Operation and Maintenance staff training in the use of equipment and in implementation of the EPP.
- B. Provide a written emergency Operations plan for review by the County, and by local community and State agencies, departments, and safety service officials, and applicable federal agencies, and

1826 finalize the plan. Such plan shall fully address all contingencies and potential emergency conditions
1827 including natural disasters, power failures, spills or releases of contaminants.

1828 C. Rehearse emergency Operations plan procedures with appropriate officials to ensure that
1829 response functions are properly executed in the event of an emergency.

1830 D. Maintain monitoring equipment and alarms for the Facility. All key Process functions shall be
1831 monitored, and when they exceed alarm setpoints, the early warning devices shall notify the on-
1832 call operator.

1833 Operator shall immediately Notify the County, appropriate federal agencies, the State, and the local
1834 community of any activity, problem, or circumstance that threatens the safety, health, or welfare of the
1835 users of the Facility or the residents of local community. In the event of damage or destruction of the
1836 Facility or any emergency which, in the reasonable judgment of Operator, is likely to resort in material
1837 loss or damage to the Facility or constitute a material threat to human health or safety, Operator may
1838 suspend Operation. Emergency repairs that are necessary to mitigate or reduce such loss, damage, or
1839 threat to human health or public safety shall be done in consultation with the County, appropriate
1840 federal agencies, the State, and the local community. Operator shall respond to emergencies and
1841 unusual circumstances in accordance with applicable regulations and requirements and with such
1842 personnel and equipment as necessary to maintain or restore Operations in a timely manner with the
1843 least possible disruption or inconvenience to Facility users.

1844 **5.10 Right to Enter and Inspect Facility**

1845 **A. Right to Enter**

1846 County staff may, without prior notice, enter the Facility at any time during Landfill Hours and speak with
1847 any Operator employees.

1848 County staff may enter the Facility at other times with one (1) Week Days' notice (Monday through
1849 Friday), except in the case of an emergency in which no notice need be given. While onsite, County staff
1850 shall comply with Operator's reasonable safety and security rules and shall not interfere with the work
1851 of Operator or its Subcontractors.

1852 The County shall have access to and the right to make reasonable use of common areas in the buildings,
1853 including lobbies, hallways, restrooms, and eating areas, as appropriate. Sixteen (16) parking spaces in
1854 the visitor parking area in front of the west entrance to the Facility will be reserved for use by County
1855 staff and visitors.

1856 **B. Inspections**

1857 Upon reasonable written notice, Operator shall allow the County, Public Participants, or their designees
1858 to inspect any or all Operator Operations, including, but not limited to, the Facility grounds, offices,
1859 Maintenance shop, tipping floor, MRF, including all Processing areas, and Recovered Materials storage
1860 areas. Operator shall cooperate fully with such inspections, which shall not interfere unreasonably with
1861 Operations. The County shall assume no liability or obligation to notify Operator of errors, events, or
1862 conditions witnessed at such an inspection. Upon request, Operator shall make specified personnel
1863 available to accompany such parties on inspections.

C. Review of Records

As provided in Article 12, upon County request, Operator shall make all records, including, but not limited to, Operational and business records, available to the County during Landfill Hours, and shall provide electronic or printed copies of records as requested.

5.11 Visitor Education and Public Information**A. Community Relations**

Operator shall work to develop and maintain positive community relations regarding the Facility and seek to become a trusted member of the community. Operator shall provide a public telephone number during hours of operation and email address for members of the public that wish to comment on or have concerns regarding the Facility, and shall promptly report to the County any complaints related to Operations, as provided in Article 12.

B. Community and Public Information Services

Operator is responsible for informing the public and for assisting the County and Public Participants with their public information programs, including:

1. Maintaining a company webpage or website informing the public of the status of the Facility.
2. Linking this webpage or website to the County website: Lessismore.org.
3. Referring to relevant County resources located at Lessismore.org on this webpage or website.
4. Linking or providing a portal to public tours that will be managed by County staff on this webpage or website.
5. As requested by the County, making presentations to local civic, environmental, and other groups or at public events, including presentation of available videos. Other requests for presentations about the ReSource Center shall be forwarded to County staff.
6. As requested by the County, hosting of Facility open houses, tours for interested members of the public, and tours for third parties.
7. If required by the County, cooperating and participating in public hearings, public meetings, and meetings of elected officials and interested groups.
8. Participating in Public Participants', County, State, and local community public events.

C. Visitor Education Center

County shall use and operate the Visitor Education Center, which will be open for tours by appointment. Operator may request use of this space.

5.12 Disposal of Bypassed Waste and Residue

Bypassed Waste properly identified and set aside during unloading of Acceptable Materials, and Residues generated from Processing activities, shall be loaded by Operator into County vehicles, weighed, and recorded at Operator's scale, as provided in Section 5.4 and Section 3.2. The County shall

1898 transport Bypassed Waste and Residue received from Operator to the working face of the Landfill for
1899 Disposal in accordance with Landfill Permit requirements. Operator shall store, load, weigh, and
1900 document Bypassed Waste separately from Residue from Source-Separated Recyclables Processing and
1901 Residue from Mixed Waste Processing.

1902 **5.13 Disposal of Recyclable and Organic Materials Prohibited**

1903 Recyclable Materials and Organic Materials may not be Disposed of in lieu of Processing, and Recovered
1904 Materials may not be Disposed of in lieu of sale or other beneficial use beyond the amounts specified by
1905 Operator as expected Process loss or as otherwise permitted in accordance with Subsection 8.5.G,
1906 without the express written approval of the County. If for reasons beyond its reasonable control,
1907 Operator believes that it cannot Divert Recyclable Materials, Organic Materials, or Recovered Materials
1908 from Disposal, Operator shall prepare a written request for approval to Dispose of such material. Such
1909 request shall:

- 1910 A. Address the basis for Operator's belief that Disposal is the only viable alternative for the Recyclable
1911 Materials, Organic Materials, or Recovered Materials in question.
- 1912 B. Describe Operator's efforts to arrange for the Diversion from Disposal of such material.
- 1913 C. Project the Tonnage(s) of Recyclable Materials, Organic Materials, or Recovered Materials
1914 required for such Disposal.
- 1915 D. Estimate the projected period required for such Disposal.
- 1916 E. Estimate the loss in value resulting from Disposal rather than sale or other beneficial use of the
1917 Recyclable Materials, Organic Materials, and Recovered Materials.
- 1918 F. Describe Operator's proposed interim plans for implementation while County is evaluating its
1919 request.
- 1920 G. Provide any additional information supporting Operator's request.

1921 Operator shall follow the process specified in Article 9 if County approval of requested Disposal of
1922 Recyclable Materials, Organic Materials, or Recovered Materials will cause, or contribute significantly to
1923 causing Operator failure to meet the Diversion Guarantee.

1924 In the event the accumulation of such Recyclable Materials, Organic Materials, or Recovered Materials
1925 is causing, or is likely to cause, a nuisance or health hazard, in the sole discretion of the County
1926 Agreement manager, he or she may authorize, in writing, the Disposal of such material on an interim
1927 basis pending final approval (or disapproval) of such Disposal by the County.

1928 **5.14 Extended Producer Responsibility Programs**

1929 **A. General.**

1930 The County and Operator acknowledge that the requirements under the existing Extended Producer
1931 Responsibility Programs (including, but not limited to, AB 1201, SB 1383, SB 54, and SB 343) may be
1932 applicable to the services provided by Operator under this Agreement, and that additional or amended
1933 Extended Producer Responsibility Programs may be established in the future. Operator further

1934 acknowledges that, because the Facility accepts materials from the public that may be regulated by an
1935 Extended Producer Responsibility Program, Operator may be uniquely positioned to operate or
1936 participate in such programs.

1937 **B. Change in Scope.**

1938 The County may require Operator's compliance with, and participation in, existing and/or new Extended
1939 Producer Responsibility Programs, and/or Operator implementation of a drop-off program(s) at the
1940 Facility, to the extent that doing so is reasonably appropriate and does not violate the Permits of the
1941 Facility.

1942 Notwithstanding Article 10, any and all County Extended Producer Responsibility Program requests
1943 and/or requirements shall be treated as a Change in Scope in accordance with Sections 2.11 and Article
1944 10, and shall not be treated as a Change in Law pursuant to Section 10.4; provided, however, that
1945 Operator shall be expressly precluded from requesting any adjustment in compensation for a Change in
1946 Scope if Operator is compensated, in whole or in part, for Processing, Recovery, and/or Diversion costs
1947 associated with such participation. Additionally, Operator shall be expressly precluded from requesting
1948 any compensation adjustment, as described in this Section, for any materials Operator represented as
1949 already being Recovered and or Diverted, even those materials that are not Recyclable Materials and
1950 even if the subject material is covered under what might otherwise be considered an eligible item under
1951 Section 10.4.

1952 **C. County Rights to Solicit Proposals.**

1953 The County may, from time-to-time, request that Operator initiate or participate in an Extended
1954 Producer Responsibility Program; provided, however, that Operator acknowledges and agrees that the
1955 County is under no obligation to request any such proposal from Operator. Furthermore, Operator
1956 acknowledges and agrees that, at any time during the Term of this Agreement, the County may solicit
1957 proposals from other Persons related to Extended Producer Responsibility Programs and may permit
1958 other Persons besides Operator to provide such services and that nothing herein shall prevent the
1959 County from also soliciting cost and operating information from other Persons in order to inform the
1960 County's evaluation of any Operator-provided proposal.

1961 **D. County Requested Proposal.**

1962 If the County requests an Extended Producer Responsibility Program proposal from Operator under this
1963 Section, Operator shall be required to seek out and coordinate with the applicable Stewardship
1964 Organization designated for the applicable program and shall describe such partnership in its proposal;
1965 these requirements are in addition to the requirements provided in Section 2.11. The County's written
1966 request for a proposal may also require additional and/or specific information relating to the Extended
1967 Producer Responsibility Program, including such information determined by the County (at the County's
1968 sole discretion) to be reasonably necessary. The County shall review the proposal and may request
1969 additional supporting documentation, calculations, or other information necessary to evaluate
1970 Operator's proposal for reasonableness and Operator's ability to comply with the requirements of the
1971 Extended Producer Responsibility Program.

As such, Operator shall, by default, accept the County's request to enact the Extended Producer Responsibility program, unless Operator can demonstrate significant barriers that would make providing such services impracticable. Operator shall express any objections or concerns during the meet-and-confer period and Operator shall provide substantial evidence of such barriers in Operator's proposal. Such information will be further reviewed by the County.

E. Record Keeping and Reporting.

Operator acknowledges that, as part of the services provided under this Agreement, Operator's participation in any Extended Producer Responsibility Program may impact the County and/or its Public Participants. As such, regardless of whether Operator is specifically contracted to provide any such Extended Producer Responsibility Programs under this Agreement, Operator acknowledges and agrees it has obligations to the County, nonetheless.

Throughout the Term of this Agreement, Operator shall maintain records of all funding or other resources Operator receives directly or indirectly through an Extended Producer Responsibility Program. Operator shall inform and report to the County as part of Operator's obligations under Exhibit I: Reporting Requirements, and shall calculate and demonstrate the dollar amount that can be attributed to services provided under this Agreement. Any cost savings identified shall be remitted to the County as either a direct payment sent to the County within thirty (30) Days after Operator's receipt of funds, or as a reduction to Operator's Per-Ton Processing Rate in accordance with Article 10, at the County's sole discretion. Operator shall include copies of invoices or receipts with the applicable Stewardship Organization with its payment or Rate Application, as appropriate, regardless of whether the County is aware such funding or other resources have been received by Operator.

Operator shall also maintain all operational and financial records related to Extended Producer Responsibility Programs, as provided in Article 12, and report such information to the County in accordance with Exhibit I: Reporting Requirements, or as otherwise requested by the County.

ARTICLE 6. MATERIAL RECOVERY FACILITY

6.1 General

Operator shall Operate and Maintain the Facility in a safe and efficient manner, in accordance with its Permits, Applicable Law, the Operations and Maintenance Manual, and the Performance Guarantees identified in Article 9, including the environmental performance and nuisance standards of Section 5.8.

Operator's services for MRF Operation shall include, but not be limited to:

- A. Managing traffic flow of vehicles entering and exiting the MRF.
- B. Unloading Acceptable Materials in a manner that conforms with the Vehicle Turnaround Guarantee.
- C. Segregated receipt of all Acceptable Waste, including Mixed Waste and Source-Separated Recyclable Materials.
- D. Acceptance of Acceptable Materials.

- 2008 E. Rejection of Unacceptable Waste.
- 2009 F. Removing and properly Disposing of Unacceptable Waste identified after acceptance of a load.
- 2010 G. Directing Acceptable Materials for appropriate Processing and Processing such materials.
- 2011 H. Ensuring traffic safety and personal safety of all parties.
- 2012 **6.2 Receipt of Acceptable Material**
- 2013 **A. Receipt**
- 2014 Following weighing at County Scale House, as provided in Section 5.4, Operator will receive and unload
- 2015 vehicles from Collection Contractors and other parties delivering Acceptable Materials. All incoming
- 2016 vehicles shall unload at the unloading area.
- 2017 Operator shall keep all loads of Mixed Waste segregated, and keep track of each load individually based
- 2018 on its originating vehicle until after each load has been checked for Unacceptable Materials and deemed
- 2019 “accepted.” Unloading of Source-Separated Recyclable Materials shall be conducted in a manner that
- 2020 the loads are kept segregated until acceptance has occurred in accordance with the Processing
- 2021 requirements of the Operations and Maintenance Manual.
- 2022 **B. Vehicle Turnaround Guarantee**
- 2023 Operator warrants that it will provide adequate staffing and equipment for unloading and acceptance of
- 2024 Acceptable Materials to provide for a maximum vehicle turnaround time of thirty (30) minutes from the
- 2025 time each vehicle enters the access road on the southern side of the Facility until unloading is complete
- 2026 and the vehicle is ready to leave the unloading area (“Vehicle Turnaround Guarantee”). Operator
- 2027 acknowledges this may require the ability to provide simultaneous unloading of two (2) or three (3)
- 2028 vehicles. Contactor may be subject to liquidated damages, as provided in Section 14.9 and Exhibit C:
- 2029 Liquidated Damages, for failure to meet the Vehicle Turnaround Guarantee. Repeated failure to meet
- 2030 the guarantee shall be a curable Event of Default, as provided in Section 14.2. The County acknowledges
- 2031 such Vehicle Turnaround Guarantee shall not apply if Unacceptable Waste is unloaded and it needs to
- 2032 be reloaded, the loadout of Residual is delayed by the County, the Collection Contractor driver exits the
- 2033 vehicle for purposes other than operational necessities, the area must be cleaned by Operator, or
- 2034 delivery vehicles are coming in successive frequency from the County Scale House.
- 2035 Any allegations that Operator failed to meet the Vehicle Turnaround Guarantee must be provided by the
- 2036 alleging party to the County within three (3) Working Days of the allegation to provide Operator and/or
- 2037 the County sufficient notice to timely investigate and preserve digital documentation related to the
- 2038 alleged incident. Notice shall include date and time of the incident, identification of the vehicle in
- 2039 question, a statement that indicates the party asserting the violation of the Vehicle Turnaround
- 2040 Guarantee did not otherwise materially contribute to the delay.
- 2041 Operator may provide evidence disputing any complaint received by any party regarding vehicle
- 2042 turnaround times, including, but not limited to, camera recordings of the vehicle(s) or other documented
- 2043 timestamp of the alleging party’s arrival and departure times from the Facility. Operator’s evidence shall
- 2044 be presented no later than ten (10) Business Days after knowledge of or receipt of a written allegation

2045 or the County's written notice of complaint. The County shall review both Operator and alleging party's
2046 evidence and provide written notice of the County's determination whether the complaint was valid or
2047 not.

2048 **C. Load Checking and Acceptance**

2049 Operator shall accept Acceptable Material at the Facility, subject to rejection rights in Section 6.2.D.
2050 Operator shall inspect delivered Acceptable Materials loads for Unacceptable Waste in accordance with
2051 the procedures contained in Operations and Maintenance Manual in Exhibit B. Once different loads of
2052 Acceptable Materials are combined, and/or the Acceptable Materials are directed to a Processing line,
2053 they will be deemed "accepted" by Operator.

2054 **D. Rejection of Delivered Materials**

2055 1. **Unacceptable Waste.** Operator shall not knowingly accept Unacceptable Waste at the Facility. In
2056 the event that Unacceptable Waste is inadvertently accepted, and identified during tipping,
2057 Operator shall reject such Unacceptable Waste, require that the Collection Contractor or other
2058 party delivering the Unacceptable Waste remove it from the Facility, and communicate with the
2059 Scale House operator to reclassify such rejected material as Bypassed Waste. If Operator
2060 reasonably determines that it is impracticable to remove such items, Operator may deem the
2061 entire load as comprised of Unacceptable Waste and shall have the right to refuse to accept the
2062 entire load.

2063 2. **Other Reasons for Rejection.** Operator may deny service if doing so would cause Operator to
2064 exceed its Permitted daily Tonnage, or if the Facility is partially or completely closed due to
2065 Uncontrollable Circumstances.

2066 Operator shall notify the County if Operator refuses to provide service to a Collection Contractor vehicle
2067 within twenty-four (24) hours of the incident and shall specify the reason(s) for such refusal. If Operator
2068 wrongfully rejects Acceptable Material delivered in accordance with this Section, it shall be subject to
2069 liquidated damages, as provided in Section 14.9 and Exhibit C: Liquidated Damages.

2070 **E. Unintentional Acceptance of Unacceptable Waste**

2071 Neither Operator nor the County shall tolerate or knowingly permit the acceptance or storage of
2072 Unacceptable Waste at the Facility. If Operator inadvertently receives delivery of, and accepts material
2073 including or consisting of Unacceptable Waste, Operator shall classify, treat, and/or transport or arrange
2074 for the transportation of such Unacceptable Waste from the Facility to a properly Permitted Recycling,
2075 Processing, and/or disposal site(s), as appropriate, in accordance with Exhibit B: Operations and
2076 Maintenance Manual and Applicable Law.

2077 Operator shall pay all costs and expenses of such Unacceptable Waste incurred in the handling,
2078 transportation, Recycling, Processing, and/or Disposal. Operator shall use Reasonable Business Efforts
2079 to identify any Person responsible for delivery to or abandonment at the Facility of any Unacceptable
2080 Waste and shall use its Reasonable Business Efforts to require such Person to bear all costs and liabilities
2081 associated with the handling of its Unacceptable Waste.

2082 At Operator's expense, those items which have chlorinated fluorocarbons ("CFCs") left intact shall be set
2083 aside, and Operator shall be responsible for having CFCs removed from used appliances if the appliances
2084 are being Marketed for their scrap value. All handling shall be done in accordance with Permits and
2085 Applicable Law.

2086 Operator shall take all reasonable steps necessary to seek enforcement of Applicable Law regarding such
2087 delivery.

2088 **F. Residue Testing**

2089 1. Operator shall perform, and pay all costs associated with, all required testing of Residue pursuant
2090 to California Code of Regulations (CCR) Title 14, Article 6, as may be amended.

2091 2. Operator shall fully cooperate with, and pay all costs associated with, random, periodic County
2092 testing of Residue. Such testing may be used to determine the weight or composition of
2093 Recoverable Materials, or of Unacceptable Wastes remaining in Residue. Results of such testing
2094 may be used in conjunction with determining compliance with the Diversion Guarantee, as
2095 provided in Article 9, or to assess liquidated damages with relation to failure to meet the Diversion
2096 Guarantee, as provided in Section 14.9 and Exhibit C: Liquidated Damages, respectively.

2097 **G. Management of Bypassed Waste**

2098 Operator shall segregate all Bypassed Waste for management, as provided in Section 5.12.

2099 **6.3 Facility Processing**

2100 Acceptable Materials to be Processed at the Facility include Mixed Waste and Source-Separated
2101 Recyclable Materials.

2102 **A. Mixed Waste Processing**

2103 Operator shall Process accepted Mixed Waste at the Facility to Recover Recyclable Materials and Organic
2104 Materials in accordance with its Permits, Exhibit B: Operations and Maintenance Manual, and Applicable
2105 Law.

2106 Operator shall Process Recyclable Materials in accordance with Good Industry Practices for the Recycling
2107 industry, in a manner that provides for "highest and best use" and commands the best Market prices. At
2108 a minimum, Operator shall sort and segregate paper and metals by type, and segregate glass, plastics,
2109 and other commonly Recovered Materials, as provided in Exhibit B: Operations and Maintenance
2110 Manual. Recovered Materials shall be prepared for Marketing, as provided in Article 8.

2111 Operator shall Process Organic Materials in accordance with Good Industry Practices for the organics
2112 industry, in a manner that provides for "highest and best use" by the County, or its designee, at the ADF
2113 and CMU. Organic Materials generated from Processing activities shall be loaded by Operator into
2114 County vehicles, pursuant to Subsection 5.1.B.17, weighed, and recorded at Operator's scale, as
2115 provided in Section 5.4 and Section 3.2. The County shall transport Organic Materials received from
2116 Operator to the ADF or CMU, as appropriate, pursuant to Subsection 5.1.B.17. Operator shall store, load,
2117 weigh, and document Organic Materials separately from all other Processed and Recovered materials.

2118 B. Source-Separated Recyclable Materials Processing

2119 Operator shall Process Source-Separated Recyclable Materials in accordance with its Permits, Exhibit B:
 2120 Operations and Maintenance Manual, and Applicable Law. Operator's Source-Separated Recyclable
 2121 Materials Processing shall result in Recyclable Materials being sorted and Recovered, as provided in
 2122 Subsection A above, and prepared to be Marketed in accordance with Article 8. Operator will Recover
 2123 and Market the minimum of Source-Separated Recyclable Materials received at the Facility pursuant to
 2124 the Performance Studies performed in Article 9 and Exhibit N: Material Characterization Methodology .

2125 6.4 Materials Storage

2126 Operator shall meet all requirements of its Permits, Exhibit B: Operations and Maintenance Manual,
 2127 Applicable Law, and Good Industry Practices regarding materials storage to control odors and vectors
 2128 and prevent other nuisances, as provided in Section 5.8, and meet regulatory requirements for material
 2129 management pursuant to 14 CCR Section 17409.5.6, as may be amended.

2130 ARTICLE 7. MATERIAL CHARACTERIZATIONS**2131 7.1 Generation, Characterization, and Pilot Studies**

2132 Operator acknowledges that the County, CalRecycle, and other governmental agencies may wish to
 2133 perform and/or participate in periodic material generation, characterization studies, or pilot programs
 2134 related to materials covered under this Agreement. Operator agrees to participate and cooperate with
 2135 the County and its agents and to perform studies and data collection exercises, as needed, to determine
 2136 weights, volumes, and composition of materials generated, Disposed, Diverted, or otherwise Processed
 2137 or Composted, including the resultant Residue. If the County requires Operator to participate in such a
 2138 study or program, Operator and the County shall mutually agree on the scope of services to be provided
 2139 by Operator and compensation, if any, that the County will pay to Operator specifically for such
 2140 participation. In any event, Operator shall permit and in no way interfere with the handling of the subject
 2141 materials by other Persons for such purposes. Operator's Performance Study obligations, specified in
 2142 Section 7.2, are not subject to this Section and shall be conducted in accordance with Section 7.2 and
 2143 Exhibit N: Material Characterization Study Methodology.

2144 7.2 Performance Studies**2145 A. General.**

2146 Operator shall conduct Performance Studies in accordance with this Section, Exhibit N: Material
 2147 Characterization Study Methodology, and Applicable Law, at its sole expense. Each Performance Study
 2148 shall be defined as and comprised of:

2149 1. Compliance Sampling:

- 2150 i. Source-Separated Recyclable Materials Residue (Residue Study)
- 2151 ii. Mixed Waste Processing Residue (Residue Study)
- 2152 iii. Recovered Organics (Organics Study)

2153 2. Characterization Study:

2154 i. Recovered Recyclable Materials (Recovery Study)

2155 ii. Recovered Mixed Waste study (Recovery Study)

2156 The Compliance Sampling and the Characterization Study shall occur on the same Day(s) each quarter.

2157 **B. Methodology and Schedule.**

2158 Unless otherwise mutually agreed upon between the Parties, Operator shall conduct the first
2159 Performance Study at the next scheduled SB 1383 Compliance Sampling event, and quarterly thereafter.
2160 Operator shall complete each Performance Study in accordance with the methodology outlined in
2161 Exhibit N: Material Characterization Study Methodology, unless otherwise directed or approved by the
2162 County in writing.

2163 Operator shall conduct the Performance Studies utilizing the labor indicated in Exhibit N: Material
2164 Characterization Study Methodology. If Operator determines that additional labor is needed to perform
2165 the Characterization Study, Operator shall be allowed to submit a request for a compensation
2166 adjustment pursuant to Section 10.4.

2167 After the first Agreement Year, the Parties may mutually agree to reduce the frequency of the
2168 Characterization Study to two (2) times per year. In the event the Characterization Study is performed
2169 less than quarterly, the Compliance Sampling shall still be performed quarterly, unless Applicable Law
2170 allows otherwise. If Parties agree to reduce the frequency of Characterization Studies, Operator shall not
2171 be eligible to seek a compensation adjustment for labor related to Performance Studies.

2172 No later than February 1 of each calendar year, Operator shall submit its proposed schedule for the
2173 performance of each Performance Study for that calendar year and any other pre-study documentation
2174 required under Exhibit N: Material Characterization Study Methodology. The County shall review and
2175 approve, in its sole discretion, the proposed schedule and documentation.

2176 **C. Recordkeeping and Results.**

2177 Operator shall submit its quarterly and year-to-date results within thirty (30) Days of completion of each
2178 Performance Study, inclusive of copies of its daily Performance Study documentation specified in Exhibit
2179 N: Material Characterization Study Methodology, as applicable. Operator shall submit the final results of
2180 each Performance Study in the format specified in Exhibit N: Material Characterization Study
2181 Methodology, unless otherwise directed by the County.

2182 The County shall review Operator-provided Performance Study results within thirty (30) Business Days
2183 of Operator's submission of complete and accurate results and shall review such results, verify accuracy
2184 and/or request changes, and shall provide Operator with written confirmation of acceptance once such
2185 accuracy determination is verified by the County. Such results will be used to evaluate Operator's
2186 compliance with the performance standards for minimum Effective Recovery Rate and Recovery
2187 Guarantee as set forth in Section 9.2. Operator shall maintain complete and accurate records of all
2188 aspects of each Performance Study in accordance with Article 12.

2189 D. Results and Records.

- 2190 1. At the end of each Performance Study Day, Operator shall provide the County with the
2191 documentation described in Exhibit N: Material Characterization Study Methodology.
- 2192 2. Within thirty (30) Days of the conclusion of each Performance Study, Operator shall provide the
2193 County with Performance Study Results, including, at a minimum, a completed version of the
2194 results file described Exhibit N: Material Characterization Study Methodology. Upon County
2195 request, Operator shall provide supporting documentation to verify the Performance Study
2196 results. In the event the results are incomplete or inaccurate, Operator shall, at its sole expense,
2197 promptly correct the results, which shall not be an excuse from meeting the required submission
2198 timeline set forth in this Section.
- 2199 3. Within thirty (30) Days following each Performance Study for each Acceptable Material, Operator
2200 shall calculate and submit its final Performance Study results to the County for approval, in
2201 accordance with Exhibit N-3: Material Characterization Study Methodology, and notify the County
2202 in writing of Operator's proposed results of the Performance Study using the template format
2203 provided in Exhibit N: Material Characterization Study Methodology.

2204 E. Approval, Disputes, and Delays

- 2205 1. If the County does not dispute the methodology Operator used to perform the Performance Study
2206 or Operator's proposed Performance Study results for either or both Acceptable Material types,
2207 the County shall accept and approve the Performance Study results and the calculation of the
2208 Residue Allowance, the Residue Overage, and the Excess Residue that shall be applied to
2209 Operator's Residue Disposal Tons for each Acceptable Material from the most recently completed
2210 calendar quarter, and Operator shall tender any payment due to the County in accordance with
2211 Section 10.6.
- 2212 2. If the County disputes the methodology used by Operator to perform the Performance Study or
2213 the calculation of any results thereof for either or both Acceptable Material types, the County
2214 reserves the right to either:
- 2215 i. Require modification(s) to Operator's proposed Performance Study(ies) results by providing
2216 any reasonably substantiated adjustment(s) and supporting documentation.
- 2217 ii. Require Operator conduct a subsequent replacement Performance Study(ies). Operator shall
2218 conduct such replacement Performance Study(ies) in accordance with Exhibit N-1: Material
2219 Characterization Study Methodology at Operator's sole cost and Operator's proposed results
2220 shall be resubmitted in accordance with Subsection 7.2.D. Unless otherwise directed by the
2221 County, the replacement Performance Study(ies) shall replace the previously conducted and
2222 disputed Performance Study(ies) and, subject to County approval, shall form the basis of
2223 Operator's calculation of the Residue Allowance, the Residue Overage, and the Excess
2224 Residue that shall be applied to Operator's Residue Disposal Tons for each Acceptable
2225 Material from the most recently completed calendar quarter, and Operator shall tender any
2226 payment due to the County in accordance with Section 10.6.

2227 **ARTICLE 8. MARKETING**

2228 **8.1 General**

2229 Operator shall Market the materials and commodities produced through the Processing activities of
2230 Article 6 in accordance with Exhibit L: Product Marketing Plan. The County may assist Operator with
2231 Marketing at its own discretion. Neither Party shall reimburse the other for any costs associated with
2232 Marketing.

2233 **8.2 Product Marketing Plan**

2234 Operator shall develop and implement Exhibit L: Product Marketing Plan, which details Operator's plan
2235 for Marketing of all Recovered Recyclable Materials produced at the Facility. Operator's Product
2236 Marketing Plan shall include the promotion of the highest and best use of materials for waste reduction,
2237 prevention, reuse, refill, repair, Recovery, and Recycling, as established by Applicable Law and Extended
2238 Producer Responsibility Programs. Where commercially reasonable, the Product Marketing Plan should
2239 include the use of local, regional, and domestic Markets, in this preferential order, for Recovered
2240 Recyclable Materials. Operator shall develop, maintain, and update the Product Marketing Plan using
2241 the same process, as provided in Section 5.6, for the Operations and Maintenance Manual.

2242 **8.3 Recovered Recyclable Materials**

2243 **A. Storage**

2244 Operator shall store all Recovered Recyclable Materials to protect against theft, deterioration,
2245 contamination, or other loss or damage.

2246 **B. Insurance**

2247 Operator shall bear all risk associated for any and all losses of Recovered Recyclable Materials during
2248 shipment and prior to transfer of title to purchasers, for fire, theft, and other casualty losses and may,
2249 but is not required to, insure such Recovered Recyclable Materials against any such losses. Operator is
2250 expressly precluded from asserting any claims for recompense or requesting consideration for
2251 compensation due to any such losses.

2252 **C. Packaging and Transportation**

2253 Operator shall properly consolidate and/or package Recovered Recyclable Materials in accordance with
2254 Good Industry Practice for the Recycling industry, and arrange for transportation and delivery to
2255 purchasers unless the terms of sale require the purchaser to arrange for transportation and delivery.

2256 **D. Weighing**

2257 In accordance with Section 5.4, prior to shipment, Operator shall deliver Recovered Recyclable Materials
2258 to Operator's Scale for weighing in accordance with Exhibit B: Operations and Maintenance Manual.

2259 E. Maintaining Records

2260 Operator shall maintain complete, accurate, and detailed records in accordance with Article 12 for all
2261 activities detailed in this Section.

2262 8.4 Rejection of Recovered Recyclable Material by Purchaser

2263 Rejection of any shipment of Recovered Recyclable Materials by purchasers (and not otherwise sold in
2264 another Recyclable Materials Market) and consequent Disposal thereof shall constitute a breach of the
2265 Diversion Guarantee and shall be considered Disposed, unless Operator presents evidence in writing
2266 relevant to the incident(s) giving rise to the rejection and Disposal and the County waives its right to
2267 declare the incident(s) a breach.

2268 The weight of rejected material that is Disposed shall not be included as Recovered Recyclable Material
2269 in calculations of the Diversion Guarantee, and Operator shall be liable for, and pay for: (i) excess
2270 transfer, hauling, and Disposal costs; (ii) fees charged by rejecting party; and, (iii) any fines, damages or
2271 other penalties, as applicable. If Operator's revenue decreases due to rejected materials that is Disposed,
2272 Operator shall not be eligible to independently trigger a Special Tipping Fee Review pursuant to Section
2273 10.4 or consider the lost revenue in any calculation for a Special Tipping Fee Review pursuant to Section
2274 10.4 that is otherwise an eligible event.

2275 8.5 Recovered Recyclable Materials Marketing**2276 A. Recyclable Sales**

2277 Operator shall arrange for the sale of Recovered Recyclable Materials to ensure Recovered Recyclable
2278 Materials are Diverted from Disposal.

2279 1. **General.** Operator shall exert Reasonable Business Efforts to sell Recovered Recyclable Materials
2280 in accordance with Exhibit L: Product Marketing Plan.

2281 2. **Certificate of End Use.** To the extent practicable, Operator shall obtain a certification of end use
2282 from the purchaser of Recovered Recyclable Materials establishing that the Recovered Recyclable
2283 Materials have been, in fact, recycled, reused, or otherwise Diverted from Disposal.

2284 B. Market Arrangements.

2285 Operator shall maintain longterm relationships with materials brokers, develop relationships with new
2286 materials brokers, continually monitor Market conditions, and have the ability to anticipate and react to
2287 severe Market demand and fluctuations in materials' quantity, composition, and pricing. Operator shall
2288 use local, regional, domestic, and international Markets to maintain continued material movement and
2289 obtain the highest and best use, as described in Subsection 8.5.C below, for the Market value.

2290 C. Recovered Recyclable Materials Marketed.

2291 Operator shall Market Recovered Recyclable Materials in the categories and grades listed in Exhibit L:
2292 Product Marketing Plan. If Operator desires any modifications to the Recovered Recyclable Materials
2293 categories or grades in Exhibit L: Product Marketing Plan during the Term of the Agreement, Operator

2294 shall request approval from the County. Such approval shall be obtained from the County before changes
2295 are implemented.

2296 **D. Highest and Best Use.**

2297 Operator's Marketing strategy shall include the promotion of the highest and best use of materials for
2298 waste reduction, prevention, reuse, refill, repair, Recovery, and Recycling, as established by Applicable
2299 Law and Extended Producer Responsibility Programs. Where commercially reasonable, the Marketing
2300 strategy should include the use of local, regional, domestic, and international Markets, in this
2301 preferential order, for Recovered Recyclable Materials for Recycling.

2302 **E. Responsible End Markets.**

2303 Operator shall ensure the County's Recovered Recyclable Materials are Delivered to, and Recycled
2304 and/or further Processed at, Responsible End Markets, and shall maintain all records necessary to
2305 demonstrate compliance with this Section and Applicable Law. Operator shall provide records to the
2306 County demonstrating compliance with this Section in accordance with Article 12 and Exhibit I: Reporting
2307 Requirements.

2308 **F. Recordkeeping.**

2309 Operator shall maintain complete and accurate Marketing records in accordance with Article 12
2310 including, but not limited to, Tonnage of material Marketed, price, revenue received, purchaser name,
2311 physical address of the final destination of Marketed Recovered Recyclable Materials, and the specified
2312 end use of Marketed Recovered Recyclable Materials.

2313 **G. Marketability of Recovered Recyclable Materials.**

2314 1. **General.** The County acknowledges that Operator is required to: (i) engage in Marketing Recovered
2315 Recyclable Materials on the open Market, which may include participating in complex global
2316 Markets that Operator has little influence over; (ii) store such Recovered Recyclable Materials prior
2317 to Marketing in accordance with its Facility Permits; and, (iii) ensure public health and safety.
2318 Except as otherwise provided in Subsection 8.5.G.2, Operator shall Market such Recovered
2319 Recyclable Materials under most Market conditions, including periods of severe depression and
2320 even negative value, to ensure that Recovered Recyclable Materials are Recycled into the
2321 productive economy.

2322 In addition to the circumstances that might arise as described in Subsections 8.5.G.2 and 8.5.G.3,
2323 if Operator encounters general Market challenges including, but not limited to, significant changes
2324 in pricing, Market availability, or quality standards for any Recovered Recyclable Materials
2325 Marketed under this Agreement, Operator shall notify the County in writing within five (5) Business
2326 Days of the nature of the Market challenge and Operator's plans for addressing the challenge.
2327 Operator shall provide the County with updates on the Market challenges at least every twenty
2328 (20) Business Days thereafter until Operator determines, and the County agrees, that the concern
2329 has been resolved. However, in the event of a significant change in price or lack of Market demand
2330 as specified in Subsections 8.5.G.2 and 8.5.G.3, Operator shall follow the noticing procedures set
2331 forth in 8.5.G.4.

2. **Lack of Market Demand.** In the event the Market challenge results in a sustained lack of Market demand for any Recovered Recyclable Materials Marketed under this Agreement, and subject to the notice requirements described in Subsection 8.5.G.4, Operator may request permission from the County to use alternative Marketing arrangements or temporarily Dispose of the specific Recovered Recyclable Material(s) impacted, as set forth below. A lack of Market demand shall mean that Operator cannot reasonably find a Market for the productive use of the subject Recovered Recyclable Material(s) that ensures the Recovered Recyclable Materials is Recycled and Diverted at any value, positive or negative.
3. **Significant Change in Price.** If the Market challenge results in a significant change in pricing for any materials Recovered under this Agreement, Operator may request temporary relief from the County, as set forth below. A significant change in pricing shall mean a reduction in Market value such that the Market cost, on a per-Ton basis, to send the subject Recovered Recyclable Materials to a non-Disposal Market, including Transportation costs, exceeds one hundred fifty percent (150%) of Operator's then-current costs for Transportation and Disposal of Acceptable Materials under this Agreement. Processing costs, which are described in and subject to the adjustment provisions of Article 10, shall be excluded from this calculation (except for Transportation costs as set forth in the preceding sentence).
4. **Duty to Provide Notice.** Within ten (10) Business Days of Operator's first knowledge of a significant change in pricing in accordance with Subsection 8.5.G.3, Operator shall notify the County via email, following with a formal signed written notice from Operator to the County. Such notice shall include Operator's best estimate of the time when its remaining capacity to store the specific Recovered Recyclable Material(s) impacted under the terms of its Facility Permits (the "Storage Capacity") will expire. Operator and the County shall meet and confer at the earliest, mutually convenient opportunity to discuss the Market conditions and Operator's assertion of a lack of Market demand for the specific Recovered Recyclable Material(s) impacted. Operator shall be required to provide the County with additional information on Operator's Storage Capacity, including the proportion occupied by the specific Recovered Recyclable Material(s) impacted relative to Operator's other material storage, and Operator's projected remaining capacity for the specific Recovered Recyclable Material(s) impacted.

Operator shall have the burden of proving its good faith efforts to identify highest value Markets for the specific Recovered Recyclable Material(s) impacted and shall present to the County any information available to Operator related to the status of primary and alternative Markets for the impacted Recovered Recyclable Material(s), material pricing histories, and any other information, reasonably required by the Director of the County Department of Public Works or their designee, that may help the County make a finding about Operator's need for relief. Operator shall also provide the County with written notice when the Storage Capacity for the material in question has declined to thirty percent (30%) of normal, setting forth the estimated number of Days when no Storage Capacity for the specific Recovered Recyclable Material(s) impacted will remain.
5. **County Determination.** The County shall make a reasonable finding that a Market demand either does or does not exist or that a significant change in pricing has or has not occurred for the impacted Recovered Recyclable Material(s), based on the good faith evaluation of information presented and any other information available, within twenty (20) Business Days after the Parties

meet and confer in accordance with Subsection 8.5.G.4 or before the date when no Storage Capacity remains, whichever comes first.

If the County reasonably determines that a Market demand does exist or that a significant change in pricing has not occurred, Operator shall be required to continue to Market all Recovered Recyclable Materials as required under this Agreement. If the County determines that a Market demand does not exist or that a significant change in price has occurred, the following provisions shall apply:

i. Determination of Lack of Market Demand. If the County reasonably determines that a Market demand does not exist, the County may, but is under no obligation to, attempt to identify a productive, non-Disposal outlet for the subject Recovered Recyclable Material(s). If the County identifies such an outlet, and such outlet does not exceed the pricing limitation described in Subsection 8.5.G.3, Operator shall deliver the subject Recovered Recyclable Material(s) to that outlet. If the County is unable to identify such an outlet, the County may authorize Operator to temporarily Dispose of the subject Recovered Recyclable Material(s) in accordance with Subsection 8.5.G.6.

Additionally, in the event that the County reasonably determines that a Market demand does not exist, the County shall have the right, but not the obligation, to take physical possession of some or all of the subject Recovered Recyclable Materials from Operator's Facility in order to Market or otherwise handle or Dispose of such materials through channels or processes the County deems appropriate, in its discretion.

ii. Determination of Significant Price Change. If the County reasonably determines that a significant change in pricing has occurred, the County may either: (i) authorize Operator to send the specific impacted Recovered Recyclable Material(s) to Market at the reduced value and agree to compensate Operator for the amount, including Transportation costs, that exceeds one hundred and fifty percent (150%); or, (ii) attempt to identify an alternate, productive, non-Disposal outlet for the specific Recovered Recyclable Material(s) at a value, including Transportation costs, less than one hundred and fifty percent (150%) of the Disposal Tipping Fee. Operator shall follow the County's direction if either of those options is selected by the County. To the extent that the provisions of this Section are otherwise addressed in Subsection 10.7.C of this Agreement, the Parties agree that Operator shall not be eligible for both the provisions of this Section and Subsection 10.7.C, only one (1) Section shall be applicable if and as such circumstances arise.

If the County is unable to identify an outlet and is unwilling to compensate Operator for the significant change in price, the County shall authorize Operator to temporarily Dispose of the subject Recovered Recyclable Material(s) in accordance with Subsection 8.5.G.6.

6. **Disposal Approval.** Subject to the determination and conditions specified in Subsections 8.5.G.5.i and 8.5.G.5.ii, the County may authorize Operator to temporarily Dispose of specified Recovered Recyclable Material(s) impacted by the lack of Market demand or significant change in price. In such case, Operator and the County shall review the status of the Markets at a frequency established by the County until such time as the acceptable pricing and Market demand return or the County reasonably determines that the review process may be discontinued. Notwithstanding

2415 any other provision of this Section, Operator shall not Dispose of any Recovered Recyclable
2416 Materials prior to receiving written authorization from the County to do so and, as necessary and
2417 appropriate under the circumstances, the County may also require Operator to secure
2418 authorization from CalRecycle and/or other relevant regulatory entities.

2419 **8.6 Liens**

2420 Operator shall keep all Recovered Materials free from liens and other creditors' claims until sold.

2421 **ARTICLE 9. PERFORMANCE GUARANTEES**

2422 **9.1 General**

2423 From the Effective Date, except as otherwise provided in Section 14.10, Operator shall conduct
2424 Operations and Processing activities in such a manner to meet or exceed the guarantees in this Section.
2425 The Performance Guarantees are key parameters for determining successful Operator performance in
2426 relation to Operations and Maintenance. Operator acknowledges it plays a pivotal role in Site, County,
2427 and Public Participants' compliance with Applicable Law, including, but not limited to, SB 1383. The
2428 Performance Guarantees outline what parameters will be measured, how measurements are to be
2429 conducted, and the rights reserved by the County in the event of Operator's failure to meet one (1) or
2430 multiple Performance Guarantees.

2431 **9.2 Operator Performance Guarantees**

2432 **A. Objective of Guarantees**

2433 Throughout the Term of the Agreement, Operator shall Divert from Disposal the Recyclable Material and
2434 Mixed Waste received at the Facility to achieve its Guaranteed Capture Rate for each Acceptable
2435 Material, as further described in this Section.

2436 The Parties agree that Public Participants are responsible for maintaining the list of Acceptable Materials
2437 that Collection Contractor(s) deliver to the Facility and that neither Party is responsible for nor has
2438 control over generator participation in Public Participants' collection programs. The Parties agree that
2439 the Performance Guarantees outlined in Subsections 9.2.B and 9.2.C are designed to evaluate Operator's
2440 Operation of the Facility independent of the relative composition of Recoverable Materials delivered for
2441 Processing through the use of a calculated Effective Recovery Rate that shall be determined quarterly,
2442 unless another frequency is determined pursuant to Subsection 7.2.B, through Performance Studies that
2443 shall be conducted in accordance with Exhibit N: Material Characterization Study Methodology.

2444 Operator's performance shall be evaluated using Operator's Guaranteed Capture Rate for each
2445 individual type of material within the Acceptable Materials relative to Operator's Effective Recovery
2446 Rate, as determined through Performance Studies for each Acceptable Material. Operator's Guaranteed
2447 Capture Rate for each individual type of material within the Acceptable Materials shall not change over
2448 time; however, Operator's Capture Rate shall be determined through each Performance Study for each
2449 Acceptable Material. The Performance Studies are designed to assesses Operator's Effective Recovery
2450 Rate based on the Available Materials in each Acceptable Material evaluated during the Performance
2451 Studies and Operator's Capture Rates of Recoverable Materials as determined by each Performance

2452 Study. The Parties agree that the outcome of the Performance Studies will provide the basis for
2453 Operator's Residue Allowance each quarter and provides documentation for any Residue Overage and
2454 Excess Residue Payment due to the County pursuant to Article 10.

2455 **B. Effective Recovery Rate**

2456 1. **Description.** Operator's Effective Recovery Rate for each Performance Study for each Acceptable
2457 Material shall be determined by assessing the percentage of Materials Recovered relative to the
2458 Available Materials during each Performance Study for each Acceptable Material. The total
2459 Available Materials shall be determined by adding each Recovered Material, by type, Recovered
2460 from the Recovery Study to the Recovered Material missed, by type, from the Residue Study, and
2461 as applicable, the Organics Study.

2462 2. **Methodology.** Operator shall conduct a Performance Study for each Acceptable Material in
2463 accordance with Exhibit N-1, calculate Operator's Effective Recovery Rate in accordance with
2464 Exhibit N-2, and document the results in accordance with Exhibit N-3.

2465 **C. Residue Calculations**

2466 1. **Description.** Operator's Residue Calculation preceding each Performance Study for each
2467 Acceptable Material shall be determined as further described in Exhibit N: Material
2468 Characterization Study Methodology. If Operator achieves the Recovery Guarantee for either or
2469 both Acceptable Material Performance Studies, then Operator will not be responsible for paying
2470 for Residue Disposed for the prior quarter for either or both Acceptable Material type(s), as
2471 applicable. The Residue Allowance for each Acceptable Material shall be determined through the
2472 most recently completed Acceptable Material Characterization Study for each Acceptable Material
2473 type and shall be calculated as the percentage of Residue produced, assuming Operator met its
2474 Recovery Guarantee for each Acceptable Material Characterization Study. The Residue Allowance
2475 percentage shall be retroactively applied to the prior calendar quarter Residue Disposal Tons for
2476 that or those Acceptable Material type(s).

2477 2. **Methodology.** Operator shall conduct a Performance Study for each Acceptable Material in
2478 accordance with N-1, calculate Operator's Residue Allocation, Residue Overage, and Excess
2479 Residue percentages in accordance with Exhibit N-2, and document the results in accordance with
2480 Exhibit N-3.

2481 **D. Recovery Guarantee**

2482 1. **Description.** Operator's achievement of Operator's Recovery Guarantee for each Acceptable
2483 Material shall be evaluated during each Performance Study and shall adjust based on the
2484 composition of the inbound materials using Operator's Effective Recovery Rate and determined
2485 during each Performance Study for each Acceptable Material, conducted in accordance with
2486 Exhibit N-1 and calculated in accordance with Exhibit N-2.

2487 2. **Methodology.** Operator shall conduct a Performance Study for each Acceptable Material in
2488 accordance with Exhibit N-1, calculate Operator's Effective Recovery Rate in accordance with
2489 Exhibit N-2, document the results in accordance with Exhibit N-3, and compare the results of
2490 Operator's Effective Recovery Rate against Operator's Recovery Guarantee.

3. **Measurement of Compliance.** Operator's compliance with its Capture Rate Guarantees shall be determined by using Operator's Effective Recovery Rate for each Performance Study for each Acceptable Material relative to Operator's Recovery Guarantee based on the Available Material for each Acceptable Material during each Performance Study. Operator's performance in meeting the Recovery Guarantee shall be determined by comparing Operator's calculated Effective Recovery Rate during each Acceptable Material Characterization Study, that will change based on the composition of Inbound Tons of Acceptable Material evaluated during each Acceptable Material Characterization Study, against the Recovery Guarantee standards expected during each Acceptable Material Characterization Study. Operator will have met the minimum Recovery Guarantee if the Effective Recovery Rate during each Acceptable Material Characterization is greater than or equal to zero (0).

4. **Failure to Achieve.** If Operator Recovers less material than what was calculated for Operator's Recovery Guarantee during any Acceptable Material Performance Study, Operator shall pay one hundred percent (100%) of the Disposal cost, per Ton, for each Ton of material that exceeds Operator's Recovery Guarantee for the prior quarter. The Residue Overage percentage, as applicable, for either or both Acceptable Material type(s) shall be determined through the most recently completed Acceptable Material Performance Study and shall be calculated as the percentage of Residue produced that is in excess of the Residue Allowance and where Operator met its Performance Guarantee for either or both Acceptable Material type(s). The Residue Overage percentage shall be retroactively applied to the prior calendar quarter Residue Disposal Tons for that or those Acceptable Material type(s), as applicable, and payment, if any, shall be due to the County in accordance with Section 10.6.

Further, Operator shall be precluded from requesting any consideration of a Special Tipping Fee within any six (6) month period when Operator has failed to meet the minimum Effective Recovery Rate for Acceptable Materials.

E. Performance Guarantee

1. **Description.** Operator's achievement of Operator's Performance Guarantee for each Acceptable Material shall be evaluated during each Performance Study and shall adjust based on the composition of the inbound materials using Operator's Effective Recovery Rate and determined during each Performance Study for each Acceptable Material, conducted in accordance with Exhibit N-1 and calculated in accordance with Exhibit N-2.

2. **Methodology.** Operator shall conduct a Performance Study for each Acceptable Material in accordance with Exhibit N-1, calculate Operator's Effective Recovery Rate in accordance with Exhibit N-2, document the results in accordance with Exhibit N-3, and compare the results of Operator's Effective Recovery Rate against Operator's Performance Guarantee.

3. **Measurement of Compliance.** Operator's compliance with its Capture Rate Guarantees shall be determined by using Operator's Effective Recovery Rate for each Performance Study for each Acceptable Material relative to Operator's Performance Guarantee based on the Available Material for each Acceptable Material during each Performance Study. Operator's performance in meeting the Performance Guarantee shall be determined by comparing Operator's calculated Effective Recovery Rate during each Acceptable Material Characterization Study that will change

based on the composition of Inbound Tons of Acceptable Material evaluated during each Acceptable Material Characterization Study against the Performance Guarantee standards expected during each Acceptable Material Characterization Study. Operator will have met the minimum Performance Guarantee if the Effective Recovery Rate during each Acceptable Material Characterization is greater than or equal to zero (0).

4. **Failure to Achieve.** If Operator Recovers less material than what is calculated for Operator's Recovery Guarantee during any Acceptable Material Performance Study, Operator shall pay two hundred percent (200%) of the Disposal cost, per Ton, for each Ton of material that exceeds Operator's Recovery Guarantee for the prior quarter. The Excess Residue percentage, as applicable, for either or both Acceptable Material type(s) shall be determined through the most recently completed Acceptable Material Performance Study and shall be calculated as the percentage of Residue produced that is in excess of the Residue Overage. The Excess Residue percentage shall be retroactively applied to the prior calendar quarter Residue Disposal Tons for that or those Acceptable Material type(s), as applicable, and payment, if any, shall be due to the County in accordance with Section 10.6.

Further, Operator shall be precluded from requesting any consideration of a Special Tipping Fee within any twelve (12) month period when Operator has failed to meet the minimum Effective Recovery Rate for Acceptable Materials.

9.3 Additional Performance Guarantees

A. Environmental Performance Guarantee

Operator shall guarantee that the Facility is Operated and Maintained in compliance with Applicable Laws, including, but not limited to, noise and odor. If more stringent limits are proposed by Operator, and accepted by the County, such limits shall form the basis for the Environmental Performance Guarantee. Operator shall be responsible for all resulting corrective actions from any regulatory agency(ies) for the Facility including, without compensation, the costs of maintaining compliance with all Permit conditions, should that condition occur, in accordance with the timeline and schedule specified by the County or by any corrective action plans imposed by any regulatory agency(ies). If the County approves new limits that exceed the requirements of Operator's Permits, the provisions of Section 2.11 shall apply.

B. Vehicle Turnaround Guarantee

If Operator fails to meet the Vehicle Turnaround Guarantee provided in Subsection 6.2.B., the County may assess liquidated damages in accordance with Section 14.9 and Exhibit C: Liquidated Damages.

C. Regulatory Compliance Guarantee

1. **Description.** Operator shall meet or exceed regulatory requirements for Diversion of Organic Materials Recovered from Mixed Waste Processing in order to ensure Facility and the County's compliance with SB 1383 ("Regulatory Compliance Guarantee"). Operator shall maintain Facility status as a high diversion organic waste processing facility as defined within 14 CCR Section 17409.5.1 by meeting or exceeding an annual average Mixed Waste Organic content Recovery of seventy-five percent (75%).

Operator shall comply with 14 CCR Section 17409.5.8 such that Organic Materials Recovered from Mixed Waste Processing shall not include more than ten percent (10%) incompatible material by weight; provided however, that if the Facility's Residue from Mixed Waste Processing contains ten percent (10%) or less Organic Material, or the AD Facility Residue contains less than ten percent (10%) of Organic Material, then Operator's requirement to meet the ten percent (10%) or less incompatible material threshold in its Organic Materials Recovered from Mixed Waste shall not be considered a failure of Operator to meet this Performance Guarantee, and such failures during the period evaluated shall not make Operator subject to the remedies as described in Subsection C.4 below.

2. **Methodology.** Operator shall comply with this Regulatory Compliance Guarantee by completing measuring protocols as described in 14 CCR Section 17409.5.2 quarterly.
3. **Measurement of Compliance.** Operator has achieved compliance when the Facility maintains its status as a High Diversion Organic Waste Processing Facility, as defined in 14 CCR Sections 17409.5.1, 17409.5.2, and 17409.5.8.
4. **Failure to Achieve.** If Operator fails to comply with this Section for more than three (3) consecutive quarters, the County may elect any remedy available under the Agreement including, but not limited to, assessing liquidated damages in accordance with Section 14.9 and Exhibit C: Liquidated Damages, determining that a breach or default has occurred, and/or directing Operator to correct the inadequacies in accordance with Article 14 of this Agreement.

D. Throughput Guarantee

1. **Description.** Operator shall Operate the fixed equipment as intended by the Equipment Manufacturer to meet or exceed the performance standards guaranteed by the Equipment Manufacturer, or as otherwise determined by the County, for each Recovered Material on each line during one (1) shift at the Facility at least equal to the Rated Capacity. Operators ability to comply with Section 9.2 rely on Operator meeting or exceeding the Throughput Guarantee.
2. **Methodology.** Consistent with Section 9.2, Operator shall conduct Performance Studies for Acceptable Materials in accordance with Exhibit N: Material Characterization Study Methodology and shall utilize the table in Exhibit N-3 to document results.
3. **Measurement of Compliance.** Operator's compliance with the Throughput Guarantee each quarter may be achieved by performing the Performance Studies in accordance with Exhibit N: Material Characterization Study Methodology and meeting Operator's Recovery Guarantee pursuant to Subsection 9.2.D and Operator's Performance Guarantee pursuant to Subsection 9.2.E. If Operator fails to meet Operator's Recovery Guarantee and/or Operator's Performance Guarantee, Operator, as part of the Performance Studies described in Exhibit N: Material Characterization Study Methodology shall be required to document its Operations meet the specifications of the Throughput Guarantee. In the event Operator meets the Throughput Guarantee but does not meet Operator's Recovery Guarantee pursuant to Subsection 9.2.D, and Operator's Performance Guarantee pursuant to Subsection 9.2.E, Operator and the County shall meet and confer to investigate why the Facility is not Operating as intended.

4. **Failure to Achieve.** If Operator fails to meet the Throughput Guarantee due to insufficient Operation of the Facility equipment in accordance with the Equipment Manufacturer's specifications, the County may, in addition to the provisions in Subsections 9.2.D.4 and 9.2.E.4, assess liquidated damages pursuant to Section 14.9 and Exhibit C: Liquidated Damages.

9.4 Additional Performance Considerations

A. Recovered Materials Rejected/Not Accepted by AD Facility

Operator shall Process Acceptable Materials to be delivered to the AD Facility in accordance with the specifications agreed upon by the County or the County's AD Facility Operator. If AD Facility is unable to accept Processed Recovered Materials prepared by Operator due to the AD Facility's operation and not due to Operator's mishandling of the Recovered Materials, Operator shall consider the Recovered Materials Diverted when determining compliance with the Performance Guarantees, even if the County directs the Recovered Material from the Facility to the Landfill rather than the AD Facility. The County shall establish and utilize a separate material type code in the Landfill scale system to separately track and account for these Tons.

This provision does not cover Recovered Material destined for the AD Facility that was rejected by the AD Facility due to Operator error or high levels of incompatible materials.

B. Failure to Achieve Diversion Guarantee

If, in any Agreement Year, Operator does not achieve the Performance Guarantees required by Section 9.2 for four (4) consecutive quarters, Section 9.3 for any one (1) quarter, or is found by CalRecycle to be in non-compliance with Applicable Law at any time, within thirty (30) Days following request by the County, Operator may arrange for an Independent Expert to conduct a conformance test of the Facility and/or a waste characterization analysis in accordance with Subsection 9.4.D (a "Conformance Test") and Operator shall be responsible for reimbursing the County's actual costs of performing the Conformance Test up to fifty thousand dollars (\$50,000), which shall be adjusted annually by the Annual Percentage Change in CPI-U, in any calendar year.

9.5 Performance Review

The County reserves the right to conduct a performance review to verify Operator has fulfilled its obligations under the Agreement to determine if Operator has met the Performance Guarantees. Operator shall cooperate with the review including by providing a thorough, complete, and accurate response to any requests for information within ten (10) Business Days after the County's request. Operator shall not request a confidentiality agreement from the County or its agents in order to conduct the performance review, nor shall it claim privilege over any record or documents that the County is entitled to under this Agreement, unless this Agreement already specifically acknowledges some privilege related to that record.

If any partial compliance or noncompliance with the Agreement is found, the County may elect any remedy available under the Agreement, including, but not limited to, assessing liquidated damages as provided in Section 14.9 and Exhibit C: Liquidated Damages, determining that a breach or default has

2647 occurred, and/or directing Operator to correct the inadequacies in accordance with Article 14 of this
2648 Agreement.

2649 If any partial compliance or noncompliance with the Performance Guarantees of this Agreement is
2650 found, Operator shall be responsible for correcting the issue, at no additional cost to the County, and for
2651 reimbursing the County's actual costs of performing the performance review up to fifty thousand dollars
2652 (\$50,000), which shall be adjusted annually by the Annual Percentage Change in CPI-U, in any calendar
2653 year.

2654 **ARTICLE 10. OPERATOR COMPENSATION AND PAYMENTS DUE COUNTY**

2655 **10.1 Overview**

2656 Operator's compensation for performance of its obligations under this Agreement shall be the Tipping
2657 Fees paid by the County and the sales of commodities Recovered from Operations. Pursuant to this
2658 Agreement, Tipping Fees paid to Operator by the County and commodity sales shall be the full, entire,
2659 and complete compensation due to Operator to cover Operator's costs for all labor, equipment,
2660 materials and supplies, Facility fees, taxes, insurance, bonds, overhead, Operations, profit, and all other
2661 things necessary to perform all the services required by this Agreement in the manner and at the times
2662 prescribed, net of any payments and fees due to the County.

2663 If Operator's actual costs, including fees due to the County, are more than Operator's then-current
2664 Revenue Requirement for services rendered by Operator under this Agreement, Operator shall not be
2665 compensated for the difference between actual costs and actual Operator's then-current Revenue
2666 Requirement for services rendered by Operator under this Agreement. If Operator 's actual costs are less
2667 than the actual Operator's then-current Revenue Requirement for services rendered by Operator under
2668 this Agreement, Operator shall retain the difference provided that Operator has made all payments
2669 required in Section 10.6.

2670 Under this Agreement, Operator shall have the right and obligation to charge and collect from the County
2671 Tipping Fees established and adjusted under this Agreement for provision of Operator's services under
2672 this Agreement.

2673 The Tipping Fees for Agreement Year One are based on Operator's Baseline Revenue. Tipping Fees for
2674 subsequent Agreement Years shall be adjusted annually in accordance with Subsection 10.2.C using an
2675 index-based adjustment method.

2676 **10.2 Process for Setting and Adjusting Tipping Fees**

2677 **A. General.**

2678 The County shall be responsible for preparing the calculation for the annual adjustment to Tipping Fees.
2679 Operator shall be responsible for receiving and reviewing the accuracy of the calculation for adjustment
2680 of Tipping Fees as described in this Article and reviewing the mathematical accuracy and logical
2681 adherence to the calculation methodology. The Tipping Fees shall be submitted to the County Board in

2682 conjunction with all other annually adjusted tipping fees and rates associated with the ReSource Center
2683 for final approval and implementation.

2684 **B. Tipping Fees for Agreement Year One.**

2685 Tipping Fees for Agreement Year One shall be \$33.00 per Ton for all obligations and services of Operator
2686 under this Agreement.

2687 **C. Annual Adjustment.**

2688 The Tipping Fees shall be adjusted annually, upon approval by the County as described in Subsection
2689 10.2.A, commencing with Agreement Year Two through the remaining Term of this Agreement, including
2690 any extension periods. The following formulas shall be used to calculate the adjustment to each
2691 component of each Tipping Fee. The Tipping Fee for Agreement Year Two, and each subsequent
2692 Agreement Year thereafter, shall be calculated as follows:

2693
$$\text{adjusted component} = \text{current component} \times (1 + \text{Annual Percentage Change in the CPI-U})$$

2694 **10.3 Tipping Fee Adjustment Process**

2695 **A. Adjustment Date and Content.**

2696 1. **Application Submittal Date.** No later than December 31 each Agreement Year, the County shall
2697 submit to Operator its adjustment document calculating the adjustment of Tipping Fees for the
2698 coming Agreement Year via email with confirmation receipt. If the County requests information
2699 from Operator for the adjustment, Operator shall provide all information requested by the County
2700 during its preparation of the adjustment.

2701 2. **Content of Adjustment.** The adjustment document submitted to support an adjustment of Tipping
2702 Fees shall be submitted in Microsoft Excel format with all formulas and calculations preserved.
2703 Such adjustment shall present the underlying data and calculations of the Annual Percentage
2704 Change in the CPI-U. The adjustment shall include all supporting documentation for the
2705 calculations.

2706 The adjustment shall also present a summary table with the Tipping Fees for the then-current
2707 Agreement Year (e.g., Agreement Year Three) and the proposed Tipping Fees for the coming
2708 Agreement Year (e.g., Agreement Year Four).

2709 **B. Operator Review of Application.**

2710 Operator shall review the County's adjustment of the Tipping Fee and, upon completion of review,
2711 Operator shall confirm agreement with the prepared adjustment.

2712 The County shall act in good faith to secure County Board approval to adjust Tipping Fees by July 1 of the
2713 Agreement Year. In the event that Operator requests a change(s) or has another inquiry relating to such
2714 adjustments to Tipping Fees, Operator shall notify the County in writing thereof within ten (10) Days of
2715 the date the County's complete adjustment is sent to Operator for review, whereupon the County shall
2716 provide a response in an effort to resolve the matters raised by Operator within ten (10) Days after
2717 receipt of written notice from Operator.

2718 Thereafter, the County shall submit the proposed adjustment of Tipping Fees to the County Board for
2719 implementation. The adjusted Tipping Fees shall not take effect until the County Board has approved
2720 such Tipping Fees such that the Tipping Fee will become effective July 1 of the Agreement Year.

2721 **C. Delay in Adjustment to Tipping Fees.**

2722 If the County Board does not approve adjusted Tipping Fees under this Agreement to be effective on July
2723 1 of the Agreement Year, the County shall provide a payment(s), adjustment(s), or surcharge(s) such that
2724 Operator receives payment for any shortfall in Operator's compensation resulting from the delay in
2725 approval of appropriate adjustments to Tipping Fees. To determine the amount of a shortfall, if any, the
2726 County and Operator shall meet and confer to determine the effect the delayed approval of appropriate
2727 adjustments in Tipping Fees has on Operator's compensation.

2728 **10.4 Special Tipping Fee Review**

2729 **A. Eligible Items.**

2730 Operator is entitled to apply to the County for consideration of a Special Tipping Fee Review, or the
2731 County may initiate such a review, should one (1) or more of the following events occur:

- 2732 1. **Change in Scope.** County-approved Change in Scope, as provided for under Sections 2.11 and 10.5.
- 2733 3. **Uncontrolled Circumstance.** Occurrence of Uncontrollable Circumstances (other than Change in
2734 Law).
- 2735 4. **Change in Law.** Change in Law, as provided in Subsection 2.9.A (Change in Law in Subsection 2.9.C
2736 is expressly precluded from eligibility, Subsection 2.9.B shall be treated as a Change in Scope in
2737 accordance with Section 10.5), after the Effective Date that was not reasonably known to Operator
2738 before the Effective Date.
- 2739 5. **Cost Savings to the County.** Instances where Operator's capital investment or operational
2740 efficiencies demonstrate a result in savings to the County.

2741 **B. Ineligible Items.**

2742 In addition to the specific circumstances identified in Subsections 9.2.D and 9.2.E and Subsections
2743 10.4.A.1 and 10.4.A.4 above, a Special Tipping Fee Review may not be initiated for the following items
2744 and Operator shall not be compensated for such items over the Term of the Agreement:

- 2745 1. **Cost Increases.** Increases in the cost of providing all services and performing all obligations under
2746 this Agreement that are in excess of the increases provided through the annual adjustment
2747 mechanism described in Section 10.2, unless cost increases are related to eligible items listed in
2748 Subsection 10.4.A above.
- 2749 2. **Change in Facility Conditions.** Increases in the cost of providing all services and performing all
2750 obligations under this Agreement that may be impacted by change in operating conditions of the
2751 Facility, unless such change is initiated by, resulting from a contract modification with, or at the
2752 direction of, the County, or the cost increases are related to eligible items listed in Subsection
2753 10.4.A above.

2754 3. **Change in Material Quantities and Composition.** Change in the Tonnage or composition of
2755 Acceptable Materials, including changes in the relative composition of the Recyclable Materials or
2756 Markets for Recovered Recyclable Materials.

2757 4. **Change in General Economic Conditions.** Changes in general economic conditions including, but
2758 not limited to, inflation, deflation, recession, depression, supply chains, default on the debts of any
2759 government agency, commodity Markets, stock markets, pension systems, automation, labor
2760 availability, or other factors broadly impacting businesses that are not explicitly contemplated in
2761 Subsection 10.4.A above.

2762 5. **Decreases in Revenues from Sale of Materials.** Changes in the value of Recovered Materials under
2763 5% that change over a 12-month period, including any changes in the Recovered Material
2764 purchaser specifications.

2765 **C. Review of Costs.**

2766 If Operator or the County requests a Special Tipping Fee Review, the County shall have the right to review
2767 any or all financial and operating records of Operator that relate to the performance of this Agreement
2768 or the basis of that Special Tipping Fee Review.

2769 **D. Submittal of Request.**

2770 If Operator is requesting a Special Tipping Fee Review, Operator must submit its request along with cost
2771 and operational data, in a form and manner specified by the County, at least six (6) months before the
2772 proposed effective date of any Tipping Fee adjustment. The County may waive the six (6) month
2773 submittal requirement if the reason for the special review is a Change in Law that will become effective
2774 in less than six (6) months, as described below.

2775 If the County is requesting a Special Tipping Fee Review, the County shall notify Operator at least seven
2776 (7) months before the proposed effective date of any Tipping Fee adjustment. Upon such notification,
2777 Operator shall, within thirty (30) Days, submit reasonable cost and operational data as requested by the
2778 County, in a form and manner specified by the County.

2779 A Special Tipping Fee Review shall include a proposal on whether the Tipping Fee adjustment resulting
2780 from the special review shall be an adjustment in addition to or in lieu of the annual adjustment to
2781 Tipping Fees performed in accordance with Subsection 10.2.C above.

2782 **E. Burden of Justification.**

2783 Operator shall bear the burden of justifying to the County by substantial evidence any entitlement to
2784 current, as well as increased, Tipping Fees under this Section. Records required to be maintained
2785 pursuant to Article 12 shall be subject to review, in accordance with appropriate professional standards,
2786 and inspection for the primary purpose of reviewing Operator's change in costs attributable to the
2787 circumstances that triggered the Special Tipping Fee Review, at any reasonable time by the County or a
2788 third party selected by the County. Operator shall not interfere with, or have any right to object to, the
2789 selection of the third party nor the scope of work provided by the County's chosen third party reviewer.
2790 The independent reviewer shall provide a final draft of its review to the County and Operator. The Party
2791 requesting the Special Tipping Fee Review shall bear the cost of the review.

2792 If the County determines that Operator has not met its burden, Operator may request a meeting with
2793 the County to produce additional evidence. Upon such request, the County shall permit said additional
2794 hearing. Any resulting disputes shall be managed in accordance with Section 14.2.

2795 **F. Grant of Request.**

2796 Notwithstanding Subsection 10.5.A below, and based on evidence submitted by Operator, the County
2797 Board may grant some, all, or none of Operator's requested adjustment to Tipping Fees, exercising
2798 reasonable discretion.

2799 **G. Compensation.**

2800 If Operator requests a Special Tipping Fee Review, Operator shall pay all of the County's reasonable costs
2801 for participating in such review up to a maximum of fifty thousand dollars (\$50,000), that shall be
2802 adjusted annually by the Annual Percentage Change in CPI-U, and such costs shall not be reimbursed
2803 through Tipping Fees. If a Special Tipping Fee Review occurs in response to a County-directed Change in
2804 Scope (pursuant to Subsection 10.4.A.1), the County shall be considered the Party requesting the Special
2805 Tipping Fee Review and the County's costs of the review may be reimbursed through the Tipping Fees.

2806 **10.5 Adjustment to Tipping Fees for Changes in Scope**

2807 As part of Operator's written proposal under Subsection 2.11.B of this Agreement, Operator shall furnish
2808 the County with projected operational and cost data for the Change in Scope to support any requested
2809 Special Tipping Fee Review. For the purpose of analyzing cost impacts resulting from changes in scope,
2810 Operator's profit shall be calculated using an operating ratio of ninety percent (90%) of actual reasonable
2811 and necessary costs. The County reserves the right to require that Operator supply any additional cost
2812 data or other information the County may reasonably need to ascertain the appropriate adjustment to
2813 Tipping Fees, if any, for the Change in Scope. If the County approves Operator's Proposal (as may be
2814 negotiated), the County shall review this operational and cost data, and the County Board shall approve
2815 Tipping Fees for the Change in Scope, if warranted.

2816 The granting of any Change in Scope shall be contingent upon the County's written approval and
2817 establishment of new Tipping Fees, if appropriate. The County Board, with input from Public Participants,
2818 shall approve Tipping Fee adjustments in good faith, coincident with any adjustment made pursuant to
2819 this Section so that the Change in Scope and the corresponding Tipping Fees become effective on the
2820 same date. In the event that such alignment is not practical for reasons including, but not limited to, the
2821 involvement of other County contracts, the County shall be entitled to compensate Operator over time
2822 or through alternative methods, as described above in Subsection 10.3.C.

2823 **10.6 Operator Payments to County**

2824 If Operator fails to meet Operator's Recovery Guarantee and/or Operator's Performance Guarantee in
2825 accordance with Subsection 9.2.D.4 and/or Subsection 9.4.E.4, the County shall submit an invoice to
2826 Operator that calculates the applicable Residue Disposal payments due to the County. The invoice shall
2827 include, as applicable:

1. **Residue Overage Payment.** The total Tons of Residue Disposed during the calendar quarter for each Acceptable Material that were greater than the Residue Allowance percentage from the most recently completed Performance Study for each Acceptable Material and less than the Excess Residue percentage shall be multiplied by the then-current per-Ton Disposal fee at the Landfill and the resultant figure shall be due payable to the County within thirty (30) Days. Operator's duty to pay the County for any Residue Overages shall survive the expiration or earlier termination of this Agreement.

2. **Excess Residue Payment.** The total Tons of Residue Disposed during the calendar quarter for each Acceptable Material that were greater than the Residue Overage percentage from the most recently completed Performance Study for each Acceptable Material shall be multiplied by two hundred percent (200%) of the then-current per-Ton Disposal fee at the Landfill and the resultant figure shall be due payable to the County within thirty (30) Days. Operator's duty to pay the County for any Excess Residue Payment shall survive the expiration or earlier termination of this Agreement.

10.7 Commodity Revenue Sharing and Commodity Floor

A. General

Pursuant to Section 10.1 of the Agreement, and except as otherwise expressly provided in Subsection 5.5.H.4, Subsection 8.5.G, and Subsection 10.7.C below, the County and Operator agree the County's payment of per-Ton Tip Fees for Processing Acceptable Materials under this Agreement shall be the only source of payments due to Operator from the County.

The County and Operator have reviewed and analyzed Operator's historical annual operating costs, made agreed-upon adjustments to Operator's projected annual operating costs for Agreement Year 1, and have also analyzed historical Tonnage and sales data related to Operator's sale of Recyclable Materials Recovered from Processing. The per-Ton Tip Fee for Agreement Year 1 was established based on Operator's projected operating costs, as adjusted as allowable costs, and the expected annual revenue from commodity sales. The County and Operator recognize Operator's actual annual revenue generated from the sale of Recyclable Materials Recovered during Processing will fluctuate and so too will Operator's annual costs to operate the Facility. To share in the risk and reward of Operator's Performance under this Agreement and to help protect Operator from severe Market fluctuations, the County and Operator further agree that the County shall be entitled to share in a portion of Operator's Commodity Revenue, as further described in Subsection 10.7.B below, and shall offer Operator a per-Ton floor payment, as further described in Subsection 10.7.C below.

B. Commodity Revenue Sharing

The County and Operator acknowledge the Tip Fees paid by the County to Operator are not Operator's sole source of revenue and that Operator's expenses to Operate the Facility exceed the amount of Tip Fee revenue that will be paid by the County to Operator for each Ton of Acceptable Material Delivered to the Facility for Processing. The County and Operator further acknowledge Operator is reliant on generating revenue from the sale of Recyclable Materials Recovered from Processing Acceptable Materials, inclusive of CRV and Transportation costs ("Commodity Revenue"), to cover the difference

2867 between Operator's operating expenses and the Tip Fee revenue paid by the County to Operator, and
2868 the County is not responsible for any such shortfalls, except to the extent provided in Subsection 10.7.C
2869 of this Agreement.

2870 County and Operator agree that Operator is projected to generate approximately four million six
2871 hundred fifty thousand dollars (\$4,650,000) in additional Commodity Revenue each Agreement Year
2872 throughout the Term of the Agreement, including any extensions thereto; provided, however, that for
2873 the purposes of this Subsection 10.7.B, the first Agreement Year shall begin July 1, 2025, rather than on
2874 the Effective Date.

2875 The Parties hereby agree that, to the extent Operator generates Commodity Revenue during any
2876 Agreement Year that is greater than six million one hundred fifty thousand dollars (\$6,150,000),
2877 Operator shall pay the County seventy-five percent (75%) of the additional Commodity Revenue in
2878 excess of six million one hundred fifty thousand dollars (\$6,150,000) ("Revenue Sharing Payment").
2879 Operator shall report on Commodity Revenue in each Quarterly Report, in accordance with Subsection
2880 3.D.1 of Exhibit I: Reporting Requirements and Subsection 12.4.A of the Agreement. No later than
2881 September 30 of each Agreement Year, Operator shall calculate the total Commodity Revenue received
2882 during the most recently completed Agreement Year, provide supporting documentation sufficient to
2883 support the calculation, and calculate the Revenue Sharing Payment owed to the County, if any. The
2884 County shall have up to thirty (30) Days to review and validate Operator's calculations or request
2885 additional documentation to support Operator's calculation. If the County is unable to validate
2886 Operator's calculation, the County shall provide written notice to Operator and Operator shall provide
2887 additional information and/or supporting documentation to the County within fifteen (15) Days. Once
2888 the County approves Operator's Commodity Revenue calculation and resulting Revenue Sharing
2889 Payment owed, if any, then the County shall provide written notice to Operator that the calculation is
2890 approved by the County. Within thirty (30) Days of Operator's receipt of the notice of County approval,
2891 and to the extent that a Revenue Sharing Payment is due, Operator shall make such payment due to the
2892 County. Operator's duty to calculate and remit any applicable Revenue Sharing Payment to the County
2893 shall survive the expiration or earlier termination of this Agreement.

2894 **C. Commodity Floor**

2895 The County and Operator acknowledge that there may be times during the Term of the Agreement that
2896 Operator experiences a significant price change in any one (1) or more individual Recovered Recyclable
2897 Material types and/or a temporary reduction in the total Commodity Revenue independent of the total
2898 Tons of Recyclable Materials Processed. To the extent that such circumstances are not otherwise
2899 addressed in Subsection 8.5.G.5.ii of this Agreement, the Parties agree that Operator shall be eligible for
2900 relief as further described in this Subsection; provided, however, that Operator shall not be eligible for
2901 both the provisions of Subsection 8.5.G.5.ii of this Agreement and this Subsection 10.7.C, only one (1)
2902 Subsection shall be applicable if and as such circumstances arise.

2903 The County and Operator have agreed to establish a per-Ton Commodity Revenue floor ("Commodity
2904 Floor") of sixty dollars (\$60.00), which shall not be adjusted during the Term of the Agreement. The
2905 Commodity Floor was established based on historical Tonnage data, the composition of Recovered
2906 Recyclable Materials Marketed by type, and the associated Commodity Revenues from Recovered

2907 Recyclable Materials sold. The County and Operator acknowledge Operator has not historically sold
2908 aluminum Recovered during Processing each month and that aluminum sales are a sensitive factor in
2909 Operator's monthly Commodity Revenue. Accordingly, the County and Operator agree that for the
2910 purposes of this Subsection 10.7.C, the value of Recovered aluminum shall be excluded from
2911 consideration in the calculation of the monthly per-Ton value of Commodity Revenue relative to the
2912 Commodity Floor.

2913 The County and Operator agree that, as of the Effective Date of this Agreement, the additional
2914 Commodity Revenue Operator is expected to rely on translates into a per-Ton value of inbound
2915 Recyclable Materials received for Processing of approximately one hundred thirty-three dollars and
2916 twenty-two cents (\$133.22) per Ton, inclusive of the sale of Recovered aluminum (Table 10-1), and one
2917 hundred eleven dollars and sixty-three cents (\$111.63) per Ton, exclusive of the sale of Recovered
2918 aluminum (Table 10-2); however, only the latter per-Ton valuation is applicable for this Subsection
2919 10.7.C.

2920 The per-Ton value of each Ton of Recyclable Materials Processed during any single month shall be
2921 calculated by taking the monthly Commodity Revenue, less the total Commodity Revenue attributable
2922 for Recovered aluminum sold, and dividing the resulting value by the total Tons of Recyclable Materials
2923 Processed during that month (the "Adjusted Per-Ton Value"). If the Adjusted Per-Ton Value for any single
2924 month exceeds the Commodity Floor, then Operator shall not be eligible for consideration of a
2925 Commodity Floor payment by the County. However, if the Adjusted Per-Ton Value for any single month
2926 is equal to or lower than the Commodity Floor, then Operator shall be eligible to receive a monthly
2927 Commodity Floor payment or credit against any current or future amounts owed to the County by
2928 Operator, if any, in the County's sole discretion. The Commodity Floor payment or credit shall be
2929 calculated as the Commodity Floor minus the Adjusted Per-Ton Value multiplied by the total Tons of
2930 Recyclable Materials Processed during the same month.

2931 **Table 10-1**

FROM MARBORG - INCLUDES ALUMINUM			
	TN Processed	Revenue/Ton	Revenue
2021 - Q3	10,475	\$ 167.14	\$ 1,750,806
2021 - Q4	9,404	\$ 105.65	\$ 993,568
2022 - Q1	10,032	\$ 121.47	\$ 1,218,639
2022 - Q2	10,044	\$ 152.19	\$ 1,528,533
2022 - Q3	9,074	\$ 116.90	\$ 1,060,691
2022 - Q4	8,991	\$ 107.79	\$ 969,178
2023 - Q1	9,498	\$ 95.60	\$ 907,978
2023 - Q2	8,724	\$ 117.78	\$ 1,027,469
2023 - Q3	8,568	\$ 109.22	\$ 935,769
2023 - Q4	8,747	\$ 100.81	\$ 881,708
2024 - Q1	9,314	\$ 119.17	\$ 1,109,968
2024 - Q2	8,570	\$ 149.02	\$ 1,277,153
2024 - Q3	8,851	\$ 190.80	\$ 1,688,767
2024 - Q4	9,009	\$ 161.29	\$ 1,453,130
2025 - Jan/Feb	6,202	\$ 200.94	\$ 1,246,177
2025 - Mar-June			
TOTALS	135,503	\$ 133.20	\$ 18,049,534

Table 10-2

FROM MARBORG - EXCLUDES ALUMINUM			
	TN Processed	Revenue/Ton	Revenue
2021 - Q3	10,475	\$ 153.18	\$ 1,604,636
2021 - Q4	9,404	\$ 98.34	\$ 924,800
2022 - Q1	10,032	\$ 104.96	\$ 1,052,990
2022 - Q2	10,044	\$ 135.91	\$ 1,365,057
2022 - Q3	9,074	\$ 107.16	\$ 972,375
2022 - Q4	8,991	\$ 77.66	\$ 698,291
2023 - Q1	9,498	\$ 75.30	\$ 715,167
2023 - Q2	8,724	\$ 89.16	\$ 777,864
2023 - Q3	8,568	\$ 82.07	\$ 703,136
2023 - Q4	8,747	\$ 79.85	\$ 698,428
2024 - Q1	9,314	\$ 100.12	\$ 932,583
2024 - Q2	8,570	\$ 127.64	\$ 1,093,937
2024 - Q3	8,851	\$ 146.40	\$ 1,295,720
2024 - Q4	9,009	\$ 139.21	\$ 1,254,185
2025 - Jan/Feb	6,202	\$ 167.15	\$ 1,036,634
TOTALS	135,503	\$ 111.63	\$ 15,125,802

2932

2933 **ARTICLE 11. PERSONNEL**

2934 **11.1 General Personnel Requirements**

2935 **A. Qualified and Experienced Staff**

2936 Staffing shall be provided in accordance with Exhibit M: Staffing Plan and the other requirements of the
2937 Agreement, using Good Industry Practices and meeting all Performance Guarantees. Subcontractors and
2938 other third parties shall be equally qualified for the particular services to be performed. Subcontractors
2939 and other third parties are independent contractors and shall make no direct claim against the County
2940 or Public Participants.

2941 Operator shall at all times maintain the necessary number of employees, staff, or Subcontractor staff to
2942 Operate, Maintain, and manage the Facility; adequately maintain the Facility and all related structures
2943 and appurtenances in good repair; provide good service to all parties delivering material; and protect
2944 the health, welfare and safety of the citizens of the local community and surrounding communities.

2945 Operator shall provide a qualified and experienced Operations staff in accordance with Exhibit N:
2946 Material Characterization Study Methodology. Operator shall provide for additional third-party support
2947 as may be needed to perform Operator's Obligations.

2948 **B. Organizational Chart**

2949 Operator shall provide and maintain an organizational chart that lists job classifications and categories,
2950 including the numbers of staff employed under each category with clear identification of positions and
2951 staff with management or supervisory responsibilities. Operator shall notify the County of any significant
2952 changes in staffing and/or the personnel organization for the Facility. The initial staffing plan is included
2953 in Exhibit M: Staffing Plan.

2954 **C. Management and Supervisorial Staff**

2955 Operator shall provide: (i) qualified management, supervisory, technical, laboratory, and Operating and
2956 Maintenance personnel, licensed or certified as required, for Operation and Maintenance of all Facility
2957 activities; (ii) a manager for Day-to-Day supervision; (iii) specialists, as may be necessary, including those
2958 for troubleshooting, emergency management, and similar circumstances; and, (iv) office and clerical
2959 support staff, as necessary.

2960 **D. Technical Support Group**

2961 Operator shall provide a technical support group for on-call backup advice, expertise, quality control,
2962 management, Maintenance and plant repair, assistance to Operational staff to ensure performance of
2963 Operator's Obligations, and the design and construction of any Facility improvements. Operator's
2964 technical support group shall also provide assistance in the investigation, development, and
2965 implementation of modifications to processes, as may be appropriate or necessary for regulatory
2966 compliance, worker safety, or process improvement.

E. Courtesy and Appearance

Operator shall train its employees in customer courtesy and shall prohibit the use of loud or profane language. If any employee is found to be discourteous or not performing services in the manner required by this Agreement, Operator shall take all necessary corrective measures including, but not limited to, transfer, discipline, or termination. Employees must present a neat appearance and conduct themselves in a courteous manner.

11.2 Operator Management

Operator shall provide the County with a twenty-four (24) hour direct access emergency number for Operator's Facility Manager.

Operator will provide the County Notice at least thirty (30) Days after a change in management personnel responsible for ensuring complete and timely performance of Operator's Obligations, including, at a minimum, all onsite and/or primary representatives of Operator (such as a change in the Facility Manager or in Operations/safety manager). The Notice shall identify the name of the new manager, effective date of the assignment, telephone and email contact information for such Person, title, description of responsibilities, and the individual's professional qualifications.

11.3 Subcontractors**A. Subcontractor Provisions**

All Subcontractors shall be licensed as required under Applicable Law to perform their Subcontracted work; shall obtain and maintain a County business license from the County tax collector; and shall comply with the record keeping and reporting requirements defined in Article 12 and the indemnification and insurance requirements defined in Exhibit Q: Insurance Requirements and Article 13. Operator shall provide notice to the County of its intent to use Subcontractors and identify which specific services such Subcontractor will be providing for the Operation of the Facility prior to executing a Subcontractor agreement. Failure to provide such notice may result in the assessment of liquidated damages, as provided in Section 14.9 and Exhibit C: Liquidated Damages.

B. Substitute Subcontractors

In an emergency, Operator may engage additional or substitute Subcontractors for up to seven (7) consecutive Days following immediate oral notice to the County. At the conclusion of the seven (7) Days, Operator engagement of such additional or substitute Subcontractors may continue only if the County consents thereto.

11.4 Fees and Gratuities

Operator shall not, nor shall it permit, any agent, employee, or Subcontractors employed by Operator to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services required under this Agreement, other than as specifically provided for under this Agreement.

3001 11.5 Training**3002 A. General**

3003 Operator shall provide, as appropriate, overall career development, onsite direction, and support to
 3004 onsite personnel, in addition to providing an ongoing series of specialized training programs in the
 3005 following areas:

- 3006 1. Laboratory
- 3007 2. Process control
- 3008 3. Operations and Maintenance and repairs
- 3009 4. Safety
- 3010 5. Confined space entry
- 3011 6. Quality assurance/quality control
- 3012 7. Emergency preparedness and response
- 3013 8. Personnel relations
- 3014 9. Community relations

3015 Operator shall notify the County in advance of any training programs held by Operator and allow County
 3016 staff participation in said programs. Class size shall be limited to that prescribed by Operator training
 3017 policy. Training shall be an integral component of Operation and Maintenance services. Mandatory
 3018 training shall be required for all personnel in general Operation, and in area-specific and job-specific
 3019 performance. Refresher courses shall be tailored for each area of responsibility. As new employees are
 3020 introduced, experienced employees are given new assignments, or new equipment or processes are
 3021 introduced, a training program shall be implemented. Operator shall document the development and
 3022 completion of all training programs in its annual report, as provided in Subsection 12.3.C.

3023 B. Licenses and Certifications

3024 Operator shall acquire and hold, and cause its personnel to acquire and hold, all required federal, State
 3025 and local approvals, licenses, Permits, and certifications necessary to operate, maintain and manage the
 3026 Facility.

3027 C. Identification of Unacceptable Waste

3028 Operator shall establish and vigorously enforce an educational and certification program to train
 3029 Operator's employees in the identification of Unacceptable Waste.

3030 11.6 Non-Discrimination

3031 Neither Operator, nor any Subcontractor, shall discriminate in the provision of service or in employment
 3032 based on account of race, color, national origin, ancestry, religion, sex, marital status, age, disability, or
 3033 medical condition. The County hereby notifies Operator that County's Unlawful Discrimination
 3034 Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is

3035 incorporated herein by this reference with the same force and effect as if the ordinance were specifically
3036 set out herein, and Operator agrees to comply with said ordinance.

3037 **ARTICLE 12. RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

3038 **12.1 General**

3039 Operator shall maintain records and prepare reports as described herein and in Exhibit I: Reporting
3040 Requirements and Exhibit S: Mitigation and Monitoring Requirements Plan, and as may otherwise be
3041 required by applicable federal, State, and local government agencies. This Article addresses minimum
3042 record keeping and related requirements. Such requirements shall not be considered limiting or
3043 necessarily complete. The County relies on Operator to identify additional data needs for record keeping
3044 and possible reporting.

3045 Operator shall maintain records and prepare reports to the County documenting Operations and
3046 Maintenance, regulatory activities, laboratory analyses, training, process control, daily inspections,
3047 significant alarms, chemicals on hand, fuel on hand, Maintenance plans and activities, outages, Permit
3048 compliance results and status, equipment status, reports, and other relevant information in accordance
3049 with the requirements of this Article, and Applicable Law, Permits, and Good Industry Practice. The
3050 County and its designated representative(s) shall have full access to these reports and data at all times.

3051 The County shall generate and maintain Scale House and other records identifying Tons directed to
3052 Operator and/or the Facility, and shall make such records available to Operator, subject to the County's
3053 obligations to protect certain data under the Public Records Act. The County and Operator shall maintain
3054 these records for a period of at least four (4) years.

3055 Article 12 is intended to highlight the general nature of records and reports and is not meant to
3056 specifically define their format and content. Upon written direction or approval of the County, the
3057 records and reports to be maintained and provided by Operator in accordance with this and other
3058 Articles of the Agreement shall be adjusted in number, format, or frequency.

3059 **12.2 Record Keeping Requirements**

3060 **A. General**

3061 During the Term of the Agreement, Operator shall keep daily accurate and complete records of
3062 Operations and Maintenance, as needed, to complete reports and audits as required in Sections 12.3
3063 and 12.4 and Exhibit I: Reporting Requirements, and keep records in sufficient detail to allow Operator
3064 to calculate, and the County to corroborate, compliance with all Operator Obligations, including, but not
3065 limited to, all payments due the County, compliance with Permits, the Performance Guarantees, Exhibit
3066 S: Mitigation and Monitoring Requirements Plan, and Applicable Law.

3067 Records shall be kept in electronic form or other media approved by the County and shall be compatible
3068 with the County's systems. Records shall be maintained in forms and by methods that facilitate flexible
3069 use of data contained in them to structure reports, as needed. Adequate record security shall be

3070 maintained to preserve records from events that can be reasonably anticipated such as a fire, theft, and
3071 earthquake. Electronically maintained data/records shall be protected and backed up offsite.

3072 In accordance with Section 15.24, all computations, records, files, plans, correspondence, reports,
3073 drawings, designs, data, and photographs prepared by or possessed by Operator relating to
3074 Development and Operations and Maintenance shall be the property of the County, and, upon request,
3075 the County shall be entitled to immediate possession thereof, provided Operator may retain copies of
3076 such records and other materials. Operator shall furnish such records and other materials to the County
3077 no later than ten (10) Days after request or upon termination.

3078 Operator agrees that the records of any and all parties conducting Operations as provided in the
3079 Agreement, including Subcontractors, shall be provided or made available to the County and its
3080 designated representatives during normal business hours or within twenty-four (24) hours' notice. The
3081 County may review or utilize any of the records described in this Section for any purpose whatsoever.

3082 Upon termination of this Agreement, Operator shall deliver all such records and other materials to the
3083 County within twenty (20) Days of termination. Such obligation shall survive the termination of this
3084 Agreement.

3085 **B. Weight Records**

3086 Operator shall maintain weight records for any materials that are required to be weighed under the
3087 terms of the Agreement, and that it weighs or causes to be weighed at a location other than the County
3088 Scale House.

3089 **C. Billing Records**

- 3090 1. County shall maintain all invoices and receipts for all payments and other records generated by
3091 the County related to:
- 3092 i. The MDA with the Public Participants, including the Collection Contractors.
- 3093 ii. The Operator's Operation Obligations related to this Agreement.
- 3094 iii. The self-haul and Spot Market Materials received at the Facility and directed to the Facility.

3095 **D. Operations Records**

3096 In addition to records supporting Operational and Maintenance reports, Operator shall maintain at least
3097 the following:

- 3098 1. Video recordings of Operations at the Facility (including views of all tipping Operations, with date
3099 and times).
- 3100 2. Traffic counts, and, upon County request, the arrival and departure time of each vehicle and the
3101 amount of time vehicles were queued within thirty (30) Days.
- 3102 3. Equipment Maintenance logs in accordance with Operations and Maintenance Manual.
- 3103 4. Downtime, including Scheduled Facility Downtime, repair, and Maintenance.

3104 5. Routine, periodic, and Preventive Maintenance records, including detailed logs for each piece of
3105 equipment.

3106 **E. Marketing Records**

3107 Operator shall maintain records supporting Marketing activities specified in Article 8, Diversion
3108 Guarantee performance, as required in Article 9, and reporting of Recovered Materials revenues owed
3109 to the County, as provided in Articles 3 and 10. Such records shall include at a minimum:

- 3110 1. Names, addresses, and phone numbers of brokers and purchasers, including individual contacts.
- 3111 2. Date and terms of sale, including type, grade, specification, and quantity of Recovered Materials
3112 sold.
- 3113 3. Unit and total sales prices for each sales transaction and total revenue from Recovered Materials.
- 3114 4. Contracts or other documents evidencing transfer of title for materials sold.
- 3115 5. Residue rates for secondary Processing activities.
- 3116 6. Any certifications of end use of Recovered Materials.
- 3117 7. Broker inspection reports.

3118 **F. Financial Records**

3119 Operator shall maintain financial records relating to Operations and Maintenance activities separate and
3120 segregated from records relating to other operations outside the scope of this Agreement. In addition
3121 to records supporting audited and unaudited financial statements, Operator shall maintain at least the
3122 following records:

- 3123 1. Current audited financial statements for the guarantor as a whole if a guarantee was provided.
- 3124 2. Complete descriptions of related party transactions (corporate and/or regional management fees,
3125 intercompany profits from transfer, Processing, or Disposal Operations).

3126 **12.3 Reporting Requirements**

3127 **A. General**

3128 Operator shall submit monthly reports within fourteen (14) Days after the end of the calendar month
3129 and annual reports no later than thirty (30) Days after the end of each calendar year. Monthly and annual
3130 reports shall include, at a minimum, all data and information described in Exhibit I: Reporting
3131 Requirements, unless otherwise specified under this Agreement.

3132 **B. Report Formats**

3133 Operator shall propose report formats for approval by the County. Operator shall submit all reports in
3134 an electronic format approved by the County and compatible with County's hardware and software.
3135 Failure to update and submit all required reports on time may result in assessment of liquidated
3136 damages, as specified in Section 14.9 and Exhibit C: Liquidated Damages. The County may request
3137 additional information and report clarifications, which Operator will provide within thirty (30) Days.

3138 C. State Reporting Compliance

3139 The County will submit required reports to the State on behalf of Operator. In addition to the quarterly
3140 reports specified in Exhibit I: Reporting Requirements, Operator shall provide County with quarterly
3141 reports as required pursuant to 14 CCR Section 18815.5, as may be amended, no less than ten (10)
3142 working Days prior to the due date of the report to the State. Quarterly State reports are due February
3143 28, May 31, August 31, and November 30 each year.

3144 D. Access to Electronic Records

3145 Operator shall provide County with real-time, read-only electronic access to reporting information and
3146 video recordings of the Facility. The County and Operator shall determine within sixty (60) Days of the
3147 Effective Date the reporting information to be made available in this format. County access to reporting
3148 information and video recordings of the Facility in no way limits Operator's sole responsibility for the
3149 accuracy reporting information and video recordings of the Facility.

3150 12.4 Audits**3151 A. Operator's Annual Audit and Costs**

3152 Operator shall annually (per Agreement Year) audit its financial statements and Operations no later than
3153 September 30 through an independent certified public accountant at Operator's expense. Financial
3154 statements shall be audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a
3155 certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of
3156 California, as determined by the State of California Department of Consumer Affairs Board of
3157 Accountancy. The County must pre-approve, in writing, Operator's selection of an accountant.

3158 County may request, up to once per Agreement Year, Operator to cause a qualified firm with relevant
3159 industry experience to conduct a review of Operator's inbound and outbound Scale House data of
3160 Recovered Materials and audit of all weight records during each Agreement Year. Operator shall provide
3161 the County with a copy of such inventory and audit on or before September 1 of each year. The County
3162 may observe such inventory and auditing procedures and confer with such accountant.

3163 County reserves the right to define the scope of any audit described herein.

3164 B. County Audit

3165 The County may conduct a full audit of Operator's Operations under this Agreement. Operator will
3166 cooperate with County's auditor as instructed by the County. In addition, Operator shall be subject to
3167 the examination and audit of the California State Auditor, at the request of the County or as part of any
3168 audit of the County, for a period of three (3) years after final payment under this Agreement (Gov. Code
3169 Section 8546.7). Operator shall participate in any audits and reviews, whether by the County or the State,
3170 at no charge to the County. If federal, State, or County audit exceptions caused by Operator's Operations,
3171 billing, or accounting practices are made relating to this Agreement, Operator shall reimburse all costs
3172 incurred by federal, State, and/or County governments associated with the audit exceptions or
3173 performing any audits or follow-up audits, including, but not limited to: audit fees, court costs, attorneys'
3174 fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty

assessments and all other costs of whatever nature. Immediately upon notification from the County, Operator shall reimburse such costs directly to the County as specified by the County in the notification.

C. Payments and Refunds

If an audit determines that Operator has been overpaid by the County, Operator shall refund the amount of the overpayment. If an audit determines that Operator has been underpaid by the County, the County shall pay the amount of the underpayment, including interest and/or late payment penalties pursuant to Article 10. Payments shall be due as follows:

1. One hundred thousand dollars (\$100,000) or less shall be due thirty (30) calendar Days from the date of the audit.
2. More than one hundred thousand dollars (\$100,000) shall be due ninety (90) calendar Days from the date of the audit.

12.5 Reporting Adverse Information

Operator shall provide County with two (2) copies (one (1) to the County Agreement manager or its designee and one (1) to the County Counsel) of all reports, pleadings, applications, notifications, notices of violation, communications, or other material relating in any way to Operator's performance of services pursuant to this Agreement, submitted by Operator to, or received by Operator from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission (SEC), Santa Barbara County Air Pollution Control District, California State Water Resources Control Board, or any other federal, State, or local agency, including any federal or State court. Copies shall be submitted to the County within fifteen (15) calendar Days of receipt by Operator (or sooner if reasonably apparent that to do so is materially relevant) and any responses by Operator shall be submitted to the County simultaneously with Operator's filing or submission of such matters with said agencies. Operator's routine correspondence to said agencies shall include the County as a copied recipient, and shall include County Counsel as the County deems appropriate and so directs Operator.

12.6 Failure to Report

Operator's failure to file required reports as scheduled shall result in liquidated damages, as provided in Section 14.9 and Exhibit C: Liquidated Damages. Repeated failure to provide reports or to provide required information to the County, or the inclusion of any materially false or misleading statement or representation by Operator in such report shall be an Event of Default as described in Section 14.2 which, depending on its nature, may or may not be curable.

12.7 Recycling and Disposal Reporting System Reporting

Operator acknowledges that the County and each Public Participant's franchised Collection Contractors may route Collection vehicles in a manner that will result in the commingling of Acceptable Materials from multiple jurisdictions during Collection prior to arriving at the Facility. Operator further acknowledges that its Facility manages materials from multiple jurisdictions of origin. The Parties acknowledge the interdependent nature of the County and each Public Participant's franchised Collection Contractor and various transfer facilities and that each is part of a larger integrated system,

3212 which requires the diligent and accurate tracking and sharing of data where Acceptable Material is
3213 handled by multiple parties.

3214 The County has a fiduciary duty to its ratepayers to ensure the appropriate allocation of costs for each
3215 of the Operations at the ReSource Center and the Site, and each Public Participant has a duty to its
3216 ratepayers when considering rates for services provided by its franchised Collection Contractors. As such,
3217 the County and each Public Participant places the utmost importance on accurate reporting and
3218 transparency, especially with regard to information required to make those allocations of costs. The
3219 County finds it critically important to maintain jurisdiction of origin to each Public Participant and ensure
3220 County and Public Participant compliance with AB 901, precise allocations the County and Public
3221 Participant, and accurate completion and timely submittal of reports into the CalRecycle's Recycling and
3222 Disposal Reporting System (RDRS).

3223 The Parties acknowledge that in order for the County to comply with its fiduciary duty to its ratepayers
3224 and each Public Participant, and in turn each Public Participant's duties to their ratepayers, the County
3225 must have sufficient access to Facility data, including any facilities used by Operator in transferring
3226 material to the Facility, related to inbound and outbound Tons by jurisdiction of origin and delivering
3227 entity. Further, as the owner/operator of a Permitted Processor Facility in California, Operator is a
3228 regulated entity under AB 901, and in accordance with Subsection 13.3.C of this Agreement, the County
3229 relies in part on Operator to ensure under AB 901 accurate allocation and data entry into RDRS for the
3230 County and each Public Participant. As such, the Parties hereby agree that certain data that may
3231 otherwise not be publicly available related to the allocations of Tonnage at Operator's Facilities and any
3232 other facilities used in the performance of any and all services under this Agreement, including to
3233 agencies other than the County and each Public Participant, and allocation of Processing Residue
3234 Disposal Tonnage among Operator's Operations at the Facility, will be provided by Operator to the
3235 County.

3236 Operator acknowledges its affirmative obligation under this Agreement and Applicable Law to timely,
3237 accurately, and completely track and report on the Tonnages Processed at the Facility for the purposes
3238 of Operator's allocation of Processing Residue Disposal Tonnage among Operator's Operations at the
3239 Facility and reporting in RDRS. The County understands Operator is reliant on the County and each Public
3240 Participant's franchised Collection Contractors to provide the jurisdiction of origin data for all Acceptable
3241 Materials delivered by the County and each Public Participant's franchised Collection Contractor and/or
3242 any transfer vehicles containing Acceptable Material collected by the County and each Public
3243 Participant's franchised Collection Contractor that deliver to Operator at Operator's Facility. The County
3244 and each Public Participant's franchised Collection Contractor's franchise agreement require the
3245 franchised Collection Contractor(s) to report on the Tons of material attributable to the County and each
3246 Public Participant that reconcile to inbound weight data, by material type, to Operator's Facility and any
3247 other facilities used in the performance of any and all services under this Agreement for the RDRS data.
3248 The County and each Public Participant reserves the right at any time to review the franchised Collection
3249 Contractors' data and the County reserves the right at any time to review Operator's data for accuracy
3250 and consistency and make any necessary adjustments, including reconciliation of Operator's data
3251 relative to the data tracked by the County at its Scale House at the Site.

Operator shall track and report to the County the jurisdiction of origin for all Residue Disposed at the Landfill attributed to the County and each Public Participant by Acceptable Material type. Operator shall track and use the jurisdiction of origin Tonnage allocation data provided by the County and each Public Participant's franchised Collection Contractor for each Load of Acceptable Materials Delivered to Operator and shall use any revised jurisdiction of origin inbound Tonnage allocations and/or data provided by the County to Operator in its AB 901 reporting. Operator shall use the inbound jurisdiction of origin allocations to track and allocate outbound Tons of Residue by jurisdiction of origin in its reports to the County and its quarterly RDRS submittals. Operator shall provide the County with any and all reports and data at the Facility and any other facilities used in the performance of any and all services under this Agreement that the County reasonably requires to validate the accuracy of RDRS submittals attributable to the County and each Public Participant and/or relative other Tons received by Operator at the Facility and any other facilities used in the performance of any and all services under this Agreement, where Loads of Acceptable Materials delivered by the County and each Public Participants' franchised Collection Contractors that may or may not have been commingled with Tons attributable to other jurisdictions. Additional information on Operator's reporting obligations relative to AB 901 are further described in Exhibit I: Reporting Requirements.

ARTICLE 13. INDEMNIFICATION, INSURANCE, AND PERFORMANCE BOND

13.1 Insurance

Operator's Obligations to provide insurance are set forth in Exhibit Q: Insurance Requirements.

13.2 Performance Bond

Within seven (7) Days after the Effective Date, Operator shall provide a performance bond, letters of credit, or other surety device as may be reasonably required by the County in the aggregate amount of \$2,612,850, which is twenty five percent (25%) of Operator's Projected Revenues for Agreement Year 1 representing the estimated full cost of annual Operations and Maintenance of the Facility, in a form acceptable to the County as co-beneficiary. Such performance bond shall be in standard AIA form, and shall be issued by a surety company or companies rated "A" or better per current AM. Best Company ratings and listed in the United States Treasury Department's Circular 570. Such surety shall be an admitted surety in California. Such performance bond shall be in force as of the Effective Date, will be modified as necessary to reflect Operator's annually adjusted Projected Revenues in accordance with Article 10, and must remain in force through the Term. If not renewed, it does not subject the surety to a claim on this bond.

13.3 Indemnification

A. General

Operator agrees to indemnify, defend (with counsel reasonably approved by the County), and hold harmless the County and its officers, officials, employees, agents, and volunteers from and against any and all claims, actions, losses, damages, judgments, and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors, or omissions of any Person or entity and for any costs

3290 or expenses (including, but not limited to, attorneys' fees) incurred by the County on account of any
3291 claim except where such indemnification is caused by the active negligence, sole negligence, or willful
3292 misconduct of the County.

3293 Operator hereby covenants and agrees to hold harmless and immediately reimburse County for any
3294 damages Operator causes to County property or equipment. Operator shall be responsible for all
3295 reasonable attorneys' fees and costs that County incurs in order to enforce the provisions of this
3296 Agreement.

3297 Operator shall notify the County immediately in the event of any accident or injury arising out of or in
3298 connection with this Agreement. The indemnification provisions in this Agreement shall survive any
3299 expiration or termination of this Agreement.

3300 **B. Hazardous Substance Indemnification**

3301 To the extent allowed by Applicable Law, Operator shall indemnify, defend with counsel acceptable to
3302 the County (provided that such acceptance shall not be unreasonably withheld), and hold harmless
3303 "Indemnitees" from and against any and all claims, damages (including, but not limited to, special,
3304 consequential, natural resources, and punitive damages), injuries, costs (including, but not limited to, all
3305 response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action,
3306 suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including
3307 attorneys' and expert witness' fees incurred in connection with defending against any of the foregoing
3308 or in enforcing this indemnity (collectively, "damages")) of any nature whatsoever paid, incurred,
3309 suffered by, or asserted against Indemnitees, arising from or attributable to any repair, cleanup,
3310 detoxification, or preparation and implementation of any removal, remedial, response, closure, or other
3311 plan concerning any Hazardous Substances or Hazardous Waste released, spilled, or disposed of by
3312 Operator pursuant to this Agreement. Notwithstanding the foregoing, however, Operator is not required
3313 to indemnify the Indemnitees against claims arising from Operator's delivery of Unacceptable Waste for
3314 Disposal at the Landfill, unless such claims are a direct result of Operator's negligence or willful
3315 misconduct. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e)
3316 of CERCLA, 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the Resource
3317 Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.* to defend, protect, hold harmless, and
3318 indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this
3319 Agreement.

3320 **C. CalRecycle Indemnification**

3321 In addition to any other indemnity obligations set forth herein, Operator agrees to indemnify, defend,
3322 and hold harmless Indemnitees from and against any and all fines and/or penalties imposed by
3323 CalRecycle or the Local Enforcement Agency ("LEA"), in proportion to its fault, and subject to other
3324 restrictions set forth in California Public Resources Code Section 40059.1, if the requirements of AB 939,
3325 SB 1016, AB 341, AB 1826, and/or SB 1383 are not met with respect to the Acceptable Materials
3326 Processed or otherwise accepted by Operator at the Facility under this Agreement, and such failure is
3327 due to the failure of Operator to meet its obligations under this Agreement or due to Operator delays in
3328 providing information or providing incomplete or inaccurate information that prevents Operator or the

3329 County from submitting accurate reports required by CalRecycle in a timely manner. Operator's duty to
3330 indemnify and defend shall survive the expiration or earlier termination of this Agreement.

3331 **D. Environmental Indemnification**

3332 Operator shall defend, indemnify, and hold harmless Indemnitees against and from any and all claims,
3333 suits, losses, penalties, damages, and liability for damages of every name, kind, and description, including
3334 attorneys' fees and costs incurred, attributable to and to the extent of the negligence or willful
3335 misconduct of Operator in handling Unacceptable Waste.

3336 **ARTICLE 14. DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

3337 **14.1 Performance**

3338 **A. Compliance and Remedies**

3339 The County may, at any time it has reasonable cause to believe that Operator is not performing in
3340 accordance with the Performance Guarantees or with any other provisions of the Agreement, require
3341 Operator and/or the guarantor to provide reasonable assurances of performance.

3342 Operator shall at all times comply with the Performance Guarantees, except to the extent compliance is
3343 prevented or excused by Uncontrollable Circumstances, unless such failure was solely the result of the
3344 County's failure to perform its obligations under this Agreement. If Operator fails to comply with any
3345 Performance Guarantee and is not prevented or otherwise excused from performance, Operator shall:
3346 (i) promptly notify the County within three (3) Week Days of Operator's having knowledge of any such
3347 noncompliance; (ii) promptly provide the County within three (3) Week Days with copies of any notices
3348 sent to, or received from, any Governmental Body having regulatory jurisdiction with respect to any
3349 violations of Applicable Law; (iii) pay any resulting direct damages, fines, judgments, or awards, including
3350 liquidated damages, levies, assessments, impositions, penalties, or other charges; (iv) at its own cost and
3351 expense, take any commercially practicable action (including, without limitation, making repairs,
3352 replacements, and operating and management practices changes) necessary, in light of the nature,
3353 extent, and repetitiveness of such noncompliance, in order to comply with such Performance Guarantee,
3354 to continue or resume performance hereunder and eliminate the cause of, and to reasonably assure that
3355 such non-compliance will not recur; (v) promptly prepare all public notifications required by Applicable
3356 Law, and submit copies of such notifications to the County; and, (vi) assist the County with all public
3357 relations matters necessary to adequately address any public concern caused by such noncompliance,
3358 including, but not limited to, preparation of press releases, attendance at press conferences, and
3359 participation in public information sessions and meetings.

3360 **B. Remedies for Breach**

3361 The County may, in the event that Operator breaches any material provision of the Agreement and does
3362 not promptly cure said breach within any applicable period provided in this Agreement, exercise any
3363 legal rights it has under the Agreement and under Applicable Law to recover damages or to secure
3364 specific performance. No remedy herein conferred upon or reserved to the County is intended to be
3365 exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted

by law, shall be cumulative and in addition to any other remedy given hereunder, now, or hereafter existing at law or in equity or otherwise.

14.2 Events of Default, Breach, and Remedies

All provisions of this Agreement to be performed by Operator are considered material. Each event for which Operator has no opportunity to cure shall be considered an event of Default and each event for which Operator has opportunity to cure shall be considered a breach; provided, however, that failure to cure any breach shall become an Event of Default.

A. Events of Default (No Opportunity to Cure)

Events for which no opportunity to cure is provided:

1. **Fraud or Deceit or Misrepresentation.** Operator engages in, or attempts to practice, any fraud or deceit upon the County or Public Participants, or makes a misrepresentation regarding material information including, but not limited to, financial information, operation of MRF, repairs of the MRF, and any plans required by this Agreement to the County or Public Participants.
2. **False or Misleading Statements.** Any representation or warranty made by Operator under this Agreement, or any amendment to this Agreement, which documentation proves to be false or misleading in any material respect as of the time such representation or warranty is made.
3. **Insolvency, Bankruptcy, or Attachment.** If Operator or guarantor becomes insolvent, unable, or unwilling to pay its debts, fails to make two (2) or more consecutive timely payments, fails to make more than three (3) timely payments in a twelve-month (12) period, files a bankruptcy petition or takes steps to liquidate its assets, or, there is a seizure of, attachment of, or levy on, the operating equipment of Operator, including, without limits, its equipment, Maintenance or office facilities, vehicles, or any part thereof, or placement of unauthorized liens on any equipment owned by the County, etc.
4. **Failure to Maintain or Secure Necessary Permits/Approvals.** Operator fails to acquire and/or maintain all Permits, licenses, or other approvals required for Facility Operations or to acquire and maintain those needed for Facility improvements and operational changes and such failure to acquire and maintain such Permits, licenses, or other approvals prevents the Facility from operating and Processing Acceptable Waste for a period of greater than five (5) consecutive Days or ten (10) non-consecutive Days, except where reasonably due to an Uncontrollable Circumstance(s), unless such failure was solely the result of the County's failure to perform its obligations under this Agreement.
5. **Abandonment of Facility.** Except as reasonable due to an Uncontrollable Circumstance(s), Operator does not operate and/or fails to oversee all Operations conducted at the Facility during the normal operating hours identified in Section 5.3, without prior Notice.
6. **Repeated Failure to Meet Facility Throughput Guarantee.** Except as otherwise provided in Section 2.13, Operator fails to accept all Acceptable Materials covered by the Material Throughput Guarantee provided in Article 9 for more than three (3) consecutive Days on three (3) separate occasions within a single calendar year, except if due to a labor-initiated work stoppage or

3404 slowdown that demonstrably affects Operations and where such excuse from performance labor-
3405 initiated work stoppage is at the County's sole discretion, or an Uncontrollable Circumstance(s),
3406 unless such failure was solely the result of the County's failure to perform its obligations under this
3407 Agreement.

3408 7. **Failure to Maintain All Security Instruments.** If Operator fails to provide or maintain in full force
3409 and effect any insurance, performance bonds or other security, workers' compensation, liability,
3410 or indemnification coverage as required by this Agreement, unless waived by the County, subject
3411 to the requirements of Article 13, Exhibit P: Performance Bond, and Exhibit Q: Insurance
3412 Requirements.

3413 8. **Assignment.** Operator assigns or attempts to assign any portion of the Agreement without
3414 approval of the County.

3415 9. **Other.** Any action or inaction by Operator that County determines adversely impacts health and
3416 safety or prevents continued operation of the Facility or Site for more than thirty (30) consecutive
3417 Days.

3418 **B. Events of Breach (Curable)**

3419 Operator shall have thirty (30) Days after receiving the County's oral or written Notice to cure the
3420 following events, unless the event of breach is a matter where there is a threat to public health or safety,
3421 in which case Operator shall commence cure within two (2) Days and complete within fifteen (15) Days
3422 or as otherwise directed by the County, and also excepting those circumstances where County agrees
3423 that additional time beyond thirty (30) Days is reasonably needed to cure an alleged breach, and
3424 Operator promptly commences a cure of the alleged breach and diligently pursues the cure to
3425 completion.

3426 1. **Failure to Meet Facility Throughput Guarantee.** Except as otherwise provided in Section 2.13,
3427 Operator failure to accept over any seven (7) consecutive Day period all Acceptable Materials
3428 covered by the weekly Material Throughput Guarantee provided in Section 2.10 and Article 9 from
3429 the County for more than, except if due to a labor-initiated work stoppage or slowdown that
3430 demonstrably affects Operations, or an Uncontrollable Circumstance(s), unless such failure was
3431 solely the result of the County's failure to perform its obligations under this Agreement.

3432 2. **Failure to Remit Scheduled Payments.** Operator failure to remit to the County payments due, as
3433 provided in Article 10 of the Agreement.

3434 3. **Failure to Cooperate with Audits.** Failure to complete, perform, or cooperate with any audit as
3435 required by this Agreement.

3436 4. **Failure to Submit Reports, Documentation, or Requested Data or Information.** Operator fails to
3437 complete or provide required reports or documents to the County as required by this Agreement
3438 within ten (10) Week Days of scheduled submittal date, or provide within ten (10) Week Days of
3439 the request date information, reports, and/or other records as required in Section 12.2 of the
3440 Agreement.

3441 5. **Failure to Meet Diversion Guarantee.** Operator fails to meet the Diversion Guarantee coupled
3442 with Operator's failure to follow the protocol outlined in Article 9.

- 3443 6. **Failure to Provide Assurance of Performance.** Operator fails to provide reasonable assurances of
3444 performance as required under Section 14.1.
- 3445 7. **Failure to Pay Compensatory Damages.** Operator fails to pay compensatory damages suffered by
3446 the County within the time provided in this Agreement or sixty (60) Days following the end of an
3447 Agreement Year, except where County has expressly agreed to submit the disputed amount to
3448 Dispute Resolution. For purposes of this Section, “compensatory damages” means actual damages
3449 incurred, and does not include liquidated damages or penalties.
- 3450 8. **Violations of Regulation – Material to Operations.** If Operator violates any laws, regulations,
3451 orders, licenses, Permits, or filings of any regulatory body having jurisdiction over Operator, the
3452 Facility, or the Site, and the result of such violation would be to materially interfere with Operator’s
3453 ability to perform this Agreement and Operator does not cure such violation within two (2) Week
3454 Days, provided that Operator may contest any such orders or filings by appropriate proceedings
3455 conducted in good faith. In the case Operator timely appeals said order or violation, no breach of
3456 this Agreement shall be deemed to have occurred until a final decision adverse to Operator, the
3457 County, Facility, or Site is entered by the regulatory agency.
- 3458 9. **Violations of Regulation – Not Material to Operations.** If Operator violates any laws, regulations,
3459 orders, licenses, Permits, or filings of any regulatory body having jurisdiction over Operator, and
3460 the result of such violation would not materially interfere with Operator’s ability to perform this
3461 Agreement and Operator does not cure such violation within thirty (30) Days, provided that
3462 Operator may contest any such orders or filings by appropriate proceedings conducted in good
3463 faith. In the case Operator timely appeals said order or violation, no breach of this Agreement shall
3464 be deemed to have occurred until a final decision adverse to Operator, the County, Facility, or Site
3465 is entered by the regulatory agency.
- 3466 10. **Failure to Maintain All Security Instruments.** If Operator fails to provide or maintain in full force
3467 and effect any insurance, performance bonds or other security, workers’ compensation, liability,
3468 or indemnification coverage as required by this Agreement.
- 3469 11. **Failure to Make Payments.** Failure to timely pay Operator’s employees, contractors,
3470 Subcontractors, vendors, subvendors, or suppliers.
- 3471 12. **Other.** Any other failure to perform an obligation or satisfy a condition imposed by any provision
3472 of this Agreement, Permit, license, or Applicable Law.

3473 **14.3 Criminal Activity of Operator**

3474 Should Operator or any of its officers, directors, managers, or employees have a criminal conviction of,
3475 have made an admission of guilt for, or pled nolo contendere to any offense directly related to this
3476 Agreement or any other contract held with the County, from a court of competent jurisdiction with
3477 respect to any or all of the following:

- 3478 A. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a
3479 public or private Agreement.
- 3480 B. Bribery or attempting to bribe a public officer or employee of a local, State, or federal agency in
3481 that officer’s, director’s, or Operator’s employee’s official capacity.

3482 C. Embezzlement, racketeering, false claims, false statements, forgery, falsification or destruction of
3483 records, obstruction of justice, receiving stolen property, or theft.

3484 D. Conviction for any other crime indicating a lack of business integrity or business honesty that
3485 seriously and directly affects the present responsibility of Operator or its officers or directors.

3486 Then, the County has the option to any or all of the remedy options below:

3487 1. To have each officer, director, manager, or employee of Operator or Subcontractor responsible for
3488 such proscribed conduct promptly terminated and/or replaced.

3489 2. To unilaterally terminate this Agreement, only in the event that Operator or any of its officers,
3490 directors, managers, or employees are determined to have a criminal conviction of, have made an
3491 admission of guilt for, or pled nolo contendere to any offense directly related to this Agreement
3492 or any other contract held with the County, from a court of competent jurisdiction with respect to
3493 any or all of the provisions set forth in Subsections 14.3.A-D above.

3494 3. To impose such other sanctions, which may include financial sanctions, temporary suspensions, or
3495 any other condition the County deems appropriate.

3496 **14.4 Right to Terminate Upon Default and Right to Performance**

3497 If Operator commits a material breach, including, but not limited to, any of the matters listed in Section
3498 14.2 and, if permitted to cure, does not timely cure it as provided herein, the County shall be entitled to
3499 unilaterally terminate this Agreement or impose other such sanctions (which may include financial
3500 sanctions, temporary suspensions, or any other conditions it deems appropriate short of termination) as
3501 it shall deem proper. Should the County recommend termination of this Agreement, the County shall
3502 provide Operator Notice of the County's intent to terminate at a hearing before the Board of Supervisors,
3503 and shall provide the date and time of said hearing at least fifteen (15) Days prior to said hearing. The
3504 County shall submit a report or letter to the County Board of Supervisors outlining the request for
3505 termination and the reasons for the request, which shall be provided to the County Board at least six (6)
3506 Days before the hearing. Operator may submit a written response to the report or letter at least three
3507 (3) Days before the hearing, which shall be submitted to the Clerk of the Board with copies provided to
3508 the County. At the hearing, the County and Operator, or designee, shall be provided with an opportunity
3509 to address the Board. The decision of the Board of Supervisors is final. In the event the Board directs
3510 contract termination, termination shall proceed, as provided in Section 14.6.

3511 County's rights to terminate this Agreement are not exclusive, and the County's termination of this
3512 Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to
3513 any and all other legal and equitable rights and remedies which County may have.

3514 By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the
3515 time required to effect alternative service, and the rights granted by the County to Operator, the remedy
3516 of damages for a breach hereof by Operator is inadequate and the County shall be entitled to seek
3517 injunctive relief and/or specific performance of any breach of this Agreement.

3518 14.5 Waiver

3519 County's waiver of any breach or default shall not be deemed to be a waiver of any other breach or
3520 default, including ones with respect to the same obligations hereunder. The subsequent acceptance by
3521 the County of any damages or other money paid by Operator shall not be deemed to be a waiver by the
3522 County of any preexisting or concurrent breach or default.

3523 14.6 Suspension, Termination of Portion of Obligations

3524 In the event the County suspends all or a portion of this Agreement or terminates a portion of Operator's
3525 Obligations required by this Agreement, Operator shall continue to fully perform its obligations under
3526 the remaining portions hereof that are not suspended or terminated. For example, if the County
3527 suspends Operator's Obligations with respect to Processing of Source-Separated Recyclable Materials
3528 upon the occurrence of one (1) or more events listed in Section 14.2, Operator would be obligated to
3529 fully perform its other obligations hereunder, including, but not limited to, receipt and Processing of
3530 Mixed Waste through the Facility, Marketing of Products and Disposal of Residue, etc. No compensation
3531 will be provided for the suspended services.

3532 14.7 Operator's Payment of Damages

3533 Operator shall pay the County any outstanding damages accrued and payable at the time of suspension
3534 or termination.

3535 OPERATOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

3536 14.8 County Right to Perform**3537 A. General**

3538 If Operator's performance, or any portion thereof, under this Agreement is suspended for any reason,
3539 unless such failure was solely the result of the County's failure to perform its obligations under this
3540 Agreement, for a minimum of seven (7) Days, whether or not County determines Operator to be in
3541 default, then the County shall have the right, but not the obligation, to itself perform with its own or
3542 other personnel, or cause to be performed, some or all of the services provided under the Agreement,
3543 utilizing the Facility and other County property and equipment, as well as all Non-Fixed Equipment, and
3544 other equipment, software, or licenses owned or obtained by Operator that is used to provide such
3545 service. If County performance costs, including procurement of labor, equipment and materials, and all
3546 other expenses necessary to perform such obligations exceed the amounts which would have been
3547 payable to Operator hereunder had Operator fully performed, then Operator shall pay the amount of
3548 such excess to the County.

3549 Notice of the County's determination to exercise its rights under this Section may be given orally by
3550 telephone to Operator at its principal office and shall be effective immediately. Written confirmation of
3551 such oral notification shall be sent to Operator within twenty-four (24) hours of the oral notification.

3552 Operator further agrees that in such event:

1. It will take direction from the County to affect the transfer of possession of all or any portion of equipment and property, including Non-Fixed Equipment, to County for County use, or for use by any Person or entity designated by the County.
2. It will, if the County so requests, keep in good repair and condition all such equipment and property, provide all motor vehicles and other equipment with fuel, oil, electricity, and other services, and provide such other services as may be necessary to maintain said property in operational condition.
3. County may immediately engage any or all personnel necessary or useful to provide services, including, if the County so desires, employees previously or then employed by Operator. Operator further agrees, if the County so requests, to furnish County with the services of any or all management or office personnel employed by Operator whose services are necessary or useful for provision of the services described under this Agreement.

B. County's Right to Direct Operator's Resumption of Service

It is further mutually agreed that County may, at any time in its sole discretion, provide control of the Facility to Operator and thereupon demand that Operator resume the services as provided in this Agreement, whereupon Operator shall be bound to resume the same. If the County does not provide control of the Facility to Operator within one hundred and eighty (180) Days of continuous operation by the County, then Operator shall no longer be obligated to resume Operation and this Agreement shall terminate in accordance with Section 14.2.

C. County Possession not a Taking

It is expressly agreed between the Parties that County's exercise of its rights under this Article: (i) does not constitute a taking of private property for which compensation must be paid; (ii) shall not create any liability on the part of the County to Operator; and, (iii) does not exempt Operator from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Operator is not required to indemnify the County against claims and damages arising from the sole negligence of the County, its elective and appointive boards, commissions, officers, employees, and agents in any activities related to the Facility during the time County has taken possession of the Facility and its facilities.

D. Duration of County Possession

County's rights pursuant to this Article to retain temporary possession of any of Operator's equipment that might be in use at the Facility, and to render services provided for under this Agreement, shall terminate when: (i) Operator demonstrates to the County's satisfaction that it is ready, willing, and able to resume providing such services, (ii) the County no longer reasonably requests such equipment, including Non-Fixed Equipment, or (iii) one hundred and eighty (180) Days from the date County retained temporary possession, whichever occurs first. In any case, the County shall retain all rights, maintain possession of Operator's equipment, and/or continue its use for any period of time and may at any time, in its sole discretion, and shall be under no obligation to, relinquish possession to Operator except as otherwise provided above.

14.9 Liquidated Damages

A. General

County finds, and Operator agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that shall be incurred by the County as a result of a breach by Operator of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity, which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages

The Parties further acknowledge that consistent, reliable Operations is of utmost importance to the County and that County has considered and relied on Operator's representations as to its quality of service commitment in entering this Agreement. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Operator fails to comply with the Agreement or achieve the performance standards, or fails to submit required reports or documents in a timely manner, the County and Public Participants' residents, businesses, and Collector Contractors may suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which such parties will suffer. Therefore, without prejudice to the County's right to treat such breaches as an Event of Default under this Article, the Parties agree that the liquidated damages amounts set forth in Exhibit C: Liquidated Damages represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the County and others that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damages provisions at the time that the Agreement was made.

Operator County

Initial Here _____ Initial Here _____

Operator agrees to pay (as liquidated damages and not as a penalty) the amounts set forth in Exhibit C: Liquidated Damages.

3629 County may determine the occurrence of events giving rise to liquidated damages through the
3630 observation of its own employees or representative.

3631 To the extent feasible, prior to assessing liquidated damages, the County will give Operator Notice. The
3632 Notice will include a brief description of the basis for assessing liquidated damages and the amount in
3633 accordance with Exhibit C: Liquidated Damages. Operator may, within ten (10) Days after the Notice is
3634 sent, request a meeting with County. At the meeting, Operator may contest the assessment of liquidated
3635 damages by present evidence in writing or through testimony of its employees or others relevant to the
3636 incident(s)/non-performance. Within fifteen (15) Days following the meeting, the County will provide
3637 Operator with its determination on each incident(s)/non-performance if liquidated damages will be
3638 assessed and in what amount, and if the damages will continue to accrue until the incident/non-
3639 performance is remedied to the satisfaction of the County. The decision of the County shall be final. In
3640 general, liquidated damages will be assessed from the date of the Notice (unless it is not feasible for the
3641 County to provide Notice when the incident or non-performance occurs) and may continue to be
3642 assessed until the matter is completely resolved to the County's satisfaction, and will not be stayed for
3643 any meetings requested by Operator, unless otherwise directed by the County.

3644 **C. Amount**

3645 County may assess liquidated damages for each and every calendar Day or event, as appropriate, that
3646 Operator is determined to be liable in accordance with this Agreement.

3647 **D. Timing of Payment**

3648 County may either withhold the liquidated damage amount from compensation to be paid to Operator,
3649 or the County may request Operator to pay any liquidated damages assessed by the County within ten
3650 (10) Days after they are assessed. If they are not paid within the ten (10) Day period, and there is
3651 insufficient Operator Compensation to cover these damages due within the ten (10) Day period or other
3652 period that Parties may agree to, the County may proceed against the performance bond or other
3653 securities required by the Agreement, or find Operator in default and terminate this Agreement, or both.

3654 **14.10 Excuse from Performance**

3655 The Parties shall be excused from performing their respective obligations hereunder in the event they
3656 are prevented from so performing due to an Uncontrollable Circumstance, unless such failure was solely
3657 the result of the County's failure to perform its obligations under this Agreement. The Party claiming
3658 excuse from performance shall, within one (1) Week Day after such Party has become aware of such
3659 cause, give the other Party Notice of the facts constituting such cause and asserting its claim to excuse
3660 under this Section.

3661 The interruption or discontinuance of Operator's services caused by one (1) or more of the events
3662 excused shall not constitute a default by Operator under this Agreement. Notwithstanding the foregoing,
3663 if Operator is excused from performing its obligations hereunder for any of the causes listed in this
3664 Section for a period of seven (7) Days or more, the County shall nevertheless have the right, in its sole
3665 discretion, to terminate this Agreement by giving ten (10) Days' Notice, in which case the provisions
3666 relative to the County's operation of the Facility, using all equipment, and engaging Operator's personnel
3667 in this Article will apply.

14.11 Events of Default by County

The following shall constitute an Event of Default by the County: Repeated and persistent failure or refusal by the County to perform its material obligations under the Agreement, provided that: (i) Operator has given prior written Notice of the breach of the Agreement giving rise to the default, which is not excused by an Uncontrollable Circumstance or the fault of Operator; and, (ii) such breach has not been corrected or the County has not taken reasonable steps to correct such breach within thirty (30) Days of such Notice. Operator may, in the event of a County Event of Default, exercise any legal rights it has under the Agreement and under Applicable Law, including securing specific performance.

14.12 Dispute Resolution, Non-Binding Arbitration

The Parties may, if both choose to do so, use non-binding arbitration as a dispute resolution procedure. In such event, the Parties will follow the following non-binding arbitration proceedings using an independent arbitrator. Parties may mutually agree to mediation in an attempt to resolve conflicts prior to entering arbitration. Either Party may also choose to use an Independent Expert(s) to develop and present factual information to an "Independent Arbitrator."

A. Selection

If either Party wishes to select an arbitrator, each Party shall prepare a separate list of five (5) independent arbitrators having experience, as applicable, in service contracts for ongoing performance, or operation of similar solid waste-related facilities, in numerical order with the first preference at the top, and exchange and compare lists. The independent arbitrator ranking highest on the two (2) lists by having the lowest total rank order position on the two (2) lists shall be the Independent Arbitrator. In case of a tie in scores, the Independent Arbitrator having the smallest difference between the rankings of the two (2) Parties shall be selected; other ties shall be determined by a coin toss. If no Independent Arbitrator appears on both lists, this procedure shall be repeated. If selection is not completed after the exchange of three (3) lists or sixty (60) Days, whichever comes first, then each Party shall select one (1) independent arbitrator having experience described above and the two (2) arbitrators so selected shall together select an Independent Arbitrator.

B. Costs

Parties shall pay the costs of the Independent Arbitrator in accordance with the provisions hereof, provided that if no provision is specifically made, the Parties shall share the costs of the Independent Arbitrator equally for the first three (3) dispute resolutions brought in any twelve (12) month period commencing on July 1, and thereafter shall be borne by the loser, as determined by the Independent Arbitrator.

C. Notices

Following the Parties' mutual Reasonable Business Efforts to resolve disputes for a period of no less than thirty (30) Days, the Parties shall each give the Independent Arbitrator Notice detailing the dispute together with a written statement of each Party's position thereon. Parties shall simultaneously exchange copies thereof. Upon mutual written consent of the Parties, the determination of the Independent Arbitrator shall be binding.

Both Parties shall, in good faith and in writing, promptly provide the Independent Arbitrator with any and all information and documentation the Independent Arbitrator requires or requests in order to make its determination. Each Party shall simultaneously provide the other Party with copies thereof. Neither Party shall communicate orally with the Independent Arbitrator unless the other Party is privy thereto. Neither Party shall communicate in writing with the Independent Arbitrator unless it simultaneously sends copies of such communication to the other Party, in the same manner that it sends such communication to the Independent Arbitrator.

D. Determination

The Independent Arbitrator shall make its determination based on the submissions of the Parties, the provisions hereof, and other factual determinations it may make regarding the matter in dispute. The determination of the Independent Arbitrator shall not be binding unless the Parties mutually agree in writing that such determination shall be binding.

ARTICLE 15. OTHER AGREEMENTS OF THE PARTIES

15.1 Relationship of Parties

The Parties intend that Operator shall perform the services required by this Agreement as an independent contractor engaged by the County, and not as an officer or employee of the County, nor as a partner of or joint venture with County. No employee or agent of Operator shall be or shall be deemed to be an employee or agent of the County. Except as otherwise expressly provided, Operator has exclusive control over the manner and means of performing Operator Obligations and all Persons performing them. Operator shall be solely responsible for the acts and omissions of its officers, employees, affiliates, contractors, Subcontractors, and agents. Neither Operator nor its officers, employees, affiliates, contractors, Subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to County employees by virtue of their employment with County.

15.2 Compliance with Law

In providing the services required under this Agreement, Operator shall at all times, at its sole cost, comply with all Applicable Laws now in force and as they may be enacted, issued, or amended, including, but not limited to, the payment of prevailing wage, if applicable.

15.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, without regard to the conflicts of laws or rules thereof.

15.4 Jurisdiction

All legal actions and proceedings relating to the Agreement or to any rights or any relationship between the Parties arising therefrom shall be governed solely by the laws of California and be subject to the venue of the Santa Barbara County Superior Court or Central District Court of the State of California.

15.5 Assignment

The Agreement shall be subject to the following limitations on transfer or assignment:

A. No Assignment without Prior Consent of Other Party

Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement (collectively referred to as an “Assignment”) to any other Person without the prior written consent of the other Party. Any such Assignment made without the consent of the other Party shall be void and the attempted Assignment shall constitute a material breach of this Agreement, subject to the provisions of Subsection 14.2.B.9. The County may, however, assign their rights and delegate their obligations under this Agreement to a joint powers authority, district, or similar governmental entity, other than the County, without the prior written consent of Operator. For purposes of this Section, “Assignment” shall include, but not be limited to:

1. A sale, exchange, or other transfer to a third party of at least twenty-five percent (25%) of Operator’s assets dedicated to service under this Contract.
2. A sale, exchange, or other transfer to a third party, including other shareholders, of outstanding common stock of Operator, which may result in a change of control of Operator.
3. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which Operator or any of its shareholders are a party, which results in a change of ownership or control of Operator.
4. Any Assignment by operation of law, including insolvency or bankruptcy, Assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Operator’s property, or transfers occurring in a probate or other estate proceeding.
5. Any combination of the foregoing (whether or not in related or contemporaneous transactions, which has the effect of any such transfer or change of ownership, or change of control of Operator).

B. Reliance on Operator for Vital Service

Operator acknowledges that this Agreement involves rendering a vital service to the County and Public Participants’ residents and businesses, and that the County has selected Operator to perform the services specified herein based on:

1. Operator’s experience, skill, and reputation in the Operation and Maintenance of the Facility.
2. Operator’s financial resources to support its indemnity obligations to the County under this Agreement.

C. Operator Request

If Operator requests the County’s consideration of and consent to an Assignment, the County may deny or approve such request in its discretion. The County will not unreasonably withhold its consent. The

3777 following standards have been set to ensure that Assignment will result in continued quality service. At
3778 a minimum, no request by Operator for consent to an Assignment need be considered by the County
3779 unless and until Operator has met the following requirements:

3780 1. Operator shall pay the County its reasonable expenses (including attorneys' fees and other
3781 professional services fees) to investigate the suitability of any proposed assignee, and review and
3782 finalize any documentation required as a condition for approving any such Assignment. Any
3783 request for an Assignment shall be submitted with a deposit of fifty thousand dollars (\$50,000)
3784 towards the cost of review.

3785 2. Operator shall pay the County a transfer fee upon approval of Assignment equal to eighty thousand
3786 dollars (\$80,000) per year for three (3) years, or for the remainder of the Term, whichever is less.

3787 3. Operator shall furnish the County with audited financial statements of the proposed assignee's
3788 operations, meeting the requirements of Subsection 12.2.F, for the immediately preceding three
3789 (3) operating years.

3790 4. Operator shall furnish the County with satisfactory proof:

3791 i. That the proposed assignee has solid waste management experience of sufficient type and
3792 duration to ensure it can fulfill the terms of this Agreement.

3793 ii. That in the last five (5) years, the proposed assignee or affiliates has not suffered any
3794 significant citations or other censure from any federal, State, or local agency having
3795 jurisdiction over its waste management operations due to any significant failure to comply
3796 with State, federal, or local Environmental Laws, and that the assignee has provided the
3797 County a complete list of such citations and censures.

3798 iii. That the proposed assignee has, at all times, conducted its operations in an environmentally
3799 safe and conscientious fashion.

3800 iv. That the proposed assignee conducts its solid waste management practices in accordance
3801 with sound waste management practices in full compliance with all federal, State, and local
3802 laws regulating the collection and disposal of solid waste, including Hazardous Wastes.

3803 v. Of any other information required by the County to ensure the proposed assignee can fulfill
3804 the terms of this Agreement in a timely, safe, and effective manner.

3805 5. The assignee shall assume all duties and obligations, whether precedent or otherwise. The County
3806 may, in its sole discretion, require additional, reasonable assurances of performance beyond those
3807 stipulated in this Agreement, including additional types or amounts of securities.

3808 6. Operator shall remain secondarily liable for the Agreement.

3809 **D. Assignment in Event of Default**

3810 Under no circumstances shall the County be obliged to consider any proposed Assignment if Operator is
3811 in default of the Agreement at any time during the period of consideration.

3812 15.6 Binding on Assigns

3813 The provisions of this Agreement, including all representations, covenants, and warranties, shall inure
3814 to the benefit of and be binding on the permitted assigns (if any) of the Parties.

3815 15.7 Cooperation Upon Termination or Expiration of Contract

3816 Prior to, and at the end of the Term, or in the event this Agreement is terminated for cause prior to the
3817 end of the Term, Operator shall cooperate fully with County and any subsequent third party operator
3818 that County designates to assure a smooth transition of Operations and management. Such cooperation
3819 shall generally include, but not be limited to, transfer of computer data, files and tapes, and all written
3820 materials related to Operations at the Facility that are reasonably required to assume the role of
3821 Operator. Provision of information shall include, but not be limited to: (i) labor and employment records;
3822 (ii) equipment and supply inventories; (iii) up-to-date and historical Maintenance records; (iv) originals
3823 of Permits, licenses and other entitlements; (v) regulatory and permitting agency communications; (vi)
3824 Maintenance and supply contracts; (vii) Product sales contracts; (viii) non-technical and technical design,
3825 construction, and Operations information, whether or not proprietary, including the Operations and
3826 Maintenance Manual, technical specifications, and as-built plans of the Processing system, and assign or
3827 provide any other license or consent which is necessary for all Operations; and, (ix) all other data
3828 required to be maintained under this Agreement and/or that are reasonably required to fulfill Operator's
3829 Obligations.

3830 Operator's cooperation shall also include, but not be limited to the following:

- 3831 A. Promptly turn over all keys and security codes for access to property and Operations at the Facility.
- 3832 B. Leave Facility and equipment clean, intact and fully operable, and deliver possession of the Facility
3833 and all equipment as directed by the County.
- 3834 C. Vacate the Facility, removing all Operator property not related to Operations.
- 3835 D. Transfer to the County or, at the County's request, a new contractor(s) the rights to use any and
3836 all patents, licenses, trade secrets, or other intellectual property necessary for all Operations at
3837 the Facility.
- 3838 E. Deliver possession of any proprietary components needed for all Operations at the Facility to the
3839 County or, at the County's request, to the new operator.
- 3840 F. Provide thirty (30) Days of training of such personnel designated by the County that may
3841 reasonably be necessary to enable the County or a new contractor(s) to safely and successfully
3842 commence Operations.
- 3843 G. Pay all taxes due to appropriate parties including, but not limited to, State, County, Public
3844 Participants, and other local agencies.

3845 The failure to cooperate with County following expiration of the Term or early termination shall be
3846 conclusively presumed to be grounds for specific performance of this covenant and/or other equitable
3847 relief necessary to enforce this covenant.

15.8 Cooperation Upon Transition

In the event of an Assignment or transfer, or if Operator is not awarded an extension following the expiration or earlier termination of the Agreement, Operator shall cooperate fully with County and any subsequent contractor(s) as designated by the County to assure a smooth transition of services described in this Agreement, as provided in Section 15.7.

15.9 Parties in Interest

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

15.10 Operator's Investigation

Operator has made an independent investigation (satisfactory to Operator) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

15.11 Notice

All Notices, demands, requests, proposals, approvals, consents, and other communications that this Agreement requires, authorizes, or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to the County:

County of Santa Barbara
Attn: Deputy Director
Resource Recovery & Waste Management
130 E. Victoria Street, Suite 100
Santa Barbara, CA 93101
Telephone: (805) 882-3603
Fax: (805) 882-3633
Email: jgonzal@countyofsb.org

If required:

Attn: County Counsel
105 E. Anapamu, Suite 201
Santa Barbara, CA 93101
Telephone: (805) 568-2950
Fax: (805) 568-2982

If to Operator:

MarBorg Recovery, LP
Attn: Brian Borgatello
Telephone: 805-963-1852
Fax: 805-962-0552
Email: bborgatello@marborg.com

3887 The address to which communications may be delivered may be changed from time to time by a Notice
3888 given in accordance with this Section. Parties may request that electronic copies also be provided.

3889 Notice shall be deemed given on the Day it is personally delivered or, if mailed, three (3) Days from the
3890 date it is deposited in the mail.

3891 **15.12 Operator's Representative**

3892 Operator shall, by the Effective Date, designate in writing a responsible officer who shall serve as the
3893 representative of Operator in all matters related to the Agreement and shall inform the County in writing
3894 of such designation and of any limitations upon their authority to bind Operator. The County may rely
3895 upon action taken by such designated representative as actions of Operator unless they are outside the
3896 scope of the authority expressly delegated to him/her by Operator as communicated to the County.

3897 **15.13 Compliance with County, Public Participant Codes**

3898 Operator shall comply with those provisions of any of the codes and ordinances issued by the County
3899 and Public Participants that are applicable, and with any and all amendments to such provisions during
3900 the Term of this Agreement.

3901 **15.14 Exercise of Options**

3902 Except as otherwise provided, the County's exercise of any approval, disapproval, option, discretion,
3903 election, or choice hereunder shall be in the County's independent, sole, exclusive, and absolute control
3904 and judgment, unless this Agreement specifically provides that such exercise must be reasonable.

3905 **15.15 No Third Party Beneficiaries**

3906 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
3907 party to bring an action to enforce any of its terms.

3908 **15.16 Professionalism**

3909 Operator, its employees, Subcontractors, and other agents shall act in a professional and courteous
3910 manner at all times.

3911 **15.17 Cooperation and Disputes**

3912 Operator shall fully comply with its obligations and cooperate to its fullest extent with third party service
3913 providers, such as purchasers of Products. In the event of disputes between Operator and such third
3914 parties, Operator shall be solely responsible for resolving such dispute in a manner that ensures full and
3915 uninterrupted performance of Operator's Obligations.

3916 **15.18 Payment of Taxes**

3917 Operator shall pay all taxes, levies, duties, and assessments of every nature due in connection with any
3918 work under this Agreement and shall make any and all payroll deductions required by Applicable Law.
3919 The County shall not be responsible for paying any taxes on Operator's behalf, and should the County be
3920 required to do so by State, federal, or local taxing agencies, Operator agrees to promptly reimburse

3921 County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include,
3922 but not be limited to, the following: FICA (Social Security), unemployment insurance contributions,
3923 income tax, disability insurance, and workers' compensation insurance.

3924 **15.19 Operator's Records**

3925 Operator shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks,
3926 Tonnages, and other records or documents evidencing or relating to charges for services, or
3927 expenditures and disbursements related to the Facility, for a minimum period of four (4) years, or for
3928 any longer period required by Applicable Law, from the date of final payment to Operator pursuant to
3929 the Agreement. Operator shall maintain all documents, reports, and records that demonstrate
3930 performance of Operator's Obligations for a minimum period of four (4) years, or for any longer period
3931 required by Applicable Law, from the date of termination the Agreement. Any records, reports, or
3932 documents required to be maintained pursuant to this Agreement shall be made available for inspection
3933 or audit, at any time during regular business hours, upon request by the County. Copies of such
3934 documents shall be provided to the County for inspection at Operator's offices, Facility, or at County
3935 offices, as specified by the County. Where County has reason to believe that such records or documents
3936 may be lost or discarded due to dissolution, disbandment or termination of Operator's business, the
3937 County may, by written request or demand, require that custody of the records be given to the County
3938 and that the records and documents be maintained at County offices. Access to such records and
3939 documents shall be granted to any party authorized by Operator, Operator's representatives, or
3940 Operator's successor-in-interest.

3941 Operator may mark records which include "trade secrets" as "CONFIDENTIAL–TRADE SECRET
3942 INFORMATION." Should the County receive a Public Records Act request seeking any of the records
3943 marked "CONFIDENTIAL–TRADE SECRET INFORMATION," the County shall promptly notify Operator of
3944 such request to allow Operator a reasonable time to seek a judicial order preventing the public disclosure
3945 of such information.

3946 **15.20 Facility at Termination**

3947 **A. County Option to Acquire Equipment, or Require Removal**

3948 Upon the expiration of the Term, and in accordance with Subsections 5.5.B and 5.5.G, the County shall
3949 have the exclusive option, at its sole discretion, to acquire all Non-Fixed Equipment, Maintenance
3950 equipment, furnishings, and office equipment at the net book value, or outstanding debt balance,
3951 whichever is greater. If the County determines not to purchase such equipment at the expiration of the
3952 Term, Operator shall promptly remove such equipment from the Site.

3953 **B. Transition of Operations**

3954 Upon termination or expiration of the Agreement, Operator shall take direction from the County to
3955 transition Operations of the Facility to the next operator(s) to assure a smooth transition of Operations
3956 and management, including, at least one hundred eighty (180) Days prior to the transition of services,
3957 attending meetings with the next service provider and with County staff and consultants to plan for the
3958 transition to the new operator. Operator shall perform in accordance with such plan and direct personnel

to provide Operations and transition assistance. Operator will direct its employees to provide accurate information to the new operator about Operations, customers, buyers, and suppliers of the Facility.

C. Condition of Facility

Throughout the Term, Operator shall use Good and Accepted Operating Practices to maintain the Facility in a good and safe condition, and mitigate any negative environmental impacts (such as Hazardous Waste exposure and ground water contamination) to the Facility and roadways used to access the Facility, such that there shall be no ongoing negative environmental impacts or conditions resulting from Facility Operations at the Site upon expiration of the Term.

15.21 Conflict of Interest

Operator covenants that Operator presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Operator further covenants that in the performance of this Agreement, no Person having any such interest shall be employed by Operator. Operator must promptly disclose to the County, in writing, any potential conflict of interest. The County retains the right to waive a conflict of interest disclosed by Operator if the County determines it to be immaterial, and such waiver is only effective if provided by the County to Operator in writing.

15.22 No Publicity or Endorsement

Operator shall not use County's name or logo or any variation of such name or logo in any publicity, advertising, or promotional materials. Operator shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Operator. Operator shall not in any way contract on behalf of or in the name of the County. Operator shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of the County.

15.23 County Property and Information

All of the County's property, documents, and information provided for Operator's use in connection with this Agreement shall remain the County's property, and Operator shall return any such items whenever requested by the County and whenever required according to Sections 14.7 and 14.8. Operator may use such items only in connection with providing the services required under this Agreement. Operator shall not disseminate any County property, documents, or information without County's prior written consent.

15.24 Ownership of Documents and Intellectual Property

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected; all documents of any type whatsoever; all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials; and any material necessary for the practical use of such items, from the time of collection and/or production, whether or not performance under this Agreement is completed or terminated prior to completion. Operator shall not release any of such items to other parties except after prior written approval of the County.

Operator assigns to the County, effective as of the date of Operator's receipt of the payments specified in Article 10 and to the extent Operator has the ability to lawfully make such assignment, all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Operator pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). The County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Operator agrees to take such actions and execute and deliver such documents as may be needed to validate, protect, and confirm the rights and assignments provided hereunder. Operator warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Operator at its own expense shall defend, indemnify, and hold harmless the County against any claim that any Copyrightable Works or Inventions or other items provided by Operator hereunder infringe upon intellectual or other proprietary rights of a third party, and Operator shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by the County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.1 Entire Contract

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no Party, agent, or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other Party to execute this instrument.

16.2 Section Headings

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

16.3 References to Laws

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

16.4 Interpretation

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either Party regardless of the degree to which either Party participated in its drafting.

4033 16.5 Amendments

4034 This Agreement may not be modified or amended in any respect except by a writing signed by the
4035 Parties. The Parties may change, modify, supplement, or amend this Contract only upon mutual written
4036 agreement duly authorized and executed by both Parties.

4037 16.6 Execution of Counterparts

4038 This Agreement may be executed in any number of counterparts and each counterpart shall for all
4039 purposes be deemed to be an original; all such counterparts, or as many of them as the Parties shall
4040 preserve undestroyed, shall together constitute one and the same instrument.

4041 16.7 Severability

4042 If any non-material provision of this Agreement is for any reason deemed to be invalid and
4043 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining
4044 provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not
4045 been contained herein.

4046 16.8 Exhibits

4047 Each of the Exhibits identified as Exhibit "A" through "V" is attached hereto and incorporated herein and
4048 made a part hereof by this reference. In the event of conflict between the provisions contained in the
4049 numbered Sections of this Agreement and the provisions contained in the Exhibits, the provisions of the
4050 Exhibits shall prevail over those in the numbered Sections.

4051 * * * *

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the date executed by COUNTY.

ATTEST:
Mona Miyasato
County Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

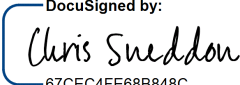
By: _____
Deputy Clerk

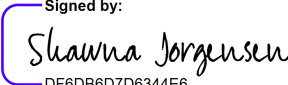
By: _____
Laura Capps
Chair, Board of Supervisors

Date: _____

RECOMMENDED FOR APPROVAL:
Santa Barbara County Public Works
Department

APPROVED AS TO ACCOUNTING FORM:
Betsy M. Schaffer, CPA
Auditor-Controller

By:  _____
Chris Sneddon, Department Head,
Public Works Director

By:  _____
Deputy

APPROVED AS TO FORM:
Rachel Van Mullem
County Counsel

APPROVED AS TO FORM:
Greg Milligan
Risk Management

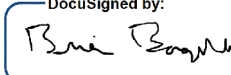
By:  _____
Deputy County Counsel

By:  _____
Risk Management

Operator signature on the following page.

Operator:

MarBorg Recovery, LP

DocuSigned by:

By: BD83FC9DE8F94C0...

Name: Brian Borgatello

Title: Partner

Authorized Representative

EXHIBIT A: RESERVED

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EXHIBIT B: OPERATIONS AND MAINTENANCE MANUAL

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EXHIBIT B:

OPERATIONS AND MAINTENANCE MANUAL

A. Waste Inspection

The tipping area is where the receipt of the single stream mixed MSW occurs. A designated employee is responsible for coordinating all vehicles and employees working on the tip floor to ensure a safe working environment (Tip Floor Spotter). All people working on the tipping floor, including Operator staff and truck drivers, must take direction from the Tip Floor Spotter. Should the Tip Floor Spotter be absent, these coordinating responsibilities fall to the Front End Loader Operator.

Regular training sessions shall be conducted for Facility employees to distinguish Acceptable Waste for Processing from Unacceptable Waste and Hazardous Waste. This will assure that any individual assigned to the tipping floor and Processing areas will be able to maintain quality control standards and allow safe Operation of the Facility. Moreover, tip floor personnel will be trained to recognize the different compositions of residential and commercial streams and the importance of segregating these for optimal Processing performance. Any material which cannot be handled safely shall not be Processed at the Facility. These materials shall not be accepted by the Facility.

The following steps cover incoming material inspection, Hazardous Waste procedures and Unacceptable Waste procedures:

1. Personnel directly involved in the handling of incoming materials, such as the Front End Loader Operator or Tip Floor Spotter will be trained and instructed to identify and deal with traffic control, excessive Unacceptable Waste, Unprocessable Waste, Hazardous Waste and Unacceptable Waste.
2. All delivered loads of material shall be unloaded onto the floor and subjected to inspection. When material is discharged onto the tipping floor, the Front End Loader Operator or Tip Floor Spotter will visually inspect the load. In the event that material of a questionable nature is received, the Facility Manager is to be notified.
3. If Hazardous Waste is discovered in a delivered vehicle, the driver will not be permitted to discharge his load and will be directed to leave the Site. The Facility Manager will be notified, and all vehicle information (hauler, vehicle number, scale ticket number, waste type, etc.) will be documented. If necessary, photographic documentation will be made.
4. If Unacceptable Waste are non-hazardous and can be handled safely, they will be reloaded into the delivery vehicle and rejected per agreed upon load rejection procedures. If the materials cannot be reloaded into the delivery vehicle, the material will be relocated to an unoccupied area of the Facility and stored in a secure container.
5. In the event that the material is determined to be Hazardous Waste but not an immediate threat, it will be removed from the area, properly labeled and stored in drums in the Hazardous Waste storage or containment area. Storage of Hazardous Waste onsite will not

EXHIBIT B:

OPERATIONS AND MAINTENANCE MANUAL

exceed 90 Days. All wastes shipped offsite will comply with State Manifesting Requirements and in accordance with all local, State and federal regulations.

6. In cases where the material is considered to be a possible immediate threat, such as explosives or ruptured drums, the material will be left in place, roped off if possible and personnel and traffic prevented from operating in that area of the tipping floor. The appropriate governmental or local emergency response personnel will be contacted immediately.
7. Suspected Hazardous Wastes will be sampled and tested by an approved laboratory. If necessary, a specialist contractor will determine the status of any suspect waste and identify handling procedures. If the waste is determined to meet any of the Hazardous Waste identification criteria established by the controlling regulatory authorities, it will be properly packaged, labeled and monitored pending transfer from the Facility.
8. Removal of all Unprocessable Waste from the Facility will be accomplished in as expeditious a manner as possible using federal, State, and County procedures utilizing only appropriately licensed Hazardous Waste transporters. Unacceptable Waste, including oversize bulky wastes, such as certain white goods and large timbers not eliminated in the above screening process, will be placed in containers for removal.
9. It is important to note that the standard procedure includes follow up investigation of accounts and of loads brought to the Facility immediately following highly contaminated loads.
10. If Hazardous Waste or unsafe materials get by the Tip Floor Spotter/Front End Loader Operator and onto the Facility sorting line, the sorter will pull aside the material and notify the Line Supervisor. Hazardous Waste or Unprocessable Waste collection from sort line stations will be regularly scheduled.

Unacceptable Waste cannot be safely and/or effectively Processed or Marketed. When delivered in sufficient concentrated quantity, or by their very presence, Unacceptable Waste has an adverse impact on the Processing system, personnel, or the quality of Recovered Materials.

It is likely that loads of waste for Processing will contain a quantity of Unacceptable Waste. As each load of material is delivered, visual inspections shall be made to the reasonable extent possible. When Unacceptable Waste is found, the material will be manually removed from the stream by the Tip Floor Spotter or Front End Loader Operator into a roll-off box designated for that purpose. Unacceptable Waste includes any items that are not specifically listed as Acceptable Materials elsewhere in this Operations and Maintenance manual. Examples of Unacceptable Waste include, but are not limited to, the items listed below:

- Tires
- Gasoline Tanks
- Combustible Material
- Any containers used for Hazardous Waste

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- Barrels containers, pressure vessels and tanks containing or used for volatile or flammable liquids or for unknown liquids, solids or gases.
- Propane Tanks
- Pails containing Excessive Residue or Hazardous Waste or potential Hazardous Waste.
- Machinery Parts (hydraulic pumps, gear boxes, steel shafts, etc.)
- Large and/or heavy Automobile and Truck Parts that may damage the Processing system (drive line components, engines, transmission parts, axle assemblies, wheel parts, other metal parts, heavy plastic and rubber car parts).

Any oversize materials/bulky items which cannot be reasonably Processed by the equipment are also considered Unacceptable Waste, including, but not limited to the following:

- White goods (appliances other than small household appliances like toasters)
- Mattresses, box springs
- Furniture, couches, upholstered chairs, lawn chairs, window frames
- Any item of waste having dimensions or weight which may cause obstructions or equipment damage within the Processing system.
- Construction and Demolition Debris including shingles, masonry, dry wall, insulation, concrete, steel, wood, and any debris over 3' in any dimension.
- Large bolts, heavy vinyl or other material. Cargo nets, fire hoses, parachutes, large tents, swimming pools liners and covers and carpeting.

The screening of Acceptable Materials for Unacceptable Waste and Hazardous Waste is critical. Operator will employ the procedures set for herein.

Operator will employ a Tip Floor Spotter at all times to inspect the mixed MSW as they are discharged from delivery vehicles prior to being pushed onto the infeed conveyors. If the inspection indicates that any material amount of Hazardous Waste has been delivered (recognizing that immaterial amounts of Hazardous Waste, such as batteries and paint cans, do not trigger this requirement), Operator will: 1) direct the Collection Contractor or Other User(s) to leave the Facility with the Collection Contractor or Other User(s)'s entire load, 2) direct the Collection Contractor or Other User(s) to retrieve that portion of the load which Operator determines is or may be Hazardous Waste, or 3) direct the Collection Contractor or Other User(s), at the Collection Contractor or Other User(s)'s expense, to provide for the removal of Hazardous Waste from the Facility by a licensed Hazardous Waste contractor. If the Collection Contractor or Other User fails to comply with Operator's direction, Operator will notify the County, and at the direction of the County the appropriate Public Participant(s) of the Collection Contractor or Other User's non-compliance, including providing the identification and plate numbers of the vehicle which deposited the Hazardous Waste, along with photographs and a written report of the incident.

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Operator will establish a procedure in consultation with the County, that shall be subject to approval by the County, and maintain records related to the refusal or rejection of incoming material that includes the required notification procedures to the County and appropriate Public Participants, regarding the delivery and disposition of Hazardous Waste in accordance with the notification procedures of this Operations and Maintenance (“O&M”) Manual.

All Hazardous Wastes are prohibited at the Facility as they may: pose an unreasonable threat to health and safety, cause extraordinary damage to the Facility (beyond normal wear and tear), or cause violation of any Applicable Law or code.

Hazardous Wastes will include, but not be limited to, the following: radioactive waste; biological waste; powders; live animals; chemicals, acids, or other toxic materials; compressed gas cylinders; explosives of any nature (TNT, dynamite, gun powder, ammunition, fireworks, flares etc.); and any other refuse which could display the same fire and/or explosive potential similar to any of the listed items.

B. Facility Training Program

This Facility Training Program is developed to outline the training activities for the Facility.

Employee safety and health training is an essential component of Operator’s Operations. Facility employers are responsible for ensuring all employees, including supervisors and contract laborers, are properly trained, appropriate to their assigned jobs and tasks. Employees shall be advised of the unique hazards related to the Operation of the Facility, which may affect the activities in which Operator’s employees will engage. Generally, there are five (5) types of training:

1. **Employee Orientation** - All new and transferring employees must be made familiar with their new work location.
2. **Job Qualification** – All employees must meet certain minimal requirements to ensure they will be able to safely perform their assigned duties and the County may, at any time, request written job descriptions for each job classification (Job Descriptions) for Operator’s employees and Operator shall provide such written job descriptions within ten (10) Business Days. In some cases, this training must be provided after employment begins.
3. **Hazard Recognition** - All employees must be familiar with the potential hazards of their workplaces. Training should identify both the hazard and a method of avoiding or safely managing it. Regulatory compliance programs require that numerous training programs (e.g., Hazard Communication, Personal Protection Equipment (PPE), Lockout/Tagout, and Emergency Planning) be implemented.
4. **Risk Reduction** - Some employees will be identified as requiring special or supplemental training (e.g., traffic control, safe lifting) due to their task assignment or safety performance.

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5. **Follow-up** - Training must be repeated quarterly to maintain an employee's knowledge of the requirements and to ensure the employee's knowledge is based on current job responsibilities and workplace conditions.

Upon completion of Employee Orientation, subsequent job specific training will commence. Employee training begins with a clear understanding of the work employees are to perform. Employees must also be aware of the regulations that apply to their Operations and the requirements for employee training contained in those regulations.

Operator shall refer employees to the manufacturer's, installer's, modifier's or system designer's instructions to ensure that correct operating and Maintenance procedures and work practices are understood and followed.

Operator is responsible for ensuring that adequate training is provided either by the contract laborer's parent employer or by the Facility Operator where a job or task is performed.

Operator management will conduct regular (at least monthly) safety training sessions. Such meetings shall be used to review the Facility Training program elements, discuss the results of Facility inspections, and identify employee behavior observations, traffic considerations, customer issues, Operational changes, etc.

Documentation of completed employee training is essential. Training records for each employee will be stored either in a separate training file or in each employee's personnel file where they can be reviewed during audits or inspections.

Employees will not be allowed or permitted to perform any task or duty for which they have not received training. This also applies to all temporary employees and contract laborers.

Periodic refresher training is required for many functions. Refresher training intervals normally range from one (1) to three (3) years. Changes to equipment used or processes which may be modified, must be evaluated to identify any new hazards. Such changes to equipment or processes require all affected employees to be re-trained. All recognized hazards must be addressed. Additional retraining also shall be provided whenever a periodic inspection reveals, or whenever management has reason to believe, that there are employee deviations from procedures, or inadequacies in the employee's knowledge of procedures.

Training will be repeated on a periodic basis, and specifically if there is evidence that previously trained employees demonstrate a lack of understanding or are not complying with the training requirements.

Equipment operators must be trained in the operation of their equipment as it is used in the Facility. Ideally, they should have, or be working toward, operator certification. At a minimum, management should conduct an equipment proficiency evaluation when the employee is hired and annually thereafter.

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C. Maintenance Programs & Standards

The following standards establish separate, specific Maintenance standards for general Maintenance (i.e., clean and litter free), Processing equipment Maintenance, and mobile equipment Maintenance.

The Operations Manager has overall responsibility of the Maintenance Department. In general, the Operations Manager is responsible for coordinating with the Maintenance Supervisor in the development and implementation of the Facility's Maintenance Program, which will effectively maintain the Facility equipment, supervise the staff and coordinate scheduled and unscheduled Maintenance repairs. The Maintenance Supervisor will also be responsible for administering the Preventive Maintenance (PM) Program activities to the Maintenance staff.

Operator will develop a formalized Maintenance Program, consisting of clearly defined procedures for managing and performing Maintenance, to achieve 92% uptime. This O&M Manual provides guidance for the formulation of systems and techniques that can be adapted to the needs of the Facility. A computerized Maintenance program, provided by Van Dyke Recycling Solutions (VDRS), will incorporate these procedures, including a schedule of PM and replacement intervals.

The actual planning and accomplishment of PM procedures should be based on the establishment of priorities in consideration of the effect upon total Process system Operations. Manufacturer's equipment operation and Maintenance manuals provide the specific procedures for the respective equipment.

Buildings, equipment, and paved areas are regularly maintained in good working order and to ensure public safety. The Facility Manager is responsible for inspecting the Facility to assess the overall level of Maintenance. As needed, repairs will be made to maintain the Facility. Operator is not responsible for repair and Maintenance due to earth movement, utility infrastructure failure, or any equipment or facilities designated as a County responsibility.

Maintenance Program

1. **Basic Objectives** – The basic objective of Maintenance management is the optimum use of available manpower, equipment, material, and money by:
 - i. Providing effective support and response to management and Operational requirements.
 - ii. Increasing the productivity of the Maintenance force.
 - iii. Insuring a high standard of Maintenance.
 - iv. Achieving economic goals in the Maintenance of facilities.
2. **Maintenance Management Purpose** – The purpose of Maintenance management is to:

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- i. Ensure Maintenance is performed on a scheduled basis rather than on an intermittent, break-down basis.
 - ii. Take corrective action before advanced deterioration necessitates major repairs.
 - iii. Ensure repairs are timely and efficient.
 - iv. Improve Maintenance capacity and quality.
 - v. Ensure that the equipment of the Facility meets their functional requirements.
 - vi. Provide direct control over the use of the Maintenance labor force.
 - vii. Eliminate over-Maintenance as well as under-Maintenance.
 - viii. Develop and maintain equipment Maintenance history to identify areas that need corrective action by management.
3. **Maintenance Classification** – Maintenance requirements are divided into two (2) major classifications: a) Preventive, and b) Scheduled.
- i. Preventive Maintenance – The sum of those actions performed on Operational equipment, buildings, and grounds that contribute to uninterrupted Operation of equipment facilities is classified as Preventive Maintenance. These Maintenance actions are performed on a scheduled basis rather than intermittently or on breakdown. The system is designed to assist the Facility to:
 - 1. Reduce complex Maintenance requirements to simple procedures easily identified and managed.
 - 2. Define the Preventive Maintenance requirements, schedule and control their performance, describe the methods and tools to be used, and provide for the prevention and detection of impending breakdowns.
 - 3. Forecast and plan manpower and material needs.
 - 4. Plan and schedule Maintenance.
 - 5. Detect areas for improved training and Maintenance techniques.
 - ii. Scheduled Maintenance Classifications – The actual planning and accomplishment of Scheduled Maintenance should be based on the establishment of priorities in consideration of the effect upon total Operations of the Facility. A Maintenance Work Order (MWO) is completed to document the Maintenance required. Four priority levels are derived from the following classifications of Maintenance required:
 - 1. Problem will cause immediate system downtime.
 - 2. Problem requires attention within 24 hours.
 - 3. Problem is a nuisance but does not require immediate attention.
 - 4. Contract Maintenance required.

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4. Spare Parts

- i. Spare Parts Procedures – A successful Maintenance program is dependent on the availability and organization of spare parts for equipment in case of breakdown. It is the intent of this Maintenance Program to maintain an available inventory of spare parts, whether it is maintained by the Facility, vendors, or both. Operator will be responsible for proper tracking and inventory control. In most cases necessary spare parts will be maintained by the Facility. In some cases, available vendor inventory, which can be delivered in emergency fashion, will be utilized. This will especially be true in large dollar inventory items.
- ii. Spare Parts Numbering and Location – It is important to organize the Facility's inventories of spare parts. It is therefore necessary to assign spare part numbers and locations to facilitate finding the part when it is needed, especially for someone unfamiliar with the part. There are three (3) basic forms utilized in maintaining a spare parts system:
 1. Spare parts inventory and location
 2. Spare parts vendor master list
 3. Spare parts ID tags
- iii. Spare Parts Inventory and Location Form
 1. Identifies parts utilizing equipment name and number and part OEM number.
 2. Identifies quantity on hand and reorder point
 3. Identifies bin location of part

Each segment of the system has its own bin location. For example, all conveyors that are similar have one (1) spare parts bin.
- iv. Spare Vendor Master List – The Vendor Master List identifies all vendors associated with a piece of equipment.
- v. Spare Parts Tag
 1. Identifies part description and vendor part number.
 2. Is filled out upon check-in of part prior to placing in bin.

Upon use of part, the parts tag is deposited in the parts used bucket to help facilitate the inventory system. Daily as necessary, the tags are compared to the spare parts inventory to update this inventory and parts ordered, dictated by minimum quantity.

5. Maintenance Logs And Procedures

- i. Emergency MWO – Emergency Maintenance is defined as Maintenance required on down equipment to minimize down time. For this situation, a MWO may be filled out after the work has been completed. The Facility Manager will make the decision.

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After the emergency situation is remedied, the emergency Maintenance log should be completed as follows by the Maintenance personnel performing the work.

1. Month: Enter current month. Log should reflect one (1) month's work only.
2. Date: Enter date of work.
3. Equipment: Enter equipment ID number of work.
4. Work performed: Enter a description of work performed.
5. Hours: Enter hours spent on emergency to nearest ¼ hour.

At the end of each month, the original log should be filed in the Maintenance master file.

- ii. MWO Instructions – The following are instructions for filling out a MWO requesting or defining Maintenance requirements.

1. Facility: Enter Facility name.
2. Date: Enter date of generation.
3. MWO #: Maintenance will enter a number.
4. Equipment #: Enter equipment ID# from equipment master list.
5. Equipment name: Enter name.
6. Description: Enter complete description of problem or work. Try to be as specific as possible.
7. Priority: Circle priority number using the following guidelines:

Priority 1: Problem will cause immediate system down time.

Priority 2: Problem request attention within 24 hours.

Priority 3: Problem is a nuisance but does not require immediate attention.

Priority 4: Contract Maintenance required.

The majority of all MWOs should have a Priority 2 or 3. Priority 1 MWOs are overridden by emergency breakdowns and should not be confused. MWOs are not required for emergency situations.

8. Work performed: Maintenance will enter description work performed.
9. Stock parts used: Maintenance will enter parts number of parts used. Inventory logs should be adjusted to reflect use.
10. Non-stock parts used: Maintenance will enter list of non-stock parts used.
11. Cost: Maintenance will enter and total costs of parts.
12. Date: Maintenance will enter dates of work performed.

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13. Hours: Maintenance will enter (min ¼ hr.) of hours of mechanical (M), electrical (E), and instrumentation (I) performed.
14. Remarks: Maintenance will enter remarks on anything unusual about work.
15. Originator: Signature of Person originating MWO.
16. Maintenance: Signature of Maintenance Person.
17. Date Completed: Maintenance will enter completion date and also notify originator of completion.

Completed MWOs should be filed in the master Maintenance file in a separate file folder for each piece of equipment. Uncompleted MWOs should be kept in the shop on clipboards designating each priority. Maintenance supervisor will conduct formal, daily, documented quality control review of work performed by technicians to ensure quality of work performed.

D. Waste Sampling

The Facility will be equipped with weigh scale at the waste delivery area. On a daily basis, waste delivered to the Facility will be weighed and recorded upon delivery. Post-Facility Processing, Tonnages delivered to the ADF will be weighed, including Residue delivered to the Landfill working face. All Tonnages will be recorded and entered into a computer controlled process control system.

The process control system will be equipped with data logging, which will track pre- and post-Facility Processing Tonnage, and thus provide a means to ensure compliance with the Tonnage guarantees (i.e., Material Throughput Guarantee, Availability Guarantee, Diversion Guarantee, etc.).

E. Reporting

The process controls for the Facility will perform data acquisition on a continuous or semi-continuous real time basis. Reports from the system will be generated in an agreed upon format and timeline between Operator and the County. At a minimum, the report shall include:

- Facility uptime
- Facility downtime with event tracking: When and why the Facility was down and when it started back up
- PM schedule compliance tracking
- Failure analysis of every major unplanned Maintenance event and emergency downtime

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F. Report Review

The data requirements for monthly, annual, and ad-hoc report requirements will be consistently collected. The senior Facility operator will produce the reports based on a consistent format including the relevant specified parameters. Any monthly and annual reviews with the County, and at the County direction with Public Participants, will be scheduled after the Commencement Date on a date and time that is mutually agreed upon by Operator and the County; provided, however, that the review(s) must be scheduled no later than thirty (30) Days following any County request, unless otherwise agreed upon by the County.

G. Quality Assurance/Control

The quality of the Recovered Materials produced is critical to the success of the Facility's Operations. Every single staff member working in the Facility has a hand in ensuring material quality. Quality control begins on the tip floor, by making sure that excess Unacceptable Wastes are not introduced into the system, and continues throughout the mechanical and manual aspects of the sorting system. Every sorter working on the system contributes to the quality of the Facility's materials, as do the Maintenance personnel who keep the equipment working.

Our focus in Processing the incoming stream will be to maximize the value of the Recovered Materials we will sell. When we Recover paper from the waste stream, it can have 45% moisture content. Wet mixed paper has a higher HHV, producing more biogas than wood waste. There are two (2) options for this wet mixed paper: (1) adding the wet mixed paper to the organics in the AD Process; or, (2) as part of the Facility, a paper dryer dries the wet mixed paper down to 15-18% moisture content, turning it into a valuable Recyclable commodity.

On the container side, the Facility's sorting efforts will be similarly focused on generating high-value commodities. Key target materials will include PET, HDPE-Natural, HDPE-colored, as well as aluminum and tin cans. We also will make mixed plastic bales of #3-#7 plastics, as well as a mixed rigid plastic grade (predominantly oversized plastics that are sorted at presort). Operator attention will be more focused on securing the quantity and quality of the higher value plastics and metals. Glass will be mechanically separated from the stream.

Quality control for the containers coming from the single stream operation is largely a function of the efficiency of the optical sorting equipment and the effective training of the sorters. Only those materials ejected by the optical sorters and approved by the sorters will go into the Facility's Products. For fiber, the sorting Process is both an inspection and sorting Process; we both optically and manually remove the wrong materials from the fiber stream, rather than positively sorting the selected items. Effective quality control is created through a reliable plan for cross training staff on the different grades of materials we generate, how those materials are sorted and baled, and how to identify and escalate problems to supervisors.

The final quality control operation in the Facility's Processing system is the forklift and Front End Loader Operators who move Products into storage and into trailers for out shipment. It is the

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responsibility of these staff to ensure that only the proper grades of material are shipped to Market.

The following are several specific quality and inspection procedures related to managing the out shipment of Products from the Facility:

1. **Storage Areas** – Forklifts loaders move Processed material to storage areas prior to shipping. Two (2) storage areas include Bale Storage and Glass Storage.

Bale Conditioning & Stacking Quality Control

- i. All fiber, plastics, aluminum, and tin sorted from the Processing system will be baled.
 - ii. Bales in a stack must be consistent material composition and shape. Straps, ties, or similar devices in sufficient number for the type of material, as well as the size and shape of the stack, must contain the bales. Bales stored in tiers must be stacked, blocked, interlocked, or limited in height so they are stable and secure against sliding or collapse. Straight stacks (one (1) bale placed directly on top of another) must be limited to four (4) high. Plastics will be stored in a specifically designated area if required. If plastics are stored outside of the designated and delineated area, then these shall only be stacked two (2) high.
 - iii. Loose, incomplete, or out-of-shape bales must not be stacked or be used to support other bales in the stack.
 - iv. Bales in stacks must be visually inspected daily for stability of the stack and condition of the bales. Immediate action must be taken to correct an unstable condition, such as identifying and removing bales that are not structurally sound.
 - v. Training must be provided to authorized employees to provide knowledge of bale content and quality, stacking requirements, and remedial action that can be taken to correct unstable stack conditions. Training must also be provided to other affected employees to provide them knowledge of the potential hazards involving bale stacking, the precautions necessary to avoid these hazards, and the requirements to report apparent hazards to the employer.
 - vi. Bale storage areas must be designated as special work areas, with access limited to only authorized employees.
2. **Quality Inspections** – Quality is a major factor for all shipments leaving the Facility. In an effort to control negative impacts on quality, it is crucial to conduct commodity inspections before and during the loading process.
 - i. An initial inspection of the truck will be made for any possible contaminants left in the truck from previous loads. If any contaminants are found, they should be removed from the truck before any loading occurs. The loader

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should inspect each bale/bucket during the loading process to see if any contaminants are visible.

- ii. If any contaminants are visible, the loader should notify his or her supervisor immediately, and that particular bale/bucket should not be loaded. The contaminated material should be separated from any other materials for closer inspection. The integrity of baled material is an important factor. If the bale cannot be loaded without the bale breaking and the material spilling, then it should not be loaded. Again, the supervisor should be notified and the problem bales set aside to be dealt with.
 - iii. Baled material is loaded using a forklift. Bales are extracted from bale storage and loaded onto a trailer located at one (1) of the loading dock doors along the Southeast corner of the Facility.
 - iv. Forklift Operator or Baler Operator is responsible for filling out the correct paperwork while loading out materials. After a trailer is filled, it will be weighed on the outbound scale adjacent to the loading docks. We anticipate that all shipments will be sold Free on Board (FOB) at the Facility with transportation arranged by the buyer. Thus, once loaded, we will then coordinate the final paperwork among the Scale House, loading dock operations, and truck driver to most efficiently Process the load and get the materials moving to Market.
 - v. Empty trailers awaiting a load will be moved onto available loading docks immediately as docks become available.
 - vi. The use of on-site staged trailers provides additional storage space and saves time and double handling of bales loaded out for shipment. Depending on Market conditions and available trailers, we may use staged trailers to expedite shipping from time to time.
3. **Tractor Trailers** – Forklift operators are responsible for making sure that the following guidelines are followed by themselves, as well as drivers, when loading trucks or trailers:
- i. Ensure trailer is secured and cannot be moved or driven away.
 - ii. Make sure portable or powered dockboard (bridge dock plate) is secured in position by an anchor or other device that will prevent slipping.
 - iii. Mobile equipment operators should always inspect trucks or trailers before loading: check the floor, frame, and support members for holes and other damage to make sure the vehicle is safe to load.
 - iv. Clean the vehicle of contaminants. Sweep out if necessary before loading.
 - v. Load the vehicle carefully, as though they will also be unloading it.
 - vi. Turn on equipment lights. Turn on dock lights if appropriate.

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H. Computer Monitoring

Currently, Operator uses a Scale-Pak Scale Management Module developed and sold by So. Cal. Soft-Pak, Inc. (<http://www.soft-pak.com>). Operator intends to integrate this scale management software with the computerized management system of the Facility and ADF.

I. Consumables

The estimated annual usage of electricity for the Facility is approximately 5,447 Mwh or 30% of the estimated power produced by the ADF.

The Facility and associated administrative offices will use approximately 1,745 gallons of water per Day for handwashing, toilet flushing, and wash-down of work areas. This value is based on the use of water saving devices, such as low volume toilets and aerating faucets.

J. Facility Maintenance

Effective housekeeping procedures ensure that all walking areas and floors are kept free from obstructions and accumulations of material, grease, oil, and water. A systematic approach shall be employed by Facility operators for the cleaning of Residues that may accumulate on potential ignition sources, such as electric motors. Compressed air will be used for cleaning purposes and only with appropriate PPE. The blast cleaning nozzles must be equipped with an operating valve that must be held open manually. The following procedures are recommended for Facility cleanup:

1. Cleanup will be conducted in an organized manner by Facility operators, under the supervision of Facility supervisor.
2. An organized, daily, effective cleanup schedule will help ensure maximum Facility safety and peak system and employee performance.
3. Cleanup at the Facility will be conducted during downtime periods or during brief periods prior to breaks.

An organized approach to cleaning up will be developed and enforced. Cleanup must not be left to the end of the Day or end of the week.

Monthly Facility inspections of buildings, equipment, and paved areas will be conducted by the Supervisor/System Monitor. Observations made during the monthly inspection would be included in a repair completion tracking spreadsheet/program, ensuring all issues are addressed in a timely manner.

K. Emergencies

Safety of workers and the surrounding population and environment is of paramount importance to Operator. Operator will coordinate with County and city departments and attend meetings related to emergency preparedness efforts. Prior to the commencement date, Operator will prepare a Contingency Plan for all aspects of emergency Operations including: equipment repair,

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fire prevention and response, permanent and temporary worker replacement, and earthquake preparedness.

An Evacuation Plan will be developed as Exhibit 1 to cover procedures in the event of a threat that may require immediate evacuation of the building. An audio and visual warning system controlled by Tip Floor Spotter or Front End Loader Operator would signal the need for immediate evacuation by all personnel. Evacuation routes and signage will be clearly visible throughout the Facilities. Evacuations will be practiced on a quarterly basis.

Supervisors and managers will have the authority to commit company resources to resolve emergency and non-emergency health, safety, and environmental issues if such action is necessary to protect the health and safety of Site employees and the nearby community. Supervisory personnel will be cross trained with other operational personnel so they are available to cover for workers when absences occur due to sudden illness, emergencies, or vacations.

In the case of an emergency, the following Persons listed serve as the contacts for the Facility. Operator's daytime phone is (805) 963-1852. Off-duty number is Brian Borgatello at (805) 331-1248. If a situation arises that cannot be handled by Facility personnel, then 911 will be called or another outside emergency agency appropriate for the situation.

Table 5 lists the emergency numbers to contact if an emergency cannot be handled by Facility management. The ReSource Recovery and Waste Management Division (RRWMD) will be contacted at (805) 681-4900, in addition to the Local Enforcement Agency, as soon as possible whenever an outside agency is notified of an emergency.

Table B-1: Emergency Contacts and Agencies

TYPE OF EMERGENCY	AGENCY	PHONE NUMBER
General Emergency	Emergency Dispatch	911
Hazardous Waste Spill or Explosives	SB County Fire Department	1(800) 852-7550
Security (County of Santa Barbara – Office)	SB County Sheriff	(805) 681-4100
Unidentified Hazardous Waste	State Dept. of Health Services	(213) 897-7170
Hazardous/Suspected Hazardous Waste, Unknown Sludges, Slurries and Liquids	County of Santa Barbara Environmental Health Services (CUPA)	(805) 346-8463
Medical Waste	Medical Waste Program Cal. State Department of Health Services	(213) 977-7370

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All Emergencies	ReSource Recovery and Waste Management Division County of Santa Barbara Environmental Health Services (LEA)	(805) 882-3600 (805) 681-4900
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L. Safety Program

The Safety Program provides a safe and healthy work place for all Persons who are employed or visit the Facility. Making safety a priority enables Operator to attract and keep effective employees. Operator's primary goal for safe Facility operation is to meet or exceed all local, State, and federal worker safety regulations (i.e., Occupational Safety and Health Administration (OSHA) standards). The following outlines the comprehensive programs developed by Operator to ensure public, employee, and Facility safety.

The Safety Program outlines the Facility's safety policies, Personal Protective Equipment Program, and Facility Hazard Assessment. Following are the key strategies that the Facility shall follow in maintaining safe working conditions:

1. Providing and using well tested safety equipment.
2. Preventing accidents through proper training and manufacturers specifications.
3. Responding quickly to accidents and incidents, and making changes to prevent recurrences.
4. Reviewing occupational safety data by decision makers.

Multiple forms of communication will be used to implement the Safety Program. Facility management will conduct monthly safety training sessions. Such meetings shall be used to review Safety Program elements, discuss the results of Facility inspections, and identify employee behavior observations, traffic considerations, customer issues, operational changes, and other safety related topics as they arise.

Operator will identify an in-house safety panel that will be responsible for reviewing the Safety Program and recommend modifications to management.

The safety policies will be implemented through orientation and training. In addition, applicable OSHA Policy Statements, posters, and signage will be used to reinforce the Safety Program.

- i. **Personal Protective Equipment Program** – Personal Protective Equipment (PPE) Program is essential for protecting employees from recognized hazards that could result in

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workplace injuries and illnesses. All PPE used by employees in the course of their work must be maintained in a sanitary and reliable condition.

The following list of PPE shall be provided to all employees of the Facility; all safety equipment shall be OSHA-approved for Facility operating conditions:

1. Safety Glasses - Glasses should provide a custom fit with excellent top, bottom, and side protection, offer peripheral vision, and have a coating to provide an anti-fog, anti-static, anti-scratch, and anti-UV protection.
2. Safety Vests – ANSI Class 2 compliant reflective safety vests will be made available when work takes place in or near moving traffic.
3. Disposable/Reusable Earplugs - Earplugs which are disposable/reusable and provide the wearer with a noise-reduction rating of 26.
4. Work Gloves - Work gloves should be used by all employees. They should be manufactured with cut-proof fabric and have a safety cuff that provides lower-arm protection. Leather safety gloves are preferred for paper and plastics sorting. Neoprene dipped gloves are preferred for glass sorting.
5. Hard Hats - Hard hats must be worn by all employees. This headgear is made from lightweight polyethylene, so it provides excellent head protection with minimum weight and maximum comfort.
6. Dust Masks - Masks will be made available for people working in paper Processing areas to protect against airborne dust particles.
7. Eye-Wash Station - A hard-plumbed emergency eyewash/shower station should provide the optimum in emergency eye-wash capability. Several will be placed throughout the Facilities, including on the sort line.
8. Other recommended Facility safety equipment per applicable codes includes anti-fatigue mats, first aid kits, fire extinguishers, lockout safety kits, including lockout tags and pad locks, to be used by designated personnel as directed.

PPE does not remove the hazard from the workplace. It is the last line of defense before the hazard reaches the employee. The first line of defense is to engineer the hazard out of the process through administrative or other workplace controls.

PPE is assigned to each new employee. Hard hats, reflective vests, gloves, and safety boots must be worn by all employees working at the Facility. Safety glasses are required to be worn by all employees working on the Facility sorting line. In addition, ear protection and dust masks are provided for all employees upon request. The employees are responsible for care and storage of their equipment. If replacement equipment is needed, the employee must notify their supervisor for replacement. The offices are equipped with first aid supplies.

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Hazardous Waste response equipment is located in a spill response locker to be used for emergency response. This equipment typically includes absorbent, brooms, 55-gallon drums, protective gloves, clothing, boots, goggles and respiratory equipment.

- ii. **Facility Hazard Assessment** – Under most circumstances, the Facility does not produce or receive any incoming waste loads with toxic or volatile materials that can cause harm to employees as a result of direct contact. In the event harmful materials are received, the load rejection procedures included above in this O&M Manual are to be followed.

Critical to the overall safety and organization of the Facility is the ongoing care and cleaning of all operational areas of the Facility.

Safety hazards are present during regular Operations for employees working in the vicinity of certain equipment. These hazards include:

1. Noise from the movement of glass through the system and into storage.
2. Noise from the Process system equipment.
3. Small pieces of airborne glass and dust generated from the Processing system

The Facility's Process equipment is designed, fabricated and installed per numerous codes to protect employees and operators. Nevertheless, potentially dangerous situations can still occur around material handling equipment made up of moving parts. Facility safety training for employees will include:

1. Familiarizing employees with the layout of the Process equipment.
2. Explaining equipment safety features and safety equipment.
3. Outlining the hazards.
4. Explaining all safety procedures.
5. Noting any applicable local, State, and/or federal safety guidelines.
6. Instructing staff about fire prevention, explosion prevention procedures, and contingency plans in the event of accidents.
7. Daily inspections and reviews by management.

M. Lockout/Tagout Procedure

All Maintenance personnel will be assigned a lock with one (1) key. Only one (1) key will be available for any one (1) lock. After being assigned to a Maintenance Person, this lock and key will not be utilized by any other Person for any use. Should the lock be defective or the key lost, the lock must be replaced and discarded.

This lock will remain in the possession of the assigned Person at all times.

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Anytime a piece of equipment requires Maintenance of any kind that requires a shutdown, the following lockout procedure will be followed:

Lockout Procedure:

- 1. Shut down equipment at disconnect to de-energize the machine at the power source.
- 2. Place lock on electrical disconnect of machine. Secure lock and keep the key on your person.
- 3. Perform Maintenance as necessary.
- 4. Upon completion of Maintenance, remove lock and secure.

N. Staffing Plan

The following figure depicts the preliminary organizational relationship between the various job categories at the Facility.

MRF Operator shall hire the initial number of employees to operate the MRF, as described in Exhibit M: Staffing Plan.

Table B-2: TRRP Staffing Summary

CLASSIFICATION	HOURS
Administration	7:00 A.M. – 3:30 P.M.
MRF Operations	5:00 A.M. – 3:00 P.M.
MRF Operations	3:00 P.M. - 8:00 P.M.
MRF Maintenance	1:00 A.M.– 5:00 A.M.
CSSR option	8:00 P.M. – 1:00 A.M.

Of the 82 staff included in this list, over half are dedicated to removing oversize waste/bulky items and Unacceptable Waste, which can otherwise disrupt the proper operation of the sorting system. The remaining sorters are performing quality control sorts, removing any items that either the screens or optical sorting units may have not removed from the stream. On the container line, the majority of sorting will be automated, with manual sorting only for quality control purposes.

In addition to this sorting staff up on the system, the Facility runs with one (1) or two (2) Loaders on the tip floor (depending on volumes and volume types), a Tip Floor Spotter, and at least two (2) Forklift Operators at all times. The Facility also has a full time Mechanic and a Maintenance Assistant to keep all of the Facility equipment in proper running order at all times. The Facility

EXHIBIT B: OPERATIONS AND MAINTENANCE MANUAL

stages its Operations such that there is loader operator and forklift coverage for all receiving hours of the Day. Total Facility employment is 82 employees.

Operator will continue a local hiring preference with displaced County Landfill staff. Included in the capital costs of the Facility is a complete training program and ongoing support package.

O. Repair and Replacement

1. **Approach** – On completion of the final engineering design work and prior to start up, the manuals for PM will be produced by VDRS. These manuals will provide guidance on the correct procedures for maintaining the equipment supplied.

As part of the capital cost of the Facility, VDRS will provide a spare parts package. Life expectancy of parts will vary dependent on usage.

2. **Quality Assurance/Control** – The Facility capital and Maintenance costs for equipment and parts are described in Exhibit E: Operator's Proforma. The repair and replacement parts will be covered under warranty and have an estimated life of 5-10 years.
3. **Facility Equipment** – See Appendix B and the electronic copy VDRS Equipment Proposal for details.

P. Residuals Management

The Residuals will be conveyed to the loadout area of the tip floor. Residuals will be visually inspected for Hazardous Waste and the presence of commodities that should have been captured prior to Residue. If no Hazardous Waste is observed, the Residual will be transported to and Disposed of in the Landfill by the County. If Hazardous Waste is present, the waste will be handled as Hazardous Waste and transported to the appropriate Hazardous Waste disposal facilities. Analysis of these results would identify system upsets that may be impacting Recovery.

Q. Odor Control

As mentioned previously, the MRF will be housed in a completely enclosed building operating under negative pressure. ~3-6 air changes of fresh air through the MRF will be vented to three (3) MRF biofilters located immediately northwest of the tip floor. Such a design will prevent odors from becoming a nuisance to the community. Fragrance misters will also be installed for odor control.

R. Noise Control

As mentioned previously, the Facility is housed in a completely enclosed building. This will prevent fugitive noise from becoming a nuisance to the surrounding community. Furthermore, the primary noise generators of the Facility Operations include the wheel loaders and the motors driving the conveyor system. Such equipment is manufactured with insulated housing to reduce vibration, and thus noise.

EXHIBIT B:

OPERATIONS AND MAINTENANCE MANUAL

S. Compliance

Daily Facility perimeter odor and noise inspections will be conducted and documented by the County compliance/safety manager.

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EXHIBIT C: LIQUIDATED DAMAGES

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EXHIBIT C: LIQUIDATED DAMAGES

No.	Description	Amount
1.	Failure to Achieve Regulatory Compliance Standards. For each notice of violation that any part of Facility receives from any regulatory body related to Contractor responsibilities as it pertains to operation of the Facility as outlined in Section 5.8.	\$5,000 per month or portion thereof until the notice of violation is resolved.
2.	Failure to Develop and Revise Operating and Maintenance Manual. Failure to develop and revise O&M manual as provided in Section 5.6.	\$500 per Day per incident until resolved.
3.	Failure to Develop or Maintain Safety Program. Failure to develop and maintain safety program as provided in Section 5.7.B.	\$2,000 per Day per incident until resolved.
4.	Failure to Develop, Staff, and Maintain the Security System. Failure to develop, staff, and maintain the security system as provided in Section 5.7.C.	\$2,000 per Day per incident until resolved.
5.	Failure to Control Nuisances. Failure to control nuisances as provided in Section 5.8.	\$500 per Day per incident until resolved.
6.	Failure to Meet Vehicle Turnaround Guarantee. Failure to meet Vehicle Turnaround Guarantee as provided in Section 6.2.B.	\$2,000 per Day per incident until resolved.
7.	Rejection of Delivered Materials. Wrongful rejection of Acceptable Material as provided in Section 6.2.D.	\$400 per rejected Ton.
8.	Failure of Contractor to perform required material sampling or to properly conduct the sampling, sorting, or measurements. Failure of Contractor to perform the performance studies as provided in Section 7.2.	\$500 per sample in which the sampling, sorting, or measurements were not properly conducted or collected in a given quarter.
9.	Failure to Maintain Regulatory Compliance. Failure for Operator to maintain compliance with SB 1383 as required in Section 9.3.C	\$500 per day per incident until resolved.

EXHIBIT C: LIQUIDATED DAMAGES

No.	Description	Amount
10.	Failure to Meet Throughput Guarantees. Failure to meet the Throughput Guarantees as provided in Section 9.3, and/or to accept Acceptable Materials delivered to the Project Site for all reasons other than identification of Unacceptable Waste as provided in Section 5.3 or as otherwise required in accordance with Section 2.13.	\$50 per Ton or \$10,000 per Day, whichever is greater.
11.	Failure of the Contractor to notify the County of intent to use Subcontractor(s). Failure of Contractor to notify the County as provided in Section 11.3 anytime that a Subcontractor is used to perform any obligations of the Agreement.	\$1,000 per incident that Operator fails to notify the County of its intent to use a Subcontractor.
12.	Failure to make records available upon request. Failure of Contractor to make records collected and retained by the Contractor accessible to the County or its authorized representatives within ten (10) Business Days of making a records request as provided in Section 12.2.	\$500 per Day in which the requested records are not available to the County.
13.	Failure to Submit Required Reports. Failure to submit required reports as provided in Article 12.	\$500 per Day per incident until resolved.

EXHIBIT D:
RESERVED

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**EXHIBIT E:
RESERVED**

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EXHIBIT F:
FACILITY, RESOURCE CENTER, AND SITE MAP

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EXHIBIT G:
SECRETARY'S CERTIFICATION

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EXHIBIT G: SECRETARY'S CERTIFICATION

I, _____[name], certify that I am the secretary of the corporation names herein; that _____[name] who signed this Agreement on behalf of the corporation, was then _____[title] of said corporation; that said Agreement is within the scope of its corporate powers and was duly signed for and on behalf of said corporation by authority of its governing body, as evidenced by the attached true and correct copy of the _____[name of corporate document].

By: _____

Name: _____

Title: _____

Date: _____

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EXHIBIT H:
TAJIGUAS SANITARY LANDFILL AND RESOURCE CENTER
PERMITS

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EXHIBIT I: REPORTING REQUIREMENTS

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EXHIBIT I: REPORTING REQUIREMENTS

1. General

Operator shall prepare and submit monthly, quarterly, and annual reports to the County as provided below. Operator may propose report formats that are responsive to the objectives and audience for each report. With written directions from the Director or their designee, the reports to be maintained and provided by Operator may be reasonably adjusted in number, format, frequency, and content, and Operator's agreement with such adjustments will not be unreasonably withheld. At the County's request, Operator shall use standardized reporting forms provided by the County or an electronic reporting system specified by the County. Each report shall:

- Present the required data separately for each Public Participant and in total for the County.
- Include a certification statement by the responsible Operator official that, under penalty of perjury, the report being submitted is true and correct to the best knowledge of the responsible official after their reasonable inquiry.

Records shall be maintained in forms and by methods that facilitate flexible use of the data contained in them to structure reports as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- Ensure that the County only compensates Operator for Processing of Recyclable Materials and Mixed Waste originating in the County's Service Area.
- Determine and set Per-Ton Rates and evaluate the financial efficacy of Operations.
- Evaluate past and expected progress towards achieving the County's Diversion goals and objectives.
- Provide information needed by the County for the purpose of determining compliance with and fulfilling its State reporting requirements pursuant to AB 341, AB 1201, AB 1826, SB 54, SB 343, SB 1383, and all Applicable Law.
- Provide concise and comprehensive Operational information, Tonnage, Sector, and program information and metrics for use in fulfilling reporting requirements under Applicable Law.
- Determine needs for adjustment to programs and/or Operations.
- Coordinate Operational and logistical matters by and between Operator and the County's Collection Collector, as applicable.

EXHIBIT I: REPORTING REQUIREMENTS

Operator shall timely submit all reports by email (or in another digital format in the event email communications are unsuccessful) to County@recyclesmart.org.

Upon written request by the County, reports shall also be submitted in hard copy to:

County of Santa Barbara
Attn: Deputy Director
ReSource Recovery & Waste Management
130 E. Victoria Street, Suite 100
Santa Barbara, CA 93101
Email: pwRRWMDComplianceReports@cosbpw.net

2. Monthly Reports

Operator shall submit the monthly reports within twenty (20) Days after the end of the reporting month. The monthly Tonnage reports shall be presented by Operator to show the information described below for each month. Except when noted below, all Tonnages requested are to be net weights of the payload contents of the Collection vehicle.

All reports shall include, at a minimum, the following information in the report:

A. Recyclable Materials and Mixed Waste Processing Tonnage Report

1. Inbound Tons to the Facility

- a. Recyclable Materials Loads – Inbound Weight Ticket (Receipt) Data
 - i. Actual Tonnage of each inbound Load of Recyclable Materials Delivered by the Collection Operator to the Facility. County shall submit this data in Excel or a similar format to the Operator that allows the data to be summed, divided, etc. and supporting documentation in the form of weight tickets may be requested by the County at any time. Data for each Load shall include, at a minimum:
 - Weight ticket number
 - Date Delivered
 - Time Received at Scale
 - Vehicle identification number
 - Material type
 - Gross weight
 - Tare weight
 - Net weight
 - Route number (as applicable)
 - Vehicle type (Transfer Vehicle, route vehicle, or roll-off, as applicable)

EXHIBIT I: REPORTING REQUIREMENTS

- ii. For all Inbound Tons reported under this Section 2.A.1.a.ii, Operator shall:
 - Include the percentage allocation of Recyclable Materials to each Public Participant and Sector of origin, as provided by the Collection Operator, and the date the allocation data was provided by the Collection Operator. If the allocation has not changed since the prior month, Operator shall provide a statement indicating such.
 - Apply those percentage allocations to all Inbound Recyclable Materials Tons by both Public Participant and Sector of origin (Commercial, Single-Family, Multi-Family).
- b. Mixed Waste Materials Loads – Inbound Weight Ticket (Receipt) Data
 - i. Actual Tonnage of each inbound Load of Mixed Waste Delivered by the Collection Operator to the Facility. County shall submit this data in Excel or a similar format to the Operator that allows the data to be summed, divided, etc. and supporting documentation in the form of weight tickets may be requested by the County at any time. Data for each Load shall include, at a minimum:
 - Weight ticket number
 - Date Delivered
 - Time Received at Scale
 - Vehicle identification number
 - Material type
 - Gross weight
 - Tare weight
 - Net weight
 - Route number (as applicable)
 - Vehicle type (Transfer Vehicle, route vehicle, or roll-off, as applicable)
 - ii. For all Inbound Tons reported under this Section 2.A.1.b.ii, Operator shall:
 - Include the percentage allocation of Mixed Waste to each Public Participant and Sector of origin, as provided by the Collection Operator, and the date the allocation data was provided by the Collection Operator. If the allocation has not changed since the prior month, Operator shall provide a statement indicating such.

EXHIBIT I: REPORTING REQUIREMENTS

- Apply those percentage allocations to all Inbound Mixed Waste Tons by both Public Participant and Sector of origin (Commercial, Single-Family, Multi-Family).
 - c. Inbound Tons to the Facility

Total Tons of all material Delivered by all Facility Users to the Facility by material type, Facility User type (e.g. Recyclable Materials Delivered by the Collection Operator, other Transfer contractors, other franchised haulers, and/or Self-Haul materials) and jurisdiction of origin, including the relative percentages of all materials by Facility User type, during the reporting period. The County's Public Participants shall be allocated in this report, pursuant to Section 2.A.1.a.ii above as separate jurisdictions rather than reported as a single origin.
- 2. Processing Report
 - a. Total Tons of Accepted Material Processed during the reporting period, by material type.
 - b. Total Tons of Recyclable Materials Diverted and the Diversion rate listed separately by each Recovered Material Commodity, calculated using the approved allocation method described in Article 9 and Exhibit N of the Agreement.
 - c. Total Tons of Residue generated from Processing of all materials Delivered to the Facility and the Tons of Residue allocated to the Recyclable Materials Processing line and the Mixed Waste Processing line, calculated using the approved Residue allocation method described in Article 9 and Exhibit N of the Agreement.
 - d. Tons of Recovered Recyclable Materials Marketed (by commodity and including Average Index Value for each).
 - e. Tons of Recovered Organic Materials sent to the ADF for further Processing.
 - f. Tons of Recovered Organic Materials sent to the ADF that the ADF was unable to accept and ultimately Disposed.
- 3. Outbound Residue from the Facility
 - a. Operator shall report on the actual Tonnage of each outbound Load of Residue that Operator prepares for Transport from the Recyclable Materials Processing, the Mixed Materials Processing line, Bypassed Waste, and Unacceptable Waste sent to the Landfill, in accordance with Articles 5 and 6 of the Agreement. If Operator does not weigh outbound Loads, then Operator shall provide actual Tonnage of each outbound Load

EXHIBIT I: REPORTING REQUIREMENTS

of Residue based on weight tag data, in the same format provided in this Section 2.A.1.a.i.

- b. For all Tons of Residue reported under this Section A.3 during the reporting period, Operator shall include the percentage allocation attributable to the County, to each Public Participant, and Sector of origin, as applicable. Operator shall apply those percentage allocations to all Load Tons of Recyclable Materials Residue, as provided in 2.A.1.b.

B. Operations Report

- 1. Summary of Operations performance, Permit requirements, key Maintenance activities, any Facility or equipment modifications and/or improvements, major expenditures, and other pertinent information regarding the care and upkeep of the Facility.
- 2. Forced outages and planned outages, and forecasted outages for the next three (3) months.
- 3. Fuels and chemicals used at the Facility.
- 4. Accidents, injuries, and damages to the Facility, equipment, and/or County property.
- 5. Emergencies and alarm activations and the response actions taken by Operator.
- 6. Monthly Complaint Log: Report of all complaints relating to the Facility including a description of the complaints and Operator's response and an assessment of the complainant's satisfaction with the response.

C. Regulatory Compliance

- 1. List of any Violation(s) received at the Facility that relate to the services provided under this Agreement or the Facility's Permits during the reporting period and the current status of Violation(s). If the Violation(s) were not remedied by Operator during the reporting period, Operator shall provide a narrative description of the steps to be taken to remedy the Violation, any pending or contemplated appeal relating thereto, and the associated timeline(s) or estimated timeline(s) for final resolution.
- 2. List of any Violation(s) previously reported and remedied during the reporting period.

D. Load Classification, Rejection, and Contamination

- 1. Total Tons of Recyclable Materials Delivered by the Collection Contractor, separated by route vehicle Tons and roll-off Vehicle Tons, and Accepted by the Facility.

EXHIBIT I: REPORTING REQUIREMENTS

2. Total Tons of Unpermitted Waste or Excluded Waste Delivered by the Collection Contractor and rejected by the Facility, as applicable, in accordance with Section 6.2.D of the Agreement.
3. Total Tons of Recyclable Materials Delivered to and Rejected by the Facility due to Contamination in accordance with Section 6.2.D of the Agreement.
4. Date, time, route number, Collection Contractor truck number, material type, and reason for Operator rejection of any Collection Contractor Delivered Loads.
5. Photographs of any Rejected Load(s).

E. Financial Records

1. Any relevant Operational or financial records related to Extended Producer Responsibility Programs provided under this Agreement, if any, including but not limited to:
 - a. Invoices or receipts for new or retrofitted equipment or vehicles purchased or received to implement the Extended Producer Responsibility Program.
 - b. Changes to labor costs, if any, as a result of implementing the Extended Producer Responsibility Program.
 - c. Records of reimbursements, payments, or in-kind contributions made to Operator by the Extended Producer Responsibility Programs or Stewardship Organization.
 - d. Supporting documents related to the calculation used to determine costs allocated to the County versus other Facility Users.
 - e. Any Operational records required by the Extended Producer Responsibility Program or Stewardship Organization, if any, related to Operator's participation in the Extended Producer Responsibility Program.
2. Summary of payments made to the County for the month as required in Article 10 of the Agreement.
3. Summary of per-Ton Processing Rate payments as provided in Article 10 of the Agreement.

3. Quarterly Report

Operator shall submit the quarterly reports within thirty (30) Days after the end of the reporting quarter. At a minimum, quarterly reports shall include the following:

A. RDRS Reconciliation

EXHIBIT I: REPORTING REQUIREMENTS

1. Copies of all Recycling and Disposal Reporting System (RDRS) Quarterly Report Summaries submitted to CalRecycle during the reporting quarter and underlying supporting data.
2. Reconciliation of quarterly data from Sections 2.A.1.a.ii, 2.A.1.b, and 2.A.1c against Sections 2.A.2.c, and 2.A.3.b of this Exhibit D with an explanation of any variance in excess of two percent (2%).
3. Note that for RDRS purposes all of the County's Public Participants except for the County are part of a Regional Agency. Tons originating from the portions of Unincorporated Santa Barbara County that are within the County's Service Area must be added to Tons originating from the portions of Unincorporated Santa Barbara County outside of the County's Service Area and reported separately from the rest of the County's Tons for RDRS purposes.

B. Waste Evaluation Reports

1. Copies of the waste evaluation reports conducted in accordance with 14 CCR Section 17409.5.7.
2. Copies of waste characterization results conducted in accordance with Section 7.2 of the Agreement and Exhibit N.
3. Compliance with Performance Guarantees described in Article 9 of the Agreement.

C. Capital Improvements

1. Suggested improvement including a description of any advances in environmental mitigation measures; any advanced technologies utilized in the course of business; any pilot programs which test advanced technologies to improve Diversion.
2. A Capital Improvement Plan as outlined in Section 5.5.H of the Agreement.

D. Commodity Report –A report describing Operator's Marketing of Recovered Materials during each month of the prior calendar quarter that includes:

1. Tonnage of Recovered Materials Marketed, by Recovered Material type and month.
2. The revenue received for each Recovered Material Marketed, by Recovered Material type and month, inclusive of the CRV value and Transportation costs.
3. The Per Ton value of Recyclable Material Processed calculated as the revenue received for all Recovered Material Marketed, exclusive of aluminum, divided total Tons of Recyclable Materials Processed. This calculation will be used to evaluate whether the Commodity Floor Pricing is triggered in accordance with Section 10.7.C of the Agreement.

EXHIBIT I: REPORTING REQUIREMENTS

4. Annual Report

Operator shall submit an annual report (Annual Report) no later than ninety (90) Days after the end of each calendar year. The Annual Reports shall include, at a minimum, the following information:

- A. Summary of the monthly reports.
- B. Planned activities for the next calendar year.
- C. Proposed capital repairs and equipment replacements.
- D. Employee trainings programs and schedule.
- E. Annual odor control evaluation and suggested schedule for the evaluation.
- F. Documentation that Operator paid all government fees and taxes necessary to provide services under this Agreement in accordance with Applicable Law.
- G. A Facility capacity status report that identifies, the remaining Permitted capacity, the aggregate capacity committed to other entities through Operator's contracts, and the available, uncommitted Facility capacity.
- H. A description of any issues, plans, and concerns related to the use of the Facility during the past year and anticipated changes for the following year, including but not limited to, additional services provided or available, actual or anticipated need for use of Alternate Facilities, regulatory issue or concerns, Permit and regulatory violations, or changes in staffing.
- I. An explanation of any recently adopted laws or regulations, or changes to laws or regulations that Operator expects may impact this Agreement or Operator's Operations during the Agreement Term.
- J. Any State Facility report Operator submits to CalRecycle or to Operator's Disposal Reporting System coordinator. Such annual submittals shall be in accordance with Applicable Law.
- K. A report describing Operator's Marketing of Recovered Materials, including:
 - 1. Tonnage of Recovered Materials Marketed, by Recovered Material type.
 - 2. The actual prior year and estimated coming year per unit or per-Ton index values and revenue received for each Recovered Material.
 - 3. The Markets for each Recovered Material Marketed.
 - 4. Documentation that the County's Recovered Materials were Delivered to, and Recycled and/or Processed at Responsible End Markets.
- L. Documentation of Recovered Materials and Residue standards.

EXHIBIT I: REPORTING REQUIREMENTS

- M. Annual financial statements for Operations under this Agreement for the preceding Agreement Year. Such statements shall be prepared according to Generally Accepted Accounting Principals (GAAP), and reflect Operations of Operator in connection with this Agreement, including all required footnote disclosures.

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EXHIBIT J:
INVENTORY OF NON-FIXED EQUIPMENT

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EXHIBIT J: INVENTORY OF NON-FIXED EQUIPMENT

MRF Non-Fixed Equipment

Types	Name	Status	Model	Serial Number	Manufacturer
Rolling Equipment	Taylor Dunn Stockchaser MR-14	Online	SC-159	153412	Taylor-Dunn
Rolling Equipment	Taylor Dunn Stockchaser MR-13	Online	SC-159	148104	Taylor-Dunn
Rolling Equipment	John Deere 344K Loader	Online	344K	1LU344KXCZB040387	John Deere
Rolling Equipment	Caterpillar 305D-CR Mini-Excavator MR-12	Online	305D-CR	XER00029	Caterpillar
Rolling Equipment	Ford F-450 Fuel Truck MR-10	Online	F-450	1FDXF46R88EE54839	Ford
Rolling Equipment	Liebherr LH22 Material Handler MR-1	Online	LH22	111963	Liebherr
Rolling Equipment	Caterpillar GP30N Forklift MR-8	Online	GP30N5LE	AT13G04350	Caterpillar
Rolling Equipment	Caterpillar GP30N Forklift MR-7 Clamp	Online	GP30N5LE	AT13G04351	Caterpillar
Rolling Equipment	JLG E400AJP Manlift MR-4	Online	E400AJP	300157762	JLG
Rolling Equipment	JLG 1932R Scissor Lift 11637 MR-6	Online	1932R	WLHZ1250PZK114989	JLG
Rolling Equipment	JLG 1932R Scissor Lift 11634 MR-5	Online	1932R	WLHZ1250PZK111963	JLG
Rolling Equipment	Gehl DL55-12 Dynalift Telehandler MR-9	Online	DL12-55	DL1255JG51274	Gehl
Rolling Equipment	Cassette Trailer	Online			
Rolling Equipment	Caterpillar MH3022 Material Handler MR-15	Online	MH3022	KH240025	Caterpillar
Rolling Equipment	Caterpillar 966XE Wheel-Type Loader MR-16	Online	966XE	HNP00472	Caterpillar
Rolling Equipment	Caterpillar GP30N5-LE Forklift MR-17 Clamp	Online	GP30N5-LE	AT13G22221	Caterpillar
Rolling Equipment	Caterpillar GP30N5-LE Forklift MR-18	Online	GP30N5-LE	AT13G22214	Caterpillar

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EXHIBIT K:

WATER SYSTEM OPERATIONS GUIDELINE

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EXHIBIT K: WATER SYSTEM OPERATIONS

Water System Operations Guidelines for the Materials Recovery Facility located at the Tajiguas ReSource Center

It is the general purpose of these guidelines to promote the mutual interest of the County of Santa Barbara (County) and MarBorg Recovery LP (MarBorg), the contracted operator of the Materials Recovery Facility (MRF) located at the Tajiguas ReSource Center, and to establish agreed upon procedures of the Operation and Maintenance of the Permitted non-transient, non-community water system, apportionment, and allocation of the costs of water supply. These Guidelines should be incorporated by reference into the Operations manual for the water system (system).

It is the intention and purpose of the undersigned Parties that the well and water distribution system shall be used and operated to provide an adequate supply of water for the MRF connected thereto, for the consumption of the users, and to assure the continuous and satisfactory Operation and Maintenance of the well and water distribution system for the benefit of all users. All wells shall be monitored and operated such that extractions do not exceed the safe yields¹ of the groundwater formations (Vaqueros Formation and Sespe-Alegria Formation) the wells draw from.

A. Introductory Assumptions

- The County and MarBorg have entered into an Agreement for the Operation of the ReSource Center MRF including the water system.
- County of Santa Barbara Public Works is identified within the operating Permit of the water system as the legal Owner of the water system (Santa Barbara County Public Health Department, Environmental Health Services Permit No. 20-4200977-01).
- The current Agreement does not provide comprehensive detail as to the County's daily of the shared water system.
- The County retains ownership rights to all water generated from wells developed from on-site sources.
- The County is the Permitted Operator of the water system.
- The water system includes interconnection with existing Landfill water system improvements.

¹ CEQA 15162 Determination for the changes to the Proposed Water Supply to the ReSource Center (formerly the Tajiguas ReSource Recovery Project), Relocation of the Tajiguas Landfill Maintenance Facility, and Construction of a new ReSource Center Maintenance Facility (PD Changes No. 2) dated January 15, 2020.

EXHIBIT K: WATER SYSTEM OPERATIONS

- The guidelines provided are intended to be complementary to Permit requirements and not contradictory or conflicting.

Therefore, based on the assumptions above, the following guidelines are presented to clarify the County's expectations as to how the water system will provide water to MarBorg.

B. Water System Access

- The water system consists of all elements identified in the water system Permit for the supply, treatment, and distribution of water to the Tajiguas Sanitary Landfill and ReSource Center, namely:
 - Wells No. 5, 6, and 7
 - Raw water supply piping
 - Treatment System(s)
 - Storage tanks
 - Distribution system piping
 - Controls and monitoring systems
- Water supplied by Well No. 5 shall be designated to County Operations and County facilities.
- A portion of the water supplied by Well No. 7 shall be designated to the MRF for MarBorg.

C. Water Sources and Uses

- The annual sustainable well yields were determined by Geosyntec in 2019². The safe well yields shall be re-evaluated periodically based on metered water consumption and well water table levels.
- ReSource Center facilities may only draw water for the uses approved in the water Permit.
- The Maximum Annual Allowance for the MRF Operations from **Well No. 7 is 0.92 AF** (average flow rate of 0.57 gpm).
- The Maximum Daily Allowance as determined from Well Yield Tests, subject to overriding Maximum Annual Allowable Allowance for the MRF Operations from **Well No. 7 is 2,200 gallons**. Usage in excess of the Maximum Annual Allowance or Maximum Daily Allowance

² Tajiguas Solid Waste Landfill, ReSource Center Recovery Project, Updated Water Supply Assessment & Hydrogeologic Impact Analysis dated October 1, 2019.

EXHIBIT K: WATER SYSTEM OPERATIONS

by the ReSource Center MRF is subject to review and authorization by the County of Santa Barbara. Proposed changes in use may be subject to environmental review, review and approval of operating conditions to ensure adequate supply for County uses, premium surcharge, Permitting, capital investment, and other conditions as appropriate.

- Other uses by the ReSource Center MRF are subject to review and approval by the County of Santa Barbara and may be subject to additional Permitting and environmental review. MarBorg shall request review in writing by the County of any new use prior to implementation.
- MarBorg may not sell its allocation of water in any form to Other Users.
- Supply of water to contractors working onsite for the ReSource Center facilities that is greater than the average daily demand shall be subject to review and authorization by the County.

D. Cost Allocation and Payment

- The base rate the County has set for water use by the ReSource Center within the Maximum Annual Allowance is \$0.00/gallon.
- The County is responsible for all repair and Maintenance work on Well No. 7 to maintain a continuous supply of water to the MRF.

E. Operations

- Both the County and MarBorg shall have the right to act in order to correct an emergency situation and shall have access to all facilities. An emergency situation shall be defined as an unforeseen failure of any shared portion of the system to deliver water upon demand or prevent an uncontrolled release.
- The ReSource Center MRF shall limit its daily draw to the Maximum Daily Allowance subject to overriding annual limits.
- Other arrangements for daily allocation of water resources may be requested in writing to the County Landfill Superintendent and is subject to County approval. However, at any time, the County may revert to the general parameters identified herein.
- In the event that the volume supply from Well 7 is exhausted and can no longer meet the demands of the ReSource Center and/or MRF, MarBorg shall notify the County as soon as possible as specified in Article 14.1 (A).
- Proposals to further develop existing water supply sources to meet current or increased demand by the ReSource Center are subject to review and approval of the County of Santa

EXHIBIT K: WATER SYSTEM OPERATIONS

Barbara, compliance with CEQA due to potential impacts to the overall availability of water on the Site and potential environmental impacts on and offsite.

- County shall be notified of all system alarms via email to an address designated by County staff.

F. Permitting and Compliance

MarBorg shall operate Well 7 in accordance with the provisions set forth in Permit No. 20-4200977-001. MarBorg shall also provide written notification to the Tajiguas Landfill Compliance Manager, Engineer, and Site Supervisor of any exceedance or failure to comply with Permit requirements within twenty-four (24) hours of an incident occurring.

Failure to operate in accordance with these guidelines will be evaluated relative to Section 5.8 Environmental Performance and Prevention of Nuisances.

EXHIBIT L:
PRODUCT MARKETING PLAN

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EXHIBIT L: PRODUCT MARKETING PLAN

A. Recovered Materials Standards

1. **General.** Operator shall meet standards for the quality of Recovered Materials (herein referred to as "Recovered Materials Quality Standards") at all times during the Term to ensure that there is effective Recovery of materials and that quality commodities are produced by the Facility and Marketed by Operator.

All measurements of percentage in the Recovered Materials Quality Standards are by weight and the samples for testing the Recovered Materials Quality Standards (unless otherwise noted) will be randomly selected from Recovered Materials prepared by Operator for sale.

2. **Fiber Products.** Operator is required to produce all fiber Products of sufficient quality to attract the highest Market prices for which similar Products, produced by other local materials recovery facilities that Process single-stream Recyclable Materials, are sold. Operator's operation of the Facility shall consistently produce fiber Products that achieve Residue and contamination standards that meet, or exceed, the Market requirements to attract the highest current Market price for the specified Products. Fiber Product Grades Include:
 - i. Mixed Paper #54: No more than 1.5 -2% prohibitive materials by weight with a target moisture content not to exceed 12%
 - ii. OCC Grades (11, 11.5, 12): No more than 1-5% prohibitive materials by weight with a target moisture content not to exceed 12%
3. **Container Glass Product.** Glass Product sold by Operator shall consistently contain a Marketable amount of usable glass so the end user receives and Processes the glass Product.
4. **Aluminum Product.** Aluminum sorted and sold shall contain less than two percent (2%) non-aluminum contamination and moisture in excess of four percent (4%). Not more than ten percent (10%) of the aluminum cans fed into the Facility system shall be Disposed as Residue.
5. **PET Product.** Polyethylene Terephthalate (PET) Product sorted and sold shall contain less than ten percent (10%) non-PET contaminants. Not more than fifteen percent (15%) of qualifying PET containers fed into the Facility system shall be Disposed as Residue.
6. **HDPE Product.** High Density Polyethylene (HDPE) Product shall be sorted into natural and colored components. The HDPE-Natural (HDPE-Natural) Product shall contain less than three percent (3%) non-HDPE, no more than two percent (2%) of HDPE color and zero tolerance for any metals. The HDPE-Colored (HDPE-Colored) Product shall contain less than five percent (5%) non-HDPE and zero tolerance for any metals. Not more than fifteen percent (15%) of qualifying HDPE containers that are fed into the Facility system shall be Disposed as Residue.

EXHIBIT L: PRODUCT MARKETING PLAN

7. **Polypropylene Product.** The Polypropylene Product shall contain less than five percent (5%) non-polypropylene, except for other non PP or HDPE plastic content which cannot exceed fifteen percent (15%). Not more than ten percent (10%) of qualifying polypropylene containers that are fed into the Facility system shall be Disposed as Residual.
8. **Mixed Rigid Plastics Product.** Mixed rigid plastics shall be Recovered and Marketed to meet specifications that will support Marketability of the Product in the then-current Market conditions.

B. Marketed Recovered Materials Commodities

Recovered Recyclable Materials Commodities. Operator shall Market Recovered Recyclable Materials in the commodity categories listed in this Section. If Operator wants to modify the commodity categories during the Term of the Agreement, Operator shall request approval from the County, and such approval shall be obtained before changes are implemented. Recovered Recyclable Materials commodity categories shall include, at minimum:

1. Fiber
 - i. Old corrugated Cardboard (OCC)
 - ii. Mixed paper (MP)
2. Metals
 - i. Aluminum
 - ii. Scrap metal (inclusive of tin, steel, and bi-metal)
3. Plastics
 - i. PET
 - ii. HDPE Natural
 - iii. HDPE Color
 - iv. Polypropylene
 - v. Mixed rigid plastics
 - vi. LDPE (Low Density Polyethylene) - Film
4. Mixed Glass Containers

EXHIBIT M: STAFFING PLAN

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EXHIBIT M: STAFFING PLAN

As described in Exhibit B: O&M Manual, Section B.1, The County may, at any time request written job descriptions for each job classification for the below list of employees.

MRF Headcount				
MarBorg Recovery				
Shift	Position	Headcount	Requisitions	Total
1st	General Manager	1		
1st	Operations Manager	1		
1st	Administrative Assistant	1		
1st	Environmental Health & Safety Manager	0	1	
1st	Maintenance Technicians	4		
1st	Equipment Operator	3		
1st	Equipment Operator Lead	1		
1st	Service Writer	1		
1st	Maintenance Lead	1		
1st	Scale House Operator	2		
1st	Line Operator	2		
1st	Quality Control Baler Lead	1		
1st	Traffic Controller	1		
2nd	Welder	1	1	
2nd	Forklift Operator	1		
2nd	Maintenance Supervisor	1		
2nd	Equipment Operator	2		
2nd	Maintenance Helper	2		
2nd	Maintenance Technicians	3		
2nd	Maintenance Lead	0	1	
2nd	Line Operator	2		
	Total	31	3	34
LEADPOINT				
Shift	Position	Headcount		
1st	Screen Cleaner	0		
1st	Line Lead	1		
1st	Sorter	19		
2nd	Shift Manager	1		
2nd	Maintenance Helper	0		
2nd	Line Lead	2		
2nd	Screen Cleaner	0		
2nd	Sorter	25		
	Total	48		
New Vision Horizon				
Shift	Position	Headcount		
1st	Supervisor	1		
1st	Baler Quality Control	7		
	Total	8		
	Total Contingency Labor	56		
	Total MarBorg Recovery	34		
	Grand Total MRF Support Headcount	90		

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EXHIBIT N:
MATERIALS CHARACTERIZATION STUDY
METHODOLOGY

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EXHIBIT N:

MATERIALS CHARACTERIZATION STUDY METHODOLOGY

The following Exhibits (N-1 through N-3) describe protocols related to the Acceptable Materials Characterization Study requirements under Section 9.2 of the Agreement that will be used to quantify: (i) Operator's Effective Recovery Rate for each Acceptable Materials Characterization Study; (ii) Operator's performance against its Minimum Performance Guarantee for each Acceptable Materials Characterization Study and determination of the resultant Residue Allowance for the then-current calendar quarter for each Acceptable Material Processed; (iii) Operator's performance against Operator's Recovery Guarantee for each quarterly Acceptable Materials Characterization Study and the resultant Residue Overage and/or Excess Residue payment for the then-current calendar quarter for each Acceptable Material Processed; and (iv) payment due to the County for Residue Overages and/or Excess Residue. Provided, however, that if the County and Operator agree to reduce the frequency of the Characterization Studies in accordance with Section 7.2.B of the Agreement, then the prior calendar quarter's each Acceptable Materials Characterization Study results shall continue to be used in subsequent quarters calculation of Operator's performance in subsections ii and iii above to determine the resultant Allowance and Residue Overage and/or Excess Residue payments until the next Acceptable Materials Characterization Study is performed.

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EXHIBIT N-1:
MATERIALS CHARACTERIZATION AND COMPLIANCE
SAMPLING PROTOCOL

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EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

A. General

Operator shall conduct studies to measure the composition of (i) Recyclable Materials, including Recovered Recyclable Materials and Recyclable Materials Processing Residue; and (ii) Mixed Waste, including Recovered Materials, Mixed Waste Processing Residue, and Organic Materials Recovered (collectively "Characterization Studies") and sampling of Mixed Waste and Mixed Waste Processing Residue (collectively "Compliance Sampling"), pursuant to 14 CCR Section 17409.5.2 and as required by SB 1383, on a quarterly basis, in accordance with this Exhibit and Section 7.2 of the Agreement. The Characterization Studies and the Compliance Sampling (collectively "Performance Study") shall occur on the same Days and for the same duration of Days.

1. **Recyclable Materials:** Each Day of each of the Characterization Studies for Recyclable Materials shall be comprised of two (2) parts, inclusive of the requirements related to Compliance Sampling:
 - i. Characterization of the composition of Recovered Materials in the initial Recyclable Materials Characterization Study ("Recovery Study").
 - ii. Characterization of a Residue sample taken from the Residue sorted during the Recovery Study portion of the Recyclable Materials Characterization Study ("Residue Study"), inclusive of the Organic Materials content in the Residue sample, inclusive of the requirements outlined in 14 CCR Section 17409.5.2.
2. **Mixed Waste:** Each Day of each of the Characterization Studies for Mixed Waste shall be comprised of three (3) parts, inclusive of the requirements related to Compliance Sampling:
 - i. Characterization of the composition of Recovered Materials in the initial Mixed Waste Characterization Study ("Recovery Study").
 - ii. Characterization of a Residue sample taken from the Residue sorted during the Recovery Study portion of the Mixed Waste Characterization Study ("Residue Study"), inclusive of the requirements outlined in 14 CCR Section 17409.5.2.
 - iii. Characterization of an Organic Materials sample taken from the Organic Materials sorted during the Recovery Study portion of the Mixed Waste Characterization Study ("Organics Study"), inclusive of the requirements outlined in 14 CCR Section 17409.5.2.

B. Schedule

In accordance with Section 7.2.B of the Agreement, and unless otherwise mutually agreed upon between the Parties, Operator shall conduct the first Performance Study at the next scheduled SB 1383 Compliance Sampling event, after the Effective Date of this Agreement, and quarterly thereafter, in accordance with this Exhibit.

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

No later than February 1 of each calendar year, Operator shall submit its proposed schedule for the performance of each Performance Study for that calendar year. The County shall review and approve, in its sole discretion, the proposed schedule. The County, and designees, shall be permitted to observe all aspects of all Performance Studies, and Operator shall make adjustments to the schedule in order to accommodate observation of the Performance Studies by the County or its designees.

In the event Operator needs to reschedule a Performance Study or the Performance Study is otherwise delayed, Operator shall notify the County and submit a request for delay, which shall contain the reason for delay, start and anticipated end of delay, proposed new schedule, and plan to ensure the rescheduled Performance Study is as similar to the originally scheduled study as possible (e.g., weather conditions). The County shall review such request for approval, which shall not be reasonably withheld. Operator and the County shall meet and confer, if needed, to ensure the Performance Study is completed within a mutually agreed upon timeframe.

C. Performance Study Preparation

1. **Operator Staff.** In addition to Operator staff directly conducting the Performance Study sorting, as required under this Exhibit N-1 and described in Operator's Process Description in Section F, Operator shall have a primary representative onsite to manage all aspects of each Performance Study, and such representative shall be authorized to make decisions on behalf of Operator and to certify the results of the Characterization, and in no case shall Operator's failure to designate, empower, or have its primary representative available be grounds for Operator to dispute the Performance Study results. Operator representative shall serve as the primary point of contact during the course of each Performance Study Day through the completion of the Performance Study by Operator, and approval of the results from each Performance Study, including the Residue Allowance, Residue Overage, and Excess Residue calculations resulting therefrom. Operator shall provide contact information for its primary representative and any other relevant staff on-site that the County may need to contact.
2. **County Staff.** The County shall be invited and permitted to observe each Performance Study. The methodology set forth in this Exhibit anticipates that the County will be onsite during each Performance Study to conduct specific oversight duties. Notwithstanding such provisions, the County retains the right to not provide staff to oversee each Performance Study or instead provide a reduced number of staff throughout each Performance Study Day. If applicable, the County shall provide written notice to Operator of its decision to not provide onsite staff for observation. Regardless of County staffing level, all Operator requirements set forth in this Exhibit shall remain intact and in full force. In the event the County does not have staff onsite, Operator shall provide any communications that would have otherwise been communicated onsite via telephone, email, and/or another form mutually agreed upon by the Parties.

EXHIBIT N-1:

MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

3. **Communications Plan.** The Parties shall establish, prior to commencing each Performance Study, communication practices during all Performance Studies, including communication on-site and after each Performance Study. Each Party shall provide the other with names and contact information for relevant representatives, including relevant Operator staff, County staff, and County designees that may be onsite.
4. **Study Planning.** Operator and the County shall meet as needed prior to each Performance Study to confirm details on methodology, conduct Site visits, and provide documentation related to each Performance Study. Upon County request, Operator shall provide background information related to each Performance Study, which may include, but is not limited to: copies of written methodology, maps and Facility schematics, equipment details, and any data collection templates to be used. Operator shall notify the County in advance of each Performance Study if the County representatives are required to conduct any additional safety training prior to observing the study.

D. Sample Selection and Frequency

1. **Sample Selection.** Except as otherwise provided in Section 7.2.B of the Agreement, Operator shall perform a Performance Study one (1) time per calendar quarter over a ten (10) Day period, on a schedule approved in accordance with Section B. The Performance Study shall be conducted over two (2) weeks, with five (5) consecutive Performance Study Days for each Acceptable Material, covering Monday of week one (1) through Friday of week two (2) inclusive of the weekend. All Acceptable Materials Delivered for Processing during the ten (10) Day Performance Study Period, inclusive of the weekend between, shall be characterized. To the extent that Operator has any “holdovers” of unprocessed Acceptable Material delivered or Processing Residue generated prior to the first Performance Study Day, the same methodology of inclusion or exclusion of those materials shall be applied on the final Performance Study Day such that any “holdovers” that are included or excluded in the first Performance Study Day shall be correspondingly excluded or included from the final Performance Study Day. One week shall be an “A Route” collection week, and one (1) week shall be a “B Route” collection week. The order of which week is conducted first, between A Route or B Route, is not prescribed, provided that both weeks are completed in full and selected in accordance with this Section. The two (2) Performance Study weeks for each Acceptable Material are not required to be consecutive; however, to support consistency of external conditions, the second week shall commence no later than the beginning of the third week following the completion of the first Performance Study week, unless otherwise mutually agreed upon between the Parties, and shall be completed within the timeframe set forth in Section B.
2. **Residue Study Sample.** During each Performance Study Day for each Acceptable Material, Operator shall select a sub-sample from the pile of Residue sorted during the Recovery Study, in order to perform the Residue Study portion of each Performance Study Day for each Acceptable Material. Operator shall collect a sample of at least two hundred (200)

EXHIBIT N-1:

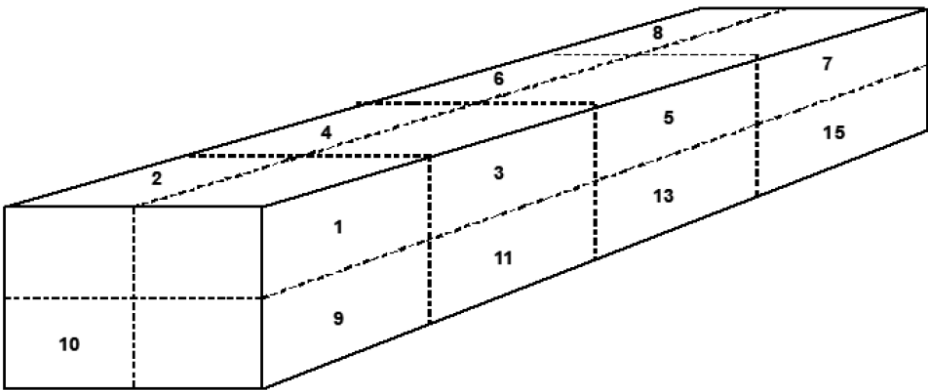
MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING

PROTOCOL

pounds per Performance Study Day for each Acceptable Material sorting in the Residue Study. The two hundred (200) pound sample for the Residue Study portion of each Performance Study Day for each Acceptable Material shall be collected in such a manner that is representative of the samples processed during the full Recovery Study for that Acceptable Material. Operator shall mix, spread, and select areas of the of the Processing Residue pile that ensure adequate randomization and representative sampling, in accordance with Operator’s Sample Selection Plan.

Operator shall collect the Residue samples directly from the belt discharge point three (3) times per Characterization Study Day in approximately equal sixty-five (65) to seventy (70) pound samples. Sample times will be randomly established prior to each testing Day, proposed in writing by Operator and approved by the County in advance, and the County shall be invited to oversee the sample selection.

Figure 1: Sixteen (16) Cell Grid

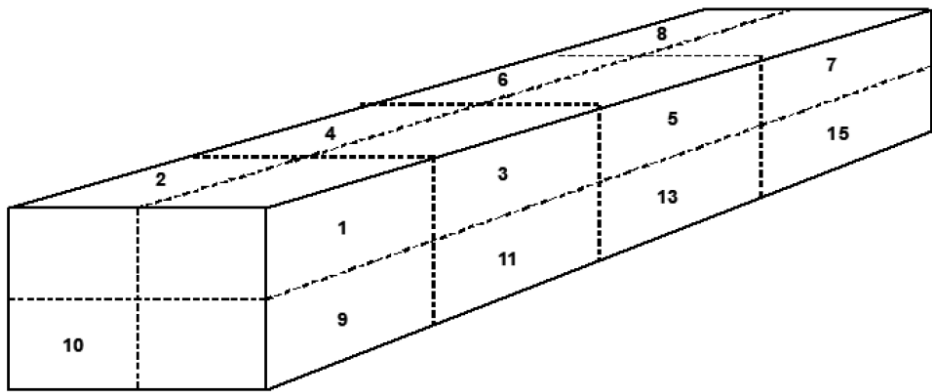


3.
- Organics Study Sample.** During each Performance Study Day for Mixed Waste, Operator shall select a sample from the pile of Organics sorted during the Mixed Waste Recovery Study, in order to perform the Organics Study portion for Mixed Waste. Operator shall collect a sample of at least two hundred (200) pounds of Recovered Organic Materials per Performance Study Day for further sorting in the Residue Study. The two hundred (200) pound sample for the Organics Study portion for Mixed Waste during each Performance Study Day shall be collected in such a manner that is representative of the samples processed during the full Recovery Study for Mixed Waste. Operator shall mix, spread, and select areas of the of the Recovered Organic Materials pile that ensure adequate randomization and representative sampling, in accordance with Operator’s Sample Selection Plan.

EXHIBIT N-1:
MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING
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Operator shall collect Organics samples directly from the belt discharge point three (3) times per Characterization Study Day in approximately equal sixty-five (65) to seventy (70) pound samples. Sample times will be randomly established prior to each testing Day proposed in writing by Operator and approved by the County in advance, and the County shall be invited to oversee the sample selection.

Figure 1: Sixteen (16) Cell Grid



4. **Sampling Documentation.** For each Performance Study, Operator shall maintain records demonstrating how Operator selected its Performance Study samples for each Acceptable Material, including how samples were selected for the Residue Study for Recyclable Materials, and the Residue Study and Organics Study for Mixed Waste. These records and documentation shall include, but are not limited to, lists of samples, Tonnage, receipts or load weight tickets, and a description of how Operator ensured that a statistically valid and representative sample was selected.

E. Equipment and Supplies

1. **Scale Standards.** Scales used during the Performance Study shall be certified by Operator and County, unless otherwise agreed upon by the Parties, and shall have any scale certifications required by Applicable Law. Operator shall ensure that scales are properly calibrated within thirty (30) Days of each Performance Study. Operator shall ensure that the scale and area under the floor scale are free of debris prior to calibration or weighing of any material. Prior to placing any material on a scale, Operator shall ensure that the scale is tared to zero (0) pounds. In the event the scale was not tared prior to weighing the material, Operator shall reweigh that material.

Operator shall use the following types of scales for each Performance Study:

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

- i. Facility floor scale
- ii. Inbound vehicle scale, with fully staffed Scale House.
- iii. Outbound vehicle scale, with fully staffed Scale House.

Prior to each Day of each Performance Study, Operator shall ensure the Facility floor scale is calibrated as follows:

Operator will utilize a known weight to confirm scale accuracy. Operator will clean the scale and place it on a level surface. Operator will put the scale into calibration mode and set the zero point. Operator will apply calibration weights and on the center of the platform and document the recorded weight. Operator will take the scale out of calibration mode and confirm the calibration by once again placing the calibration weight on the scale and recording the displayed weight. The County shall approve and document the accuracy of the floor scale at least two (2) times per year.

In the event that Operator or County observe repeated issues with scale consistency across any Performance Study Days, the County may require that Operator obtain an additional scale inspection and certification document for County review and approval and/or use an alternative scale that is similarly subject to the County's review and approval. If the County does not grant such approval, then Operator may be required to discontinue the Performance Study. In the event the concerns with scale consistency and/or accuracy are significant enough to warrant discarding the results leading up to such determination, Operator shall immediately submit a written plan to begin the replacement Performance Study(ies) in accordance with Section 7.2.E.2.ii of the Agreement, which shall be approved at the County's sole discretion. In the event the concerns with scale consistency and/or accuracy emerge during a Performance Study such that the results leading up to such determination remain reliable to both Parties, then Operator shall discontinue the remainder of the Performance Study until such time that replacement scales are available and certifications are approved by the County, and Operator shall submit a written plan to resume the Performance Study at the next available opportunity, preserving the results leading up to the determination, which shall be approved at the County's sole discretion.

2. Containers.

- i. Container List. Operator shall use a sufficient number and type of containers or receptacles to contain the material sorted during each Performance Study. Within ten (10) Days prior to each Performance Study, Operator shall provide the County with a list of containers to be labeled and weighed during the Performance Study.

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

- ii. Container Tare Weights. Before the start of each Performance Study, all containers will be tared over a calibrated scale and labeled. During each Performance Study Day, and prior to use of the containers, Operator shall weigh each container to be used in the audit while empty to obtain a baseline tare weight. Operator shall weigh, document, and maintain inventory of these containers.

Operator shall ensure that the County or its designees are able to observe and record the weighing and labeling of each container. Operator shall re-weigh containers upon County request.

- 3. **Sorting Equipment.** Operator shall utilize the same type and level of sorting equipment across each Performance Study and each Performance Study Day, as further described in Section F. In the event that a piece of equipment is no longer operational, has been replaced, or has otherwise changed, Operator shall notify the County immediately and shall propose a plan to ensure adequate level of service, for the County's approval, at its sole discretion. If the County does not approve this plan and Operator cannot provide a sufficient level of service in accordance with this Exhibit, the County may initiate the resolution process specified in Section F of this Exhibit N-1.

F. Daily Study Methodology

1. Facility Conditions and Inspection.

- i. Pre-Study Walk Through.
 - a. On each Day of the Characterization Study, Operator shall conduct a pre-Characterization Study walk through, including inspecting for the following:
 - i. The Facility, including, but not limited to, ensuring that all lines, conveyors, bunkers, silos, drum feeders, holding containers, material holding or storage areas, floors, sorting station areas, are swept and free of debris.
 - ii. All containers are free of debris, have been tared and labeled in accordance with Section E above, and have been placed at their proper sorting stations.
 - iii. If any material is remaining in the balers from prior Facility activity outside of the Characterization Study that cannot practically be removed prior to the sorting, such bales shall be clearly marked to

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

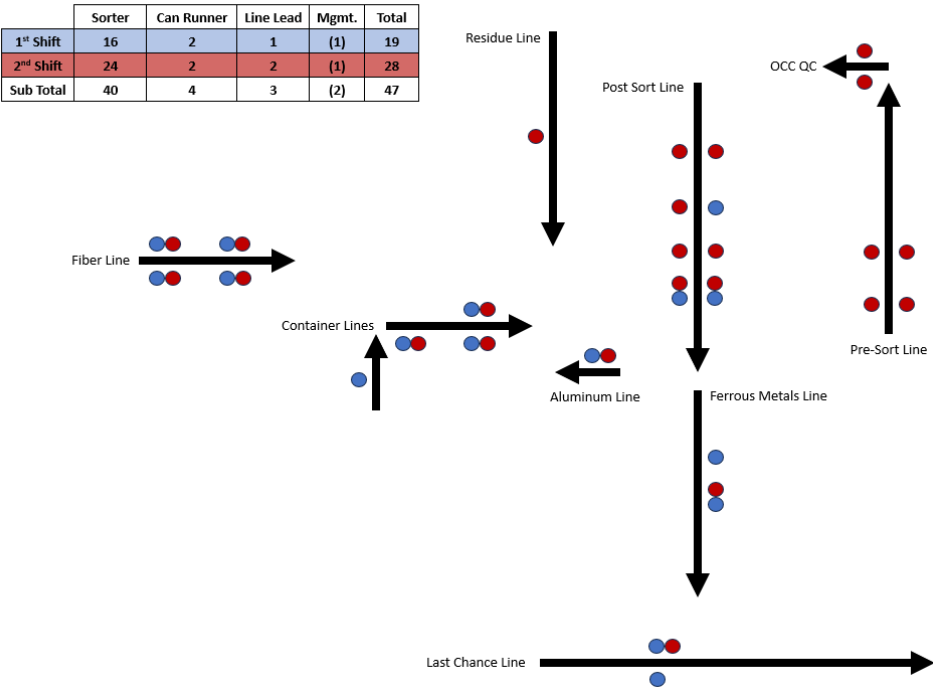
distinguish it from County material and a holding area for such material shall be identified.

- iv. Final storage areas for sorted materials are established, clear of any material, and properly labeled or otherwise designated for the County's sorted materials.
 - v. Scales have been calibrated and are free of any debris, on, around, or under the scale.
- b. Operator shall prepare and complete a pre-Characterization Study checklist to document the review for each Characterization Study Day. Operator shall maintain a record of the completed pre-audit walk through checklist, including indicated of completion by activity, relevant notes, time-stamped photographic evidence, date and time of inspection, list of people in attendance for the inspection, and the signature of the inspector certifying accuracy of the inspection.
- c. If any areas are found unsatisfactory for the Characterization Study during the inspection, Operator shall promptly correct the issue prior to loading material or commencing any sorting activities. For example, if Operator or County representative observe remaining material on a sort line, Operator shall document the issue and resolution. Operator shall take timestamped photographic evidence of the unsatisfactory condition and a photo of the area after the issue has been remedied. Operator shall make a detailed note on the checklist regarding the issue and remedy taken.
2. **Post-Study Walk-Through.** Operator shall develop a post-Performance Study walkthrough checklist to document inspection of the Facility after sorting has been completed, and submit the proposed checklist to the County with its methodology for approval. Upon completion of each Performance Study Day, Operator shall utilize the post-Characterization Study walkthrough checklist to conduct a final inspection of the Facility. If inspection conditions or timing differ between the Recovery Study, the Residue Study, and, as applicable, the Organics Study, Operator shall clearly note that on its post- Performance Study checklist; and, shall conduct two (2) inspections: one (1) prior to commencing the Residue Study and, as applicable, the Organics Study, and one (1) upon full completion of each Performance Study Day. Upon observation of unsatisfactory conditions, Operator shall record written and photographic evidence of the issue and correct the deficiency. For example, if material remained on the sort line, Operator shall clean up and weigh that material for it to be included in the Performance Study for the appropriate Acceptable Material type. Operator shall clearly document this request in writing and obtain written

EXHIBIT N-1:
MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING
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approval from the County, in the County’s sole discretion. Operator shall take timestamped photographs of each component of the checklist during the inspection, and any corrections made. Operator shall maintain records of the completed checklist, notes, and timestamped photographs, to be provided to the County with its Performance Study results.

3. **Staffing.** Operator shall provide consistent and adequate staffing for the Performance Study, in accordance with and the minimum staffing pursuant to Exhibit M: Staffing Plan.



Operator shall provide staffing in accordance with this plan for each Performance Study conducted during the Term of the Agreement, including overall number of staff as well as staff per individual sorting station. Operator shall ensure that staffing remains consistent across Performance Study Days, as well as on an hourly basis throughout each Performance Study Day. Operator shall provide the County with schedule information such as planned break times and lunch breaks that may impact the level of staffing at given times of the Day. Operator shall be solely responsible for making arrangements for and providing this level of staffing throughout each entire Performance Study.

4. **Recyclable Materials Recovery Study Sorting**
- i. Belt Speed. Operator shall run the infeed belt speed at 1350 rpm for the duration of the Recyclable Materials Recovery Study. Operator shall permit the County, or its designee, to view and record the belt speed of the infeed and full system, at periodic intervals during the Recyclable Materials Performance Study, upon County request.

EXHIBIT N-1:

MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

ii. Material Unloading. Throughout the Recyclable Materials Performance Study, each vehicle shall be weighed by the County on the inbound scale where the total weight of materials will be recorded in their scale software. Vehicles will proceed to the MRF tipping floor for Processing.

iii. Material Loading. Recyclable Materials will be loaded into the drum feeder, as follows:

Operator shall ensure the drum feeder is loaded to allow even metering of the Recyclable Materials throughout the Recovery Study, to prevent overflow and unnecessary materials falling through the system, and to prevent undue equipment clogs and material surges. To ensure an even burden depth, Operator shall utilize a self-metering drum feeder.

If the County observes that repeated surges of materials or consistent clogs, the County may request a reduced belt speed, adjustment to sorting, or equipment Maintenance to ensure similar conditions across all Recyclable Materials Performance Studies, and Operator shall not unreasonably deny such requests.

iv. Material Sorting. Operator shall sort Recyclable Materials into the required categories listed in the Performance Study Template attached to Exhibit N-3, as further described below.

- a. Metering Drum Feeder: Provides an even, steady flow of material into the system.
- b. Pre-Sort Line QC1230: No fewer than four (4) sorters are pre-sorting materials. Items that are not Residue are put into their hoppers by material type.
- c. (OCC) Separator: Separates cardboard, which is directed onto C1250 and then into a bunker.
- d. Conveyor QC1250: Material goes through no fewer than two (2) sorters to QC OCC before it is sent to bunker.
- e. Unders from OCC Screen: Sent through the plant as designed by VDRS.
- f. Post-Sort Line: No fewer than six (6) sorters are pre-sorting materials. Items that are not Residue are put into their hoppers by material type.
- g. Container Lines: No fewer than three (3) sorters are pre-sorting materials and items that are not Residue are put into their hoppers by material type.

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

- h. Aluminum Line: No fewer than one (1) sorter is pre-sorting materials. Items that are Residue are put into its hopper leading to Residue line.
- i. Fiber Line: no fewer than four (4) sorters are pre-sorting materials. Items that are Residue are put into their hoppers leading to Residue line.
- j. Ferrous Metal Line: No fewer than one (1) sorter is pre-sorting materials. Items that are Residue are put into C1520 leading to Residue line.
- k. Last Chance Line QC1440: No fewer than one (1) sorter is pre-sorting materials. Items that are not Residue are put into their buckets by material type.
- l. All Optical sorters: Set to respective programs.
- m. Magnets: separates ferrous from non-ferrous metals and each are moved into their respective bunkers.
- n. Eddy Current Separator: Separates aluminum.
- o. Balers: Compresses Recovered materials into bales.

After the Recovery Study is completed on Recyclable Materials, the sorted commodities will be moved from their bunkers to the baler. Each baled material will be weighed, photo documented, and the weight will be recorded in the log sheet. Glass will be weighed in the previously tared container trailer the weight will be recorded in the log sheet. Operator will pre-tare a vehicle and Residue will be placed inside Operator's vehicle and weighed through the Scale House, with a scale ticket generated. One 200-pound sample of Residue will be selected in accordance with Section D.2 of this Exhibit N-1. The total weight will be weighed using the floor scale, photo documented, and recorded in the logbook. Once sorted into potentially Recoverable commodities and unrecoverable items. These piles will be weighed using the floor scale and recorded.

5. **Mixed Waste Recovery Study Sorting**

- i. Belt Speed. Operator shall run the infeed belt speed at a minimum of 35 Hz for the duration of the Mixed Waste Recovery Study. Operator shall permit the County, or its designee, to view and record the belt speed of the infeed and full system at periodic intervals during the Mixed Waste Recovery Study, upon County request.
- ii. Material Unloading. Throughout the Recyclable Materials Performance Study, each vehicle shall be weighed by the County on the inbound scale where the total weight of materials will be recorded in their scale software. Vehicles will proceed to the MRF tipping floor for Processing.

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

- iii. Material Loading. Mixed Waste shall be segregated and staged for loading into the shredder as follows:

Operator shall ensure the shredder is loaded to allow even metering of the Mixed Waste throughout the Recovery Study, to prevent overflow and unnecessary materials falling through the system, and to prevent undue equipment clogs and material surges. Operator shall implement the following practices to ensure an even burden depth:

If the County observes that repeated surges of materials or consistent clogs, the County may request a reduced belt speed, adjustment to sorting, or equipment Maintenance to ensure similar conditions across all Mixed Waste Performance Studies, and Operator shall not unreasonably deny such requests.

- iv. Material Sorting. Operator shall sort Recyclable Materials into the required categories listed in the Performance Study Template attached to Exhibit N-3, as further described below.

On the Performance Study Day, Operator shall Process the Recovery Study material at a rate that does not exceed thirty-five (35) Tons per hour per line, in accordance with the system design Acceptance Testing, utilizing at least the following equipment and sorters:

- a. Metering Shredders: Provide an even, steady flow of material into the system.
- b. Unders from Shredders Screen: Sent through the plant as designed by VDRS.
- c. Post-Sort Line: No fewer than three (3) sorters are pre-sorting materials. Items that are not Residue are put into their hoppers by material type.
- d. Container Lines: No fewer than three (3) sorters are pre-sorting materials. Items that are not Residue are put into their hoppers by material type.
- e. Aluminum Line: No fewer than one (1) sorter is pre-sorting materials. Items that are Residue are put into its hopper leading to Residue line.
- f. Fiber Line: no fewer than four (4) sorters are pre-sorting materials. Items that are Residue are put into their hoppers leading to Residue line.
- g. Ferrous Metal Line: No fewer than one (1) sorter is pre-sorting materials. Items that are Residue are put into C1520 leading to Residue line.

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

- h. Last Chance Line QC1440: No fewer than one (1) sorter is pre-sorting materials. Items that are not Residue are put into their buckets by material type.
- i. All Optical sorters: Set to respective programs.
- j. Magnets: separates ferrous from non-ferrous metals and each are moved into their respective bunkers.
- k. Eddy Current Separator: Separates aluminum.
- l. Balers: Compresses Recovered materials into bales.

After the Recovery Study is completed on Mixed Waste, the sorted commodities will be moved from their bunkers to the baler. Each baled material will be weighed, and the weight will be recorded in the log sheet. Organics will be weighed in the previously tared container trailer the weight will be recorded. Operator will pre-tare a vehicle and Residue will be placed inside Operator's vehicle and weighed through the Scale House, with a scale ticket generated. One (1) two hundred (200) pound sample of Residue will be selected in accordance with Section D.2 of this Exhibit N-1. The total weight will be weighed using the floor scale, and recorded in the logbook. Once sorted into potentially Recoverable commodities and unrecoverable items. These piles will be weighed using the floor scale and recorded.

6. **Material Weighing.**

- i. General. Operator shall weigh all materials in a manner appropriate to the material type and collection method on each Performance Study Day for each Acceptable Material, as set forth below.

Materials that are captured in bales, such as bales of fibrous materials (paper and OCC), may be weighed during the sorting process as needed to increase efficiency of the Characterization. Other containerized materials shall be weighed following the sorting of materials. Roll-off boxes may be weighed as the boxes are filled, provided that a County representative is present in the Scale House to observe the weighing in accordance with this Exhibit.

Operator shall verbally state what material stream is being weighed prior to placing the material on the scale, and the Parties shall confer on the material type. The County may take a photograph of each container prior to and/or after weighing the material, and after the material has been deposited in the holding area or consolidation point.

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ii. Scale House. Materials collected in roll-off boxes shall be weighed using roll-off vehicles through the Scale House. County staff shall be invited and may be present in the Scale House to observe the weighing of materials, including the weighing of the truck with the full roll-off box to obtain the gross weight, and the truck with the empty roll-off box after material has been deposited, to obtain net weight. Upon arriving at the Scale House, Operator's roll-off vehicle driver shall verbally confirm the type of material contained in the roll-off box and state the tipping area in which the material will be deposited. County staff may then observe the deposited pile of materials and take photographs, prior to returning to the Scale House to observe the weighing of the empty truck. Operator shall provide copies of Scale House tickets, as further described in Section F of this Exhibit.

iii. Floor Scale. Operator shall place the material on the floor scale (either containerized material or bales placed directly on the scale) to be weighed. Operator shall ensure that materials placed on the scale are fully and securely on the scale and are centered to the greatest extent possible. If either Party notices that a bale or container was not in a proper position, Operator shall remove the container or bale and place it back onto the scale in the proper position to be re-weighed.

The County shall be invited and may be present and record the weight of the materials with Operator. In the event of a discrepancy or if the County was unable to record the number in time, Operator shall reweigh the material to verify Operator's recorded number. Operator and County shall document on its weight log the material stream, total weight, container number, container tare weight, and any pertinent notes that may be needed.

Prior to weighing, materials shall be placed in a designated staging area to clearly differentiate material that has not yet been weighed. After weighing, materials shall be held in a special staging area reserved for the Processed and weighed materials from each Performance Study Day, as identified during the pre-audit walk through.

iv. Sweepings. Upon conclusion of Processing and sorting all inbound Acceptable Materials during each Performance Study, Operator staff shall sweep the Processing Facility to capture material that fell from sort lines. Such material shall be added to the Residue for that Acceptable Material rather than counted as Shrinkage.

v. Shrinkage. Shrinkage shall be defined as the difference between the weight of the incoming material and the total weight of all the sorted material plus the Residual, and plus the Organic Materials for the Mixed Waste Performance Study. Operator shall operate the Processing Facility and conduct the Characterization in a manner that minimizes Shrinkage to the greatest extent possible.

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- vi. Liquids. Liquid shall be defined as the fluids trapped in containers. Operator staff shall not be required to physically open containers to separate liquids. However, for PET materials, in the event a container or bottle contains a significant amount of liquid, Operator shall remove such bottles by hand and deposit them in a separate container on the sort line. Containers with de minimis amounts of liquid shall not be placed in these separate containers and shall be counted as standard PET. Under no circumstances shall Operator mix dry PET into the containers marked as PET bottles with liquid. The County retains the right to visually inspect the liquid PET bottles, and in the event that significant liquid is not present, request that Operator weigh the material as standard PET or conduct further sorting of the bottles to remove the bottles with liquid and weigh such items separately.

The PET bottles with liquid shall be weighed separately, and that weight shall be allocated as partially Residue and partially PET in accordance with the following formula: For every 9.34 pounds of PET containing liquids, 1 pound would be considered Recyclable PET, and the remainder would be counted as liquid Residue. For example, 92 pounds of collected and weighed PET with liquids would be divided by 9.34 pounds to equal 9.85 pounds of Recyclable PET. Such calculation may occur after the characterization rather than onsite, provided that the material stream is clearly and accurately categorized on data collection sheets as PET with liquids.

- vii. Moisture. If Operator observes that bales of fiber materials appear to have increased moisture, Operator may take and document a moisture sensor reading of the bale. This shall not change the weighing or categorization process of such bales. However, Operator may notify the County with concerns regarding moisture and request that the County notify the County and Public Participant's franchise Collection Contractors of the issue.
- viii. Hazardous Materials/Sharps. If Hazardous Waste or materials are identified during the Performance Study, Operator Staff shall follow applicable safety protocols for handling the identified materials. Operator shall weigh Hazardous Waste before placing it in appropriate storage containers. Operator shall document the type of Hazardous Waste identified as part of the Performance Study. Hazardous Waste shall be identified as Residue for the purposes of the Performance Study.

7. Post-Study Walk-Through.

At the end of each Performance Study Day, Operator and the County shall perform a visual walk-through inspection of the Facility to ensure that the feedstock area, drum feeder, sort lines, screens, station containers, and other Facility areas are clear of material and that the condition of the Facility is in the same condition observed during the pre-audit walk through inspection. Operator shall utilize a post-audit checklist, in largely the same format as the pre-audit checklist.

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

Upon observation of unsatisfactory conditions by Operator or the County, the observing Party shall notify the other Party. The Parties shall record written and photographic evidence of the issue and Operator shall correct the deficiency. For example, if material remains on the sort line, Operator shall remove and weigh that material to be included in the Performance Study. Notwithstanding the foregoing, in the event Operator deems a material to be impracticable to remove and the volume of the material is estimated to be less than hundred (100) pounds., Operator may request approval from the County, in County's sole discretion, to count the material as Residue for the purposes of the Performance Study rather than remove the material.

Operator shall maintain records of the completed checklist, notes, and timestamped photographs; and, shall provide such documentation to the County upon request.

8. Residue Study Sorting

For each Acceptable Material performed on each Performance Study Day, Operator shall place the Residue from the sub-sample selected in accordance with subsection N-1.5 onto a sorting table in batches of approximately five (5) gallons each. The Operator shall provide an equipment list for sorting to the County for review. Operator shall use consistent equipment for each Performance Study in a calendar year, unless otherwise approved by the County. Operator will sort each batch removing items into the same categories as described in Exhibit N-3.

Operator will examine the materials on the sorting table, Operator shall sort materials that are approximately six (6) square inches in size into the sorting containers designated for that material type. All remaining materials that fell through the lattice will be collected and considered Residue or Shrinkage for the purposes of the Performance Study.

After sorting, the categories of materials will be separately weighed, logged, and reported in the testing results. During the Residue Study sorting process, Operator shall take photographs and make and record visual observations regarding the Marketability or Recoverability of the Recyclable Materials in the Residue sample. The recorded observations shall be provided to the County with the results of the Characterization Study.

9. Organics Study Sorting

For each Acceptable Material performed on each Performance Study Day, the Operator shall place the Residue from the sub-sample selected in accordance with subsection N-1.5 onto a sorting table in batches of approximately five (5) gallons each. The Operator shall provide an equipment list for sorting to the County for review. Operator shall use consistent equipment for each Performance Study in a calendar year, unless otherwise approved by the County. The Operator will sort each batch removing items into the same categories as described in Exhibit N-3.

EXHIBIT N-1:

MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

The Operator will examine the materials on the sorting table, the Operator shall sort materials that are approximately six (6) square inches in size into the sorting containers designated for that material type. All remaining materials will be collected and considered Residue or Shrinkage for the purposes of the Performance Study.

After sorting, the categories of materials will be separately weighed, logged, and reported in the testing results. During the Residue Study sorting process, Operator shall take photographs and make and record visual observations regarding the Marketability or Recoverability of the Recyclable Materials in the Residue sample. The recorded observations shall be provided to the County with the results of the Characterization Study.

G. Results and Documentation.

1. Results and Records.

- i. At the end of each Performance Study Day for each Acceptable Material, Operator shall provide the County with the following documentation:
 - a. Copy of completed pre-audit and post-audit checklist.
 - b. Copy of Contractor's weight data collection log completed on-site, which shall include total inbound material for that Day and each container, bale, or vehicle weighed, including, at a minimum: the specific material type, material type categorization, container number or type (container number, scale, or roll-off), gross weight (pounds), tare weight (pounds), net weight (pounds), and any associated notes taken during the Characterization.
 - c. Copy of Scale House tickets.
 - d. Copies of route sheets and inbound truck weight information.
 - e. Copy of container list and tare weights.
 - f. Other information as reasonably requested by the County.
- ii. Within thirty (30) Days of the conclusion of each Performance Study, Operator shall provide the County with Performance Study Results in accordance with Section 7.2.D of the Agreement, including, at a minimum, a completed version of the results file described Exhibits N-3. Upon County request, Operator shall provide supporting documentation to verify the Performance Study results. In the event the results are incomplete or inaccurate, Operator shall, at its sole expense, promptly correct the

EXHIBIT N-1: MATERIALS CHARACTERIZATION AND COMPLIANCE SAMPLING PROTOCOL

results, which shall not be an excuse from meeting the required submission timeline set forth in this Section.

**EXHIBIT O:
RESERVED**

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EXHIBIT P:
PERFORMANCE BOND

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EXHIBIT Q: INSURANCE REQUIREMENTS

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EXHIBIT Q: INSURANCE REQUIREMENTS

Operator shall procure and maintain for the duration of this Contract insurance against claims for injuries to Persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Operator, its agents, representatives, employees or Subcontractors.

A. Minimum Scope of Insurance Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Operator has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Pollution Legal Liability and/or Errors & Omissions: applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$10,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one (1) year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or State regulations.

If Operator maintains broader and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by Operator. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured – County and its members, officers, officials, employees, agents and volunteers are to be covered as Additional Insureds on the CGL and Pollution Liability policy with respect to liability arising out of work or Operations performed by or on behalf of Operator including materials, parts, or equipment furnished in connection with such work or Operations. General liability coverage can be provided in the form of an endorsement to Operator's insurance at least as broad as ISO Form

EXHIBIT Q: INSURANCE REQUIREMENTS

CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

2. Primary Coverage – For any claims related to this Contract, Operator’s insurance coverage shall be primary insurance as respects the County and their respective members, officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County and their respective members, officers, officials, employees, agents or volunteers shall be excess of Operator’s insurance and shall not contribute with it.
3. Notice of Cancellation – Each insurance policy required above shall provide that coverage shall not be canceled, except with Notice to the County.
4. Waiver of Subrogation Rights – Operator hereby grants to the County a waiver of any right to subrogation which any insurer of said Operator may acquire against the County by virtue of the payment of any loss under such insurance. Operator agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
5. Deductibles and Self-Insured Retention – Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require Operator to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. Acceptability of Insurers – Unless otherwise approved by County Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best’s Insurance Guide rating of “A- VII”.
7. Verification of Coverage – Operator shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Contract. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Operator’s obligation to provide them. Operator shall furnish evidence of renewal of coverage throughout the Term of the Contract. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled

EXHIBIT Q: INSURANCE REQUIREMENTS

and not replaced, County has the right but not the obligation or duty to terminate the Contract. Maintenance of required insurance coverage is a material element of the Contract and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of Contract.

9. Subcontractors – Operator shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and Operator shall ensure that County and County members are named as Additional Insureds on insurance required from Subcontractors.

10. Claims Made Policies – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of Contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of Contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, Operator must purchase “extended reporting” coverage for a minimum of five (5) years after completion of Contract work.

11. Special Risks or Circumstances – County reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Operator agrees to execute any such amendment within thirty (30) Days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance requirements will not be deemed as a waiver of any rights on the part of County.

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EXHIBIT R:
RESERVED

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EXHIBIT S:
MITIGATION AND MONITORING REQUIREMENTS PLAN

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EXHIBIT T: SUBCONTRACTOR AGREEMENTS

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EXHIBIT U:
INSTALLMENT PURCHASE AGREEMENT

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EXHIBIT V:
CONTINUING DISCLOSURES AGREEMENT

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